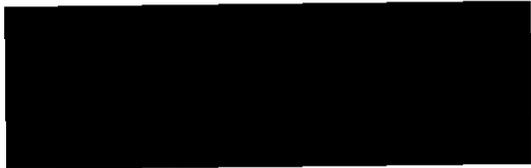


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H5

DATE: **JUL 20 2012**

OFFICE: MANILA, PHILIPPINES

File:

IN RE:

Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Manila, Philippines and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated June 23, 2010.

On appeal the applicant's spouse asserts that if a waiver is not granted, he will suffer extreme hardship. *See Statement from the Applicant's Spouse*, dated August 5, 2010.

The record contains, but is not limited to, Forms I-290B, I-130, I-601 and a decision denying the applicant's waiver application; hardship letters by the applicant's spouse and the applicant; reference letters of support; country-conditions articles; and an application for an immigrant visa. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.

The record reflects that the applicant entered the United States at Kennedy International Airport in New York and attempted to secure admission by presenting a photo-substituted and biographically altered passport and visa. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

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.

The record reflects that the applicant’s spouse is a 43-year-old native of the Philippines and citizen of the United States who has been married to the applicant since May 2008. He indicates that he and the applicant met in May 2007 while he was visiting the Philippines with his mother, and that he proposed marriage to her before returning to the United States the following month. The applicant’s spouse notes that his mother was impressed that the applicant is a registered nurse and could thus easily find employment in the United States. He maintains that he and the applicant are deeply in love, long to live together as a family along with her 15-year-old daughter, and that they cry each time they speak with each other on the phone. The applicant’s spouse states that the stress of waiting for his wife and not knowing if she will ever be able to join him is causing him to lose concentration in his job and that he is getting depressed. The applicant’s spouse asserts that the waiver denial has also caused sadness for his mother who cares about him, wants him to be happy, and wants to see him living with his wife, stepdaughter, and perhaps even children of his own while she is still alive. The AAO recognizes that the applicant and her spouse have not resided together since marrying in the Philippines and are unsure of whether they will be permitted to do so in the United States. The challenges described, however, are not beyond those ordinarily associated with the inadmissibility of a loved one.

The AAO acknowledges that separation from the applicant has caused and may continue to cause various difficulties for the applicant’s spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant’s spouse states that by working two jobs in the United States he is able to pay his mortgage, purchase a car, and provide for himself and his family – something he claims he cannot do in the Philippines. The applicant’s spouse asserts that he will have

difficulty finding work because of the high unemployment rate, and he adds that even if he does secure employment his salary would be insufficient to raise his family, and that there is “no way we can survive there financially.” The applicant’s spouse does not address how the applicant and her daughter have been able to survive financially in the Philippines, nor does he discuss or submit documentary evidence related to her employment there as a registered nurse. The applicant’s spouse further speculates that in the Philippines, he will be unable to provide the best education to his 15-year-old stepdaughter and any future children he may have with the applicant.

The applicant’s spouse explains that though he lived in the Philippines for 29 years, it did not compare to the peaceful and comfortable life he has here in the United States. He states that typhoons and flooding in the Philippines often affect the standard of living, health conditions, and transportation, and that cases of leptospirosis have been reported. A number of flood-related articles from widely varying dates have been submitted. The applicant’s spouse contends that drug crimes, prostitution and kidnapping are rampant in the Philippines and that relocation would jeopardize his and his family’s lives. Corroborating evidence has not been submitted, though the record does contain an October 2009 article about a robbery-shootout at an upscale urban mall.

The applicant’s spouse indicates that he lives with his mother and that his father died when he was young. He explains that while he has siblings in the United States, they live separately and have their own families. The applicant’s spouse states that it would be impossible for him to see his mother if he relocates to the Philippines because he would be unable to afford the airfare. He adds that it would be hard for him to leave her now as she ages and becomes ill from diabetes. The record contains no documentary evidence concerning his mother’s health. The applicant’s spouse does not address the possibility of bringing his mother with him in the event he relocates to the Philippines, and he claims without explanation that relocating would cause him to be a burden on his siblings living there.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant’s spouse including economic, employment, educational, health and safety concerns, along with concerns about leaving his mother in the United States. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant’s U.S. citizen spouse would suffer extreme hardship were he to relocate to the Philippines to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

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ORDER: The appeal is dismissed.