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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

[REDACTED]

HL5

Date: JUN 20 2012

Office: SAN FRANCISCO

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

[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,

for

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant, a native and citizen of the Philippines, 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 procuring a visa and admission to the United States through fraud or misrepresentation. The applicant entered the United States on December 30, 1997 using a B-2 visitor visa that she obtained by misrepresenting her identity and marital status. In addition, on April 7, 2000, the applicant filed a Form I-817 Application for Voluntary Departure Under the Family Unity Program, which contained false information. The applicant does not contest this finding of inadmissibility, but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her U.S. Citizen spouse.

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

The record contains the following documentation: a statement by applicant's counsel on Form I-290B, Notice of Appeal or Motion; a declaration by the applicant's spouse; medical records for the applicant's spouse; financial documentation; and other documentation submitted in conjunction with the applicant's I-601 waiver application. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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.

Section 212(i) of the Act provides:

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. The applicant's U.S. Citizen husband is the only qualifying relative in this case. 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 applicant's spouse states that he will experience medical hardship if the applicant's waiver is denied due to the fact that he suffers from asthma. A medical report dated September 29, 2009 stated that the past medical history of the applicant's spouse included mild persistent asthma, as diagnosed on January 13, 2006, and that the applicant's spouse was treated for asthma on September 13 and 21, 2006 and on December 25, 2006. A medical report from February 24, 2010 indicates that the applicant's spouse visited the emergency room due to an asthma attack. A medical report dated March 1, 2010 states that the applicant's spouse has severe asthma that is not well controlled by his current medications. The report indicates that his medications were being adjusted, and medications were being added, to get his asthma under better control. The medical documentation in the record regarding the applicant's spouse's asthma fails to include an explanation of his condition, the causes of the condition, and the effect of the adjusted medications and treatment plans being provided to the applicant's spouse. In addition, there is no evidence in the record as to the type of assistance that the applicant's spouse requires, or evidence to indicate that separation from the applicant will cause the applicant's spouse to experience further medical hardship.

The applicant's spouse states that he will experience financial hardship if the applicant's waiver is not approved, claiming that he was forced to lose his home to foreclosure, and that he and the applicant have accumulated a large credit card debt. The record includes copies of federal income tax returns, and credit card bills totaling approximately \$16,000. The applicant's spouse contends that without the applicant's income, they will not be able to meet their monthly expenses. However, a copy of a federal income tax return for 2007 that is included in the record indicates that the applicant's spouse had a higher income than the applicant during that year. The record indicates that the applicant's house in Pacifica, California was lost to foreclosure in 2008, and the applicant's spouse states that this is because the mortgage payment increased to \$5,500, and that he was unable to sell the home due to the financial crisis. However, there is no updated information regarding the income and expenses of the applicant's spouse on the record, and thus the evidence submitted is insufficient to conclude that the qualifying spouse is unable to meet his financial obligations in the applicant's absence. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The applicant's spouse further contends that he fears he might suffer a psychological breakdown if he was separated from the applicant. However, no medical evidence was submitted to support this

assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

The applicant's spouse states that because of his asthma condition, it will be difficult to tolerate the climate of the Philippines. The record includes documentation that confirms that the applicant's spouse has asthma. The record includes information that air pollution is a problem in the Philippines, and that the air quality in the larger cities in the Philippines is not good. However, there is no explanation in the record from the applicant's spouse's treating physician on the causes or triggers for his asthma attacks. In addition, there is no evidence on the record how his asthma would be exacerbated in the Philippines, or that he would not have access to adequate treatment for his asthma were he to reside in the Philippines.

The applicant has not addressed whether she has family ties in the Philippines, and thus the AAO is unable to ascertain whether and to what extent the applicant would receive assistance from family members for both herself and her family. The applicant further failed to provide any detail regarding the applicant's spouse's family members, other than the fact that the parents of the applicant's spouse live in Guam, and that his sister recently returned to Guam, thus the AAO is unable to ascertain the family ties that the applicant's spouse may have in the United States. Based on the evidence on the record, the applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to the Philippines to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission. Although the AAO is not insensitive to the applicant's husband's situation, the record does not establish that the hardship he would face rises to the level of extreme as contemplated by statute and case law.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.