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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: **MAY 01 2012** OFFICE: LAS VEGAS, NV

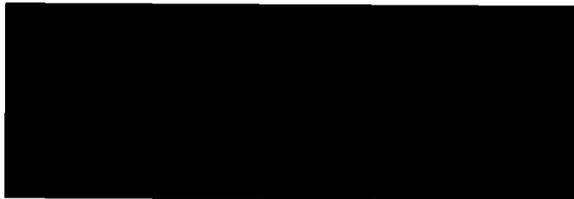
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IN RE:

APPLICANT:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and Section 212(i) of the 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, Las Vegas, Nevada, 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant was also found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa and admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to demonstrate extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated August 21, 2009.

On appeal, counsel for the applicant submits a brief in support. Therein, counsel asserts that the applicant's spouse and family would suffer extreme hardship in the form of financial, emotional, and physical difficulties if the applicant is not allowed to remain in the United States. Counsel adds that the applicant merits a favorable exercise of discretion.

The record includes, but is not limited to, statements from the applicant and her spouse, letters from family, friends, community members, and employers, financial documents, medical records, a psychological evaluation, police clearance certificates, certificates of achievement, evidence on country conditions, evidence of birth, marriage, residence, and citizenship, photographs, and other applications and petitions filed on behalf of the applicant. 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:

- (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.

The applicant admitted in an adjustment interview that, after she was initially denied a nonimmigrant visa in her own name, she used a passport in the name of [REDACTED] to obtain a multiple-entry B-1/B-2 visa on June 5, 1992. She used this visa to obtain admission into the United States on July 9, 1992. The applicant admitted she stayed past the date of authorized stay, and obtained an October 1, 1992 arrival stamp from the Philippines to make it appear as if she did not overstay her period of admission. The applicant also admitted she returned to the Philippines in 1999, and was admitted to the United States on October 25, 1999 using the initial B-1/B-2 visa in the name of [REDACTED]. Inadmissibility is not contested on appeal. Therefore, the AAO finds that the applicant procured a visa and admission to the United States through fraud or misrepresentation and is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall

¹ Furthermore, the record reflects that the applicant obtained a fraudulent [REDACTED] to obtain a social security card in the United States.

have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant was admitted to the United States pursuant to a B-1/B-2 nonimmigrant visa on July 9, 1992, and remained past the date of her authorized stay until she returned to the Philippines in 1999. As such, the applicant has accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions in the Act, until her departure in 1999. Inadmissibility is not contested on appeal. She is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and requires a waiver under section 212(a)(9)(B)(v) of the Act. The applicant's qualifying relative for a waiver of her misrepresentation and unlawful presence is her U.S. Citizen spouse.

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.

Counsel asserts that the applicant’s spouse would experience familial and emotional difficulties if the applicant returns to the Philippines. The spouse explains that he would not be able to take care of their child [REDACTED] by himself, and he would be unable to afford the additional child care expenses if the applicant were not present. Counsel indicates that the applicant is pregnant again. The applicant’s spouse states that he has a happy family life, and he would experience emotional hardship if the applicant had to leave. A psychological evaluation indicates that he has anxiety, severe depression, and some anger issues.

The applicant’s spouse also asserts that he would be unable to meet his financial obligations without the applicant’s income. The spouse claims he makes \$63,000 per year as an electrician with an electrical engineering degree, and has a benefits package which includes medical, dental, and vision insurance as well as retirement benefits. The applicant indicates she makes \$10.50 an hour, 32.5 hours a week, working as a cashier. Evidence of income and some expenses are submitted, and a monthly budget sheet is also included in the spouse’s statement.

The applicant’s spouse indicates that even if he were to relocate to the Philippines, he would have difficulty finding employment. He adds that he has no desire to return to the hardship and economic situation in the Philippines, especially because his mother, sister, and two brothers reside in the United States. The spouse states he has not visited the Philippines since he left in 1994. Counsel contends that the family would not be able to afford medical insurance without the applicant’s earnings, and they would be unable to obtain proper medical care for the spouse’s hypertension in the Philippines.

Despite submission of income, mortgage, and some billing statements, the record does not support assertions of financial hardship. The AAO notes that the applicant's spouse earned \$69,462 according to his 2008 W-2 statement, and the applicant made \$20,368 that year. The applicant's spouse indicates in a monthly budget that their monthly expenses total \$4,895, which is less than their net income of \$5,200; however, only some of the expenses reported on the budget are supported by evidence of record. Moreover, there is no evidence to support an assertion that child care without the applicant present would cause the spouse's expenses to exceed his income. It is noted that the applicant's spouse's income exceeds 125% of the minimum income required for a family of four. *Form I-864P, 2012 HHS Guidelines for Affidavit of Support, USCIS, March 1, 2012.* Given the supporting evidence of record, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The applicant's spouse asserts he will experience some psychological difficulties if he is separated from the applicant, and that he loves her and his children very much. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to the Philippines without her spouse.

The record also lacks sufficient evidence to demonstrate extreme hardship in the scenario of relocation to the Philippines. The AAO notes that the applicant's spouse is a native of the Philippines and lived there until he was an adult. Although the spouse indicates that his mother, sister, and two brothers reside in California, the record does not demonstrate that he no longer has other family ties in the Philippines. Furthermore, although the applicant's spouse and counsel claim he will experience difficulties finding employment in the Philippines, the record lacks evidence supporting the conclusion that a person with his education and experience will have such difficulties. Although the spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Assertions that the spouse will be unable to access medication for his hypertension in the Philippines are similarly unsupported by the record.

As such, the AAO does not find evidence of record to show that the applicant's spouse would face difficulties above and beyond those commonly experienced by relatives of inadmissible aliens who relocate. In that the record does not contain sufficient evidence to establish that the financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot find that the spouse would experience extreme hardship if he were to relocate to the Philippines with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) of the Act. 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 a waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 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.