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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**

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[REDACTED]

Date: **JAN 26 2012** Office: SAN JOSE, CA 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*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Jose, 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 his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated August 24, 2009.

On appeal, counsel contends that the applicant established extreme hardship, particularly considering the applicant has chronic plantar fasciitis, left the Philippines in 1995, and has not returned to the Philippines since his departure. In addition, counsel states that the applicant's wife is pregnant with their third child and that she was hospitalized for preterm labor. According to counsel, the applicant is taking care of his wife as well as their two young daughters. Counsel submits additional evidence of hardship.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on June 25, 2004; a letter from the applicant; a letter and affidavits from [REDACTED] a letter from the applicant's physician; a letter from [REDACTED] physician, copies of medical records, and a copy of a prescription; several letters from [REDACTED] relatives; copies of bills, tax returns, and other financial documents; a psychological evaluation of [REDACTED] a letter from [REDACTED] employer; a copy of the U.S. Department of State's Background Note on the Philippines and other background evidence; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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 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 he entered the United States on or about June 20, 1995, under an assumed name and using another person's passport. Therefore, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act 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 wife, [REDACTED] states that she cannot bear the thought of her husband returning to the Philippines. She states that they were working hard to build a foundation for their children, but that they lost their house last year. According to [REDACTED] her husband lost his job due to the bad economy and he is now the primary caregiver of their children while she works. She states that she suffers from severe anxiety and that she has physical symptoms from the stress and fatigue of her husband’s immigration situation, including abdominal pains of an unknown cause, a change in eating and sleeping habits, and a lack of concentration at work. [REDACTED] claims her abdominal pain has gotten out of hand and she experiences pain after every meal. She states her doctor has prescribed her an antacid, referred her to a psychologist, and prescribed her a medication for her anxiety and to help her sleep better. In addition, [REDACTED] contends her husband was diagnosed with plantar fasciitis and has sought professional help for his condition. Furthermore, [REDACTED] asserts that she cannot return to the Philippines with her husband because she has lived in the United States since the age of sixteen and has never returned to the Philippines since she left. She contends her entire family lives close by in San Jose, California. She also contends it would be hard to live in the Philippines considering its economy and claims that their children would be subject to inferior schools and healthcare systems.

After a careful review of the record, the AAO finds that if [REDACTED] moved back to the Philippines to be with her husband, she would experience extreme hardship. The record shows that [REDACTED] has lived in the United States since she was sixteen years old and has three U.S. citizen children. The record also shows that [REDACTED] entire family lives in the San Jose, California, and that she is very close to them. In addition, the record shows that [REDACTED] has a career as a registered nurse and has worked at the same hospital since 2001. Moreover, the AAO takes administrative notice that the U.S. Department of State warns U.S. citizens regarding travel to the Philippines due to terrorist activity,

kidnap-for-ransom gangs, and violent assaults in areas including Manila, where the applicant is from. *See U.S. Department of State, Travel Warning, Philippines*, dated January 5, 2012 (“The Department of State warns U.S. citizens of the risks of terrorist activity in the Philippines [which] could be indiscriminate and could occur in any area of the country, including Manila. . . . Kidnap-for-ransom gangs continue to be active throughout the Philippines and have targeted foreigners, including U.S. citizens.”); *U.S. Department of State, Country Specific Information*, dated May 11, 2010 (“Kidnap-for-ransom gangs operate in the Philippines and sometimes target foreigners as well as Filipino-Americans. . . . Crime is a significant concern [and] kidnappings and violent assaults do occur in Metro Manila and elsewhere.”). Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if she moved 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 she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the family’s circumstances, there is no evidence that their situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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). Although documentation in the record confirms counsel’s contention that [REDACTED] was pregnant and had difficulties with preterm labor, the record shows she was due to give birth in March 2011 and there is no contention that she continues to require the applicant’s assistance due to any physical condition. Regarding the emotional hardship claim, although the record contains a Psychological Consultation from a psychologist, the report does not show that the hardship [REDACTED] would suffer is unique, or atypical compared to others in similar circumstances. Although the psychologist states that [REDACTED] emotional functioning is shown to be in disarray, that she has coping deficits and significant distress, would likely have trouble adjusting to drastic changes in her life at this time, and that her form of coping focuses on the reliance of feedback and support from external sources, the report does not show that [REDACTED]’s situation is unique, or atypical. In fact, the psychologist states that throughout the testing session, [REDACTED] maintained normal mood and normal affect and that her speech and thought processes were all within normal limit. The psychologist also notes that [REDACTED] coping style seems to have worked well in the past, given the availability of her social support and the lack of psychiatric history. In addition, the psychologist notes that many of [REDACTED] responses are likely related to the issues being first time parents. The AAO notes that [REDACTED] has a significant support system. *See, e.g., Letter from [REDACTED] supra* (“our family can help my sister with taking care of the kids”); *Letter from [REDACTED] supra* (“We . . . would openly extend our time and resources to serve them when needed”). Similarly, the letter from [REDACTED]’s physician, which states that [REDACTED] is suffering from stress and abdominal pain related to her stress does not show that her hardship is unique, or atypical. In addition, the letter from [REDACTED] physician does not address the prognosis or severity of her stress or abdominal pain. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. Finally, the AAO notes that although the record contains financial documentation, neither the applicant nor his wife makes a financial hardship claim. In any event, the record shows that [REDACTED] has a

career as a registered nurse, earning a salary of \$87,377. Even considering all of these factors in the aggregate, the record does not show that Ms. [REDACTED] hardship is extreme if she were to remain in the United States without her husband.

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 in 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 [REDACTED], the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 he 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.