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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[Redacted]

H5

Date: **JAN 25 2012** Office: LOS ANGELES, CALIFORNIA FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

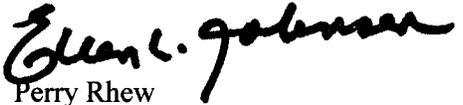
ON BEHALF OF APPLICANT:
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated June 22, 2009.

On appeal, counsel contends that the field office director failed to consider the entire record, particularly considering the applicant's husband's health, the length of time he has lived in the United States, and his two U.S. citizen children from a previous marriage.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on October 4, 2008; a declaration from the applicant; two declarations from [REDACTED]; letters from [REDACTED] physician; copies of tax returns, bank statements and other financial documents; letters from the applicant's and [REDACTED] employers; copies of photographs of the applicant and her family; letters of support; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.¹

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other

¹ The AAO notes that on the applicant's Notice of Appeal or Motion (Form I-290B), counsel indicated that the appeal was of the Form I-601 as well as the Form I-485. *Notice of Appeal or Motion (Form I-290B)*, dated July 19, 2009. The AAO does not have appellate jurisdiction over an appeal from the denial of a Form I-485. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement. Therefore, the AAO will adjudicate the appeal of the Form I-601.

documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant concedes, that between 1981 and 1988, she entered the United States four times using identities, passports, and visas that belonged to other people. *Record of Sworn Statement*, dated April 21, 2009. Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

Extreme hardship is “not a definable term of fixed and inflexible content or meaning,” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative’s family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative’s ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one’s present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec.

880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In this case, the applicant’s husband, [REDACTED], states that he has lived in the United States since 1987 and that he has two U.S. citizen daughters who live close to him. He states that prior to meeting his wife, his life was spinning out of control and he was heavily into gambling and alcohol. According to [REDACTED] since meeting his wife, he no longer drinks and has stopped gambling. He states that without his wife, he does not know if he’d be alive today and contends he could not survive without her. [REDACTED] states that he has been working at the same job for eleven years. In addition, he states that he has hyperthyroidism, high cholesterol, high blood pressure, numbness in his limbs, and had a lump removed from his breast. He contends his hyperthyroidism is very serious and causes severe weight loss, pain in his neck, shaking, and nervous problems. He states he sees his doctor every six weeks to monitor his thyroid level and that he needs his wife to go with him to his appointments because he has difficulty understanding English. According to [REDACTED] there are many days that he cannot get out of bed because of the severe neck pain associated with his hyperthyroidism and his wife takes care of him. [REDACTED] states he takes several medications and has been taking them for over ten years. Furthermore, [REDACTED] contends he cannot move back to the Philippines, where he was born, to be with his wife because he has seen the same doctor for eleven years and he fears he would die without proper medical care in

the Philippines. *Declarations of Qualifying Relative/USC Spouse* [REDACTED] dated July 19, 2009, and May 18, 2009; *cf. Declaration of Applicant* [REDACTED] dated July 19, 2009.

Letters from [REDACTED] physician state that [REDACTED] has a history of severe hyperthyroidism and has possible periodic paralysis as a result. The physician states that [REDACTED] may also have [REDACTED] disease with autoimmune thyroiditis and may have an underlying liver or gall bladder problem. In addition, the physician notes that [REDACTED] had been in the Philippines and ran out of medication, but did not notice any change in symptoms. However, the physician states that [REDACTED] has recently lost weight, has increased itching, and recurrent palpitations. *Letters from* [REDACTED] dated April 5, 2005, May 3, 2004, September 4, 2001, and June 13, 2001.

After a careful review of the record, the AAO finds that if [REDACTED] had to move back to the Philippines to be with his wife, he would experience extreme hardship. The record shows that [REDACTED] is currently fifty-five years old, has lived in the United States since 1987, and letters from his employer corroborate his claim that he has worked for the same company since 1997. *Letters from* [REDACTED] dated March 30, 2009 and November 25, 2008. The record also shows that he has a history of severe hyperthyroidism and although the most recent letter from his physician is from 2005, four years before the applicant filed his waiver application, the AAO acknowledges [REDACTED] contention that he has been receiving medical treatment from the same physician for eleven years and that he goes in for appointments to monitor his thyroid level every six weeks. *Declaration of Qualifying Relative/USC Spouse* [REDACTED] dated July 19, 2009. Although the letters from his physician show that [REDACTED] has traveled to the Philippines and has run out of medication without a noticeable difference in his symptoms, the AAO recognizes that relocating to the Philippines would disrupt the continuity of [REDACTED] medical care and the procedures his doctor has in place to monitor and treat him. Moreover, the AAO takes administrative notice that although “[a]dequate medical care is available in major cities in the Philippines, . . . even the best hospitals may not meet the standards of medical care, sanitation, and facilities provided by hospitals and doctors in the United States.” In addition, medical care in the Philippines is limited in rural and more remote areas. *U.S. Department of State, Country Specific Information, Philippines*, dated May 11, 2010. Furthermore, the AAO acknowledges [REDACTED] contention that he has two U.S. citizen daughters from a previous marriage, that he is very close with them, and that they live near him in California. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if he had to move back to the Philippines is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Although the AAO is sympathetic to the couple’s circumstances, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the emotional hardship claim, although the AAO acknowledges [REDACTED] contention that he no longer drinks or gambles because of his wife, the record does not show that his hardship is extreme or that his situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996)

(holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Regarding his medical conditions, the letters from [REDACTED] physician do not contend he needs or relies on his wife for assistance in any way and there is no contention that his daughters are unwilling or unable to assist him. Moreover, although the record contains financial documents, the applicant does not make a financial hardship claim and the AAO notes that the applicant has not provided any documentation addressing the couple's regular monthly expenses.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.