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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: 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:



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, Manila, the Philippines, 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 attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the daughter of a United States citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 mother.

The Field Office Director found that the applicant established that her United States citizen mother would experience extreme hardship if she relocated to the Philippines; however, she failed to establish that extreme hardship would be imposed on her mother if she remained in the United States, and the Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 18, 2009.

On appeal, the applicant, through counsel, contends that the Field Office Director erred in denying the applicant's waiver application. *See Form I-290B*, filed December 18, 2009. Counsel claims that the Field Office Director "failed to consider the entire range of factors concerning hardship in their totality." *Id.* Moreover, counsel claims that the applicant is "central in the day-to-day care of her U.S. citizen mother, thereby supporting the link that her reunification with her mother...is necessary for [the applicant's mother] to subsist." *Id.*

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant, medical documents and articles for the applicant's mother and sister, a Social Security statement for the applicant's mother, and a country conditions document for the Philippines. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) 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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (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 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 resident spouse or parent of such an alien.

In the present case, the record indicates that on January 12, 1984, the applicant married her current husband in the Philippines. On March 8, 1984, the applicant's mother filed a Form I-130 on behalf of the applicant as an unmarried child. On May 23, 1984, the applicant's Form I-130 was approved; however, it was revoked on April 12, 1991, because the applicant did not disclose that she was married at the time that the applicant's mother filed the Form I-130, and lawful permanent residents are unable to petition for married sons or daughters. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother 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 United States Citizenship and Immigration Services (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 of Immigration Appeals (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 AAO notes that the Field Office Director determined that the applicant established that her United States citizen mother would experience extreme hardship if she relocated to the Philippines. The AAO affirms the Field Office Director's previous finding with respect to hardship to the applicant's mother if she joined the applicant in the Philippines. However, the record fails to establish extreme hardship to the applicant's mother if she remains in the United States.

In a statement dated September 8, 2009, the applicant states her mother suffers from various medical conditions and requires assistance. Medical documentation in the record establishes that the applicant's mother "suffers from recurrent syncope, legal blindness, hypertension, arthritis, depression, gastroesophageal reflux disease," and "hyperlipidemia." *Letter from* [REDACTED], dated July 22, 2009. In a letter dated July 23, 2009, [REDACTED] states the applicant's mother is

legally blind and “[i]t would be helpful for her to have a full-time caregiver to assist her.” In counsel’s appeal brief dated January 13, 2010, counsel claims that the applicant’s mother requires supervision, she “needs a walker as well as a wheelchair in order to get around,” and “[t]he degeneration of [the applicant’s mother’s] physical functions increase with old age.” Counsel claims that the applicant is the only person who could provide full-time care to her mother. Counsel states that “[w]hile [the applicant’s mother’s] other U.S. citizen children are in close proximity to her and are undoubtedly able to give *some* form of care,” “all of her children in the U.S. not only have their own families to support and provide care for but they all also have to work for a living and hence, no one else other than [the applicant] is able to provide the ‘full-time’ care necessary.” The applicant states her siblings “offer a high level of assistance to [their mother].” Counsel states that the applicant’s mother resides with her daughter, [REDACTED] who was “recently diagnosed with breast cancer.” Medical documentation in the record establishes that the applicant’s sister, [REDACTED] was diagnosed with breast cancer and she was receiving chemotherapy every one to two weeks. *See letter from [REDACTED] dated July 28, 2009.* However, the record establishes that the applicant’s mother and her sister, [REDACTED] share the same address. *See Form I-601, filed September 14, 2009.* Additionally, medical documentation in the record establishes that the applicant’s mother resides with “her children.” *See Hackensack University Medical Center consultation sheet, dated December 11, 2007; see also Hackensack University Medical Center summary sheet, dated January 21, 2008.*

The applicant states her mother “suffers from anxiety, persistent sadness, feelings of restlessness, and depression.” She claims that her mother’s depression is “a direct result of being apart from [the applicant].” The AAO notes that no medical documentation in the record discusses the severity of the applicant’s mother’s depression, or if she requires or is receiving treatment for her mental health condition.

Additionally, the applicant states her mother receives Supplemental Security Income of \$705.25 a month. The record includes a July 20, 2009, letter from the Social Security Administration supporting her statement. The record does not include any other financial evidence.

The AAO acknowledges that the applicant’s mother may be suffering some emotional problems in being separated from the applicant. However, the AAO notes that while it is understood that the separation of loved ones often results in significant psychological challenges, the applicant has not distinguished her mother’s emotional hardship upon separation from that which is typically faced by the loved ones of those deemed inadmissible. The AAO finds the record to include some documentation of the applicant’s mother’s income; however, this material offers insufficient proof that the applicant’s mother is unable to support herself in the applicant’s absence. Additionally, the applicant has not distinguished her mother’s financial challenges from those commonly experienced when a family member remains in the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that her mother would suffer extreme hardship if her waiver application is denied and she remains in the United States.

Although the applicant has demonstrated that her mother would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. 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, supra* at 886. 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, supra* at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to her mother in this case.

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. *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.