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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**

HS

[REDACTED]

DATE: **MAR 28 2012** OFFICE: SAN FRANCISCO, CA FILE: [REDACTED]

IN RE: [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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Inadmissibility (Form I-601) was denied by the District Director, San Francisco, California on September 17, 2009, 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 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 procuring admission into the United States by fraud or willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with her U.S. citizen spouse.

In a decision dated September 17, 2009, the field office director determined that the applicant had failed to establish her husband would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that the director abused her discretion by applying an “exceptional and extremely unusual hardship standard” in the applicant’s case rather than the section 212(i) “extreme hardship” standard. Counsel asserts further that the applicant’s U.S. citizen husband will experience extreme emotional, physical, and financial hardship if the applicant is denied admission into the United States. In support of these assertions, counsel submits medical and psychological-exam documentation; affidavits from the applicant, her husband and family members; employment-related documentation; and country-conditions evidence. The entire record was reviewed and considered in rendering a decision on the appeal.¹

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 on June 8, 1989, the applicant used a passport and non-immigrant visa issued in the name of another individual to gain admission into the United States. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for procuring admission into the United States through fraud. Counsel does not contest the applicant’s inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

¹ The applicant filed two previous Form I-601 waiver application appeals. An initial appeal filed in 2001 was dismissed by the AAO as moot on June 20, 2008, because a second I-601 was filed, denied, and appealed before the AAO reviewed the first appeal. A second appeal filed in 2004 was dismissed by the AAO on June 20, 2008, based on the applicant’s failure to establish extreme hardship to a qualifying relative. A motion to reopen the AAO’s dismissal of the 2001 appeal was filed in October 2010, and in a separate decision has been dismissed based on failure to comply with procedural requirements.

- (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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 BIA 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 BIA 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, supra* 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 BIA 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 is married to a U.S. citizen. The applicant's spouse is a qualifying relative for section 212(i) of the Act, waiver of inadmissibility purposes.

The applicant and her husband assert in their affidavits that the applicant's 67 year-old husband is retired and that he is emotionally and financially dependent upon the applicant. They assert that the applicant's husband has many health problems and that he suffers emotionally at the thought of living without the applicant or moving away from his three adult children and their families, and the life he has in the United States. The affidavits indicate that the applicant and her husband have a loving relationship. The applicant works full-time, and according to her affidavit, her employment provides health insurance benefits for her husband, and she pays for his medical expenses as well as most of their living expenses. The applicant's husband additionally depends on the applicant to take care of their home.

The record contains medical records reflecting that the applicant's husband has a history of diabetic hyperlipidemia, vertigo, actinic keratosis, hematuria, gout and hypertension, and that he has been prescribed various medications which he takes daily. Additional medical evidence from a doctor in the Philippines reflects the applicant's husband has been diagnosed with diabetes, hypertensive cardiovascular disease, dylipidemia, gouty arthritis, and vertigo, and lists local peso costs of related medications and office visits.

A 2001 psychological report states the applicant's husband shows signs of anxiety and depression and that he could become depressed if his wife were required to return to the Philippines. A 2004 psychological report states that the applicant's husband shows symptoms of distress and generalized anxiety disorder due to his wife's immigration situation, and that he could experience a major depressive episode if the symptoms persisted. A 2009 psychological report states the applicant's husband appears to suffer from major depression based on his wife's immigration problems, and states there is a high risk of suicide if the applicant had to leave the United States.

Upon review, the AAO finds the evidence in the record fails to establish that the hardships faced by the applicant's husband, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

The record contains no financial evidence to corroborate a psychologist's summary of the retirement income and benefits of the applicant's husband and the couple's living expenses, and the applicant's income evidence fails, in and of itself, to demonstrate that the applicant's husband would experience financial hardship if he remained in the U.S. without the applicant. The record also lacks evidence to corroborate the assertion that the applicant's husband is dependent upon his wife for medical insurance coverage and payment of his medical bills, and the medical evidence contained in the record does not demonstrate that the applicant's husband's health would be affected if the applicant moved to the Philippines and he remained in the U.S. The evidence in the record additionally reflects that the applicant's husband has three grown children in the U.S. The evidence thus fails to establish that the applicant is the only family member who is able to do domestic chores at their home or to generally care for her husband, if necessary.

Diagnostic testing conducted during the applicant's husband's 2009 psychological evaluation indicated to the psychologist that the applicant's husband sees his wife "as a very nice person." The psychologist concluded that the applicant's husband could experience severe depression of suicidal proportions with melancholia if his wife moved to the Philippines without him. The conclusions in the 2004 and 2001 psychological reports submitted with previously filed applications were based on interview observations and information gathered from the applicant's husband during initial interviews. It is noted that the psychological reports in this case are from three different mental health professionals, each based on one initial interview with the applicant's husband. The reports fail to reflect an ongoing relationship between a mental health professional and the qualifying spouse and also fail to reflect any treatment plan for the conditions noted in the evaluations that would support the perceived gravity of the applicant's husband's situation. Additionally, there is no indication that the evaluators independently verified the financial, medical, physical or country-conditions claims made by the applicant and her husband.

The combined evidence in the record therefore fails to establish that the applicant's husband would experience emotional, physical or financial hardship that rises above that normally experienced upon removal or inadmissibility if he remains in the U.S.

The applicant also failed to establish that her husband would experience emotional, physical or financial hardship that rises above that normally experienced upon removal or inadmissibility if he moved with her to the Philippines. The country conditions and financial evidence contained in the record does not establish that the applicant's wife would be unable to find work in the Philippines, or that her husband would experience financial hardship if he relocated to the Philippines. The country-conditions and medical evidence also fails to demonstrate that the applicant's husband requires medical care that is unavailable in the Philippines. Indeed, the most recent medical treatment and prescription evidence contained in the record is from a doctor in the Philippines. Current U.S. Department of State country conditions demonstrate further that adequate medical care is available in major cities in the Philippines. See

In addition, the record reflects that the

applicant's husband is originally from the Philippines, and is thus familiar with the language and culture of the country. The applicant therefore failed to establish that her husband would experience hardship beyond that normally associated with removal or inadmissibility if he moved to the Philippines to be with the applicant.

The AAO does not doubt nor minimize the depth of concern and anxiety over the applicant's immigration status. The fact remains, however, that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship" Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. In the present matter, the applicant has failed to establish that her husband would experience hardship beyond the type of emotional, physical and financial hardship commonly associated with removal or inadmissibility, if she is denied admission and her husband either remains in the United States or joins her in the Philippines.

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.

ORDER: The appeal is dismissed.