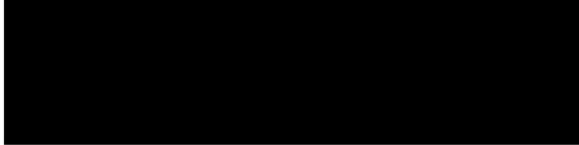


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



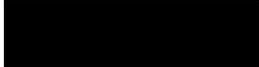
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DATE: **MAR 05 2012**

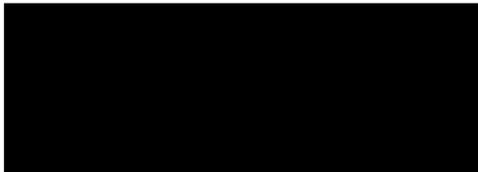
OFFICE: SANTA ANA

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:



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, Santa Ana, California, and 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 having procured a visa and U.S. admission through fraud or misrepresentation. The applicant is married to a U.S. citizen through whom he is eligible to seek adjustment of his status to that of permanent resident. The applicant does not contest this inadmissibility finding, but seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, dated October 30, 2009.

In support of the appeal, the applicant's counsel submits a brief and supporting documentation, including, but not limited to: educational and professional training records; financial information; support letters; birth certificates; and information about the Philippines. The record also contains the applicant's Form I-485, Form I-601, and supporting documents. The entire record was reviewed and considered in rendering this decision.

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

Misrepresentation

(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:

Admission of Immigrant Inadmissible for Fraud or Willful Misrepresentation of Material Fact

(1) The [Secretary] may, in the discretion of the [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 [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. As a waiver of inadmissibility under section 212(a)(9)(B)(v) depends on the same standard, the decision on the applicant's appeal will apply equally to the unlawful presence inadmissibility. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. resident spouse 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-Morales*, 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 shows that, during his consular interview for a non-immigrant visa, the applicant misrepresented his reason for traveling as being to attend a seminar in the United States and, thereby, obtained a single entry, B-1 business visitor's visa, when in reality he intended to stay here and find work. He used this visa to enter the United States on April 27, 2007, was admitted until May 28, 2007, and never departed. *See Record of Sworn Statement in Affidavit Form*, March 11, 2009. He married a U.S. citizen in Santa Ana, California, on September 15, 2008; his wife filed a Petition for Alien Relative (Form I-130) for the applicant and he concurrently filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on or about October 17, 2008. After admitting at his adjustment of status interview having lied to a Consular Officer to obtain a visa and again to an Immigration Inspector upon entry, the applicant was deemed inadmissible for having procured a visa and U.S. admission by fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act.

The applicant's U.S. citizen spouse contends she will suffer emotional and financial hardship if she remains in the United States while the applicant resides abroad due to his inadmissibility. She claims to be stressed by thoughts of possible separation from the applicant, and notes fearing that her high cholesterol and elevated blood pressure will suffer from his absence. *Statement of [REDACTED]* June 30, 2009. In the same document, the applicant's wife claims her husband is a substantial source of household income, and declares having safety concerns about relocating to the Philippines.

To begin, the record contains no supporting evidence concerning the emotional hardship that counsel and the applicant's wife state she will experience if separated from her husband, other than her own claims about feeling stress and the statement of her 20 year-old daughter in support of the waiver request. 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)). Without corroboration, the applicant's wife's statement does not satisfy the applicant's evidentiary

burden. Nor has it been established that she would be unable to travel to the Philippines to visit her husband.

As for the predicted financial hardship, besides general reference in his wife's statement to the applicant's financial support and a spreadsheet listing both of their claimed incomes, there is no evidence regarding his actual earnings contribution to household maintenance, such as tax returns, W-2s, or employer wage statements. We note that, although the applicant submitted information showing he worked in the United States as a caregiver in 2007 for approximately three months, the record contains no documentary verification. The only earnings document in the record is a statement showing the applicant's wife's net pay for one week in May 2009. We observe that an exhibit to the waiver request showing the claimed monthly earnings of the applicant and his wife is a spreadsheet provided by counsel without supporting data; therefore, the record contains no evidence supporting the qualifying relative's claim that they make equal financial contributions to the household and, in fact, suggests that the applicant became unemployed in 2007. Although providing documentation of expenses, the applicant has submitted insufficient evidence of his wife's overall financial situation to establish that, without his physical presence in the United States, she will experience financial hardship. Nor has it been established that the applicant will be unable to support himself while in the Philippines, thereby imposing hardship on his wife. Rather, the record contains the applicant's claim to have worked for the same employer in the Philippines from 2001 until his U.S. admission in April 2007 and for whom he purportedly traveled to the United States.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. Although the specifics of each qualifying relative's background may be unique, the situation of the applicant's wife, if she remains in the United States, is typical of individuals facing separation as a result of removal and does not rise to the level of extreme hardship based on the record. As counsel for the applicant has added to the record no further documentation of this claim, only restated the unsupported assertions in the initial waiver request, the applicant has not met his burden of establishing his wife would suffer hardship beyond the common results of removal or inadmissibility.

As regards establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that the record contains little evidence allowing us to compare her ties to the United States with those remaining in the Philippines from which she emigrated in 1997. We see evidence that she has three U.S. citizen children in the United States, including two who emigrated with her and are now adults. The record also reflects that she has three stepchildren in the Philippines through the applicant, whose children are comparable in age to his wife's.<sup>1</sup> Supporting her contention regarding reduced earning capacity and poor employment prospects, the applicant's wife submits documentation of technical education completed in 2006, together with information regarding the high unemployment rate in the Philippines. Although neither her work history since finishing that education nor her actual income are documented, we observe that mere diminution in earnings or the inconvenience of needing to become certified again

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<sup>1</sup> The applicant's wife's children are 20, 18, and 9 years old, while his own are 22, 17, and 13.

in her field (e.g., in the Philippines) do not comprise hardships that rise to the level of “extreme.” See, *supra*, *Matter of Cervantes-Gonzalez* and *Matter of Pilch*.

Both counsel and the applicant’s wife point out her concern for the safety of her husband, should he have to return to the Philippines, and fear for her children and herself, should they accompany him. Safety issues are addressed by a U.S. Department of State (DOS) Travel Warning, which reminds U.S. citizens to be mindful of possible terrorist activity in the islands of the southern Philippines. While recommending the use of extreme caution when traveling to these areas, the DOS does not warn against travel; the document further advises, in general, avoidance of demonstrations and other large public gatherings. This warning references ongoing concern about the threat of terrorist action against U.S. citizens and interests anywhere around the world. See *Travel Warning--Philippines, U.S. Department of State*, dated January 6, 2012.

The AAO observes that Pampanga, the applicant’s birthplace north of Manila, and Malate, the Manila district where he worked, are both located on the large northern island of Luzon outside the southern areas specified in the warning. Absent from the record is any indication where the applicant’s children – i.e., his qualifying relative’s stepchildren – live or where the applicant’s wife was born and raised. We note that, in addressing danger concerns, she does not state a specific fear of relocating to a particular place, but rather a general concern about the Philippines being dangerous. While not unmindful that moving overseas would entail challenges, we note that the documentation in the record, considered in its totality, reflects that the applicant has not established his wife would suffer extreme hardship were she to move back to the country where she lived until she was 37 years old. Accordingly, the AAO concludes the applicant has not established that a qualifying relative would suffer extreme hardship were his wife to relocate abroad to continue residing 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 she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant’s spouse’s situation, the record does not establish that the hardship she would face rises to the level of “extreme” as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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.

**ORDER:** The appeal is dismissed. The waiver application is denied.