

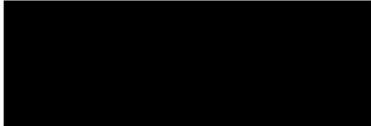
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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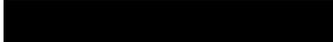


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Date: **MAY 10 2012**

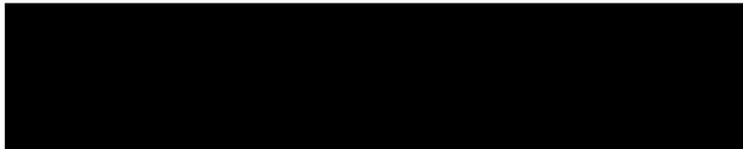
Office: CHICAGO, IL

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act (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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Chicago, Illinois. The matter 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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated September 28, 2009.

On appeal, counsel contends the applicant does not require a waiver because he did not commit fraud or willful misrepresentation. Specifically, counsel contends the applicant did not know that a Form I-485 had previously been filed for him. In addition, counsel contends that even if the applicant is inadmissible, the applicant established extreme hardship, particularly considering country conditions in the Philippines and the applicant's wife's anxiety disorder and depression.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on January 16, 2000; a copy of the birth certificate of the couple's U.S. citizen son; two affidavits from the applicant; an affidavit from [REDACTED] letters from a social worker and a counselor; a copy of [REDACTED] medical records; letters of support, including from the couple's church and [REDACTED] mother; copies of deeds; copies tax returns and other financial documents; photographs of the applicant and his family; articles addressing country conditions in the Philippines; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows that the applicant entered the United States in 1995 using a visitor's visa. The record further shows that on September 3, 1997, an Immigrant Petition for Alien Worker (Form I-140) was filed by America's Health Personnel Service, naming the applicant as the beneficiary. The record contains numerous documents that were submitted in support of the Form I-140, claiming the applicant was a Registered Nurse. The record further shows that the Form I-140 was approved on September 23, 1997, and in July 1998, a Form I-485 was filed by [REDACTED] in order to adjust his status to that of a lawful permanent resident. The Form I-485 was denied on April 20, 2000, because [REDACTED] failed to appear for fingerprinting as requested and the application was deemed abandoned. Furthermore, the record shows that after the applicant got married in January 2000, he filed a Form I-485 based on his marriage to a U.S. citizen. At his adjustment interview, the applicant claimed that he had never previously filed a Form I-485 and was not a Registered Nurse.

The applicant has submitted two affidavits declaring that when he first arrived in the United States, he asked his cousin to help him renew his visa. According to the applicant, he "remember[s] signing a form that someone would represent [him] in this matter," but his cousin was the one who sought the help of an attorney. The applicant states that he does not remember if he signed any more papers. The applicant states he did give his cousin a copy of his transcript showing he studied mechanical engineering in the Philippines. The applicant contends that after he married his wife, [REDACTED] attitude towards him changed and they have not spoken since that time. The applicant states that he never spoke to his cousin about being sponsored as a registered nurse and that he has no idea why anyone would file papers for him to work as a nurse. He states he has never been a nurse and that the fingerprint notices were sent in care of a person whom the applicant says he has never heard of.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO finds the applicant has not met his burden of proving he is admissible to the United States. The applicant has not provided sufficient information addressing significant details to support his claims. Counsel's contentions that "[i]t is possible that [REDACTED] signed a blank signature page with the understanding that it was related to his tourist visa extension," and that "it is equally possible that

someone forged [REDACTED] signature on this document after having viewed his signature on other documents,” are purely speculative. The applicant has not provided any competent, independent, objective evidence supporting his or his attorney’s statements to meet his burden of proving he is admissible to the United States. Therefore, the record shows that he is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's wife, [REDACTED] states that she has had many miscarriages and that she and the applicant finally have a son together. She states that ever since she received the denial notice for her husband's waiver application, she has been having nightmares and wakes up feeling like she cannot breathe or move. In addition, she states she fears returning to the Philippines with their son due to the recent typhoons and flooding. She states she also fears not being able to see her mother again, who is eighty years old and who has osteoporosis and cataracts.

After a careful review of the record, the AAO finds that if [REDACTED] moved back to the Philippines, where she was born, to be with her husband, she would experience extreme hardship. The record shows that [REDACTED] is currently forty-six years old, has lived in the United States for over fifteen years since 1996, and has worked for the same company since May of 1997. In addition, the record contains numerous articles supporting [REDACTED] fears about returning to the Philippines due to major flooding. The AAO also takes administrative notice of the U.S. Department of State's Travel Warning, warning U.S. citizens of the risks of terrorist activity in the Philippines as well as the risks of kidnap-for-ransom gangs. *U.S. Department of State, Travel Warning, Philippines*, dated January 5, 2012. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if she relocated to the Philippines to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the family's circumstances, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Although the record contains a risk assessment by a social worker and a letter from a counselor, neither document shows how the applicant's situation is unique or atypical compared to others in similar circumstances. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). To the extent the record contains copies of Ms. [REDACTED] medical records, substantiating her claim that she has suffered multiple miscarriages, there

is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of any medical problem [REDACTED] may have. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. The AAO notes that although the record contains tax returns and some financial documentation, the applicant has not made a financial hardship claim. In sum, even considering all of the evidence in the aggregate, there is insufficient evidence for the AAO to conclude that [REDACTED] would suffer extreme hardship if she decided to remain in the United States without her husband.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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*, 20 I&N Dec. 880, 886 (BIA 1994). 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*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to [REDACTED] the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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