



U.S. Citizenship
and Immigration
Services

[REDACTED]

715

DATE:

NOV 06 2012

Office: SANTA ANA, CA

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212 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 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 in accordance with the instructions on 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, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Philippines who was found to be inadmissible to the United States under 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 admission into the country through misrepresentation of 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 reside in the United States with her spouse.

The field office director concluded that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative, her spouse and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, on March 30, 2011.

On appeal, counsel asserts that the director erred in finding that the applicant's qualifying relative would not experience extreme hardship as a result of her inadmissibility. Counsel submits letters from the qualifying relative's physician and the psychiatrist currently treating him to support the claim of extreme hardship.

The record includes, but is not limited to: counsel's brief, statements from the applicant, her spouse and her sister; immigration documents and a copy of a divorce decree relating to previously filed Forms I-130 and I-485 (Application to Register Permanent Resident or Adjust Status); employment and financial documents; copies of identification documents; letters from the applicant's spouse's health insurance provider and physician; a statement from a psychiatrist treating the applicant's spouse; and hospital billing statements relating to the applicant. The entire record was reviewed and all relevant information considered in reaching a decision on the appeal.

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

(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.

The record reflects that the applicant was previously married to [REDACTED] a U.S. citizen, from August 5, 2002 through December 1, 2004. Eight months after her divorce, the applicant, on August 9, 2005, arrived in the United States and presented herself as the K-3 spouse of [REDACTED]. Therefore, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having sought a benefit under the Act through fraud or the willful misrepresentation of a material fact.

¹ The previously filed Form I-485 application was denied on May 2, 2005, due to abandonment.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission would result extreme hardship for a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative, which in this case is the applicant's spouse. 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*, 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 (BIA) 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 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*, 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 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In response to a Request for Evidence, the applicant provided a November 12, 2010 statement from her current spouse, who indicated that he suffers from high blood pressure and would be taking medicine for this condition for the rest of his life; that he had lost his job in June 2010; that his health care insurance coverage expired May 31, 2010; and that his spouse had had two operations in the last three years. [REDACTED] stated that due to his medical condition, which is heredity, he had been denied health care insurance by his former provider and was unable to afford high-risk insurance. He also stated that the applicant’s departure would cause psychological problems for both of them.

In a November 9, 2010 statement, the applicant asserted that she needed to be with her spouse in order to take care of him due to his medical condition. She requested that her waiver of inadmissibility be granted as she had a decent job and was able to support her family. The applicant also indicated that she was used to the lifestyle in the United States.

To support [REDACTED] medical claims, the applicant submitted a letter dated November 12, 2010 from [REDACTED] who indicated that [REDACTED] past medical history was

significant for hypertension; a letter, dated October 13, 2010, from Anthem Blue Cross, which stated that [REDACTED] had been denied coverage due to “[h]igh blood pressure currently treated with lisinopril”; and a June 8, 2010 Continuation Coverage Election Notice (COBRA) relating to continuing health care coverage. The record also contains medical billing statements from Anthem Blue Cross that establish the applicant received medical treatment on January 28, 2009 (emergency room outpatient service), October 6, 2009 (outpatient service for mammography and ultrasound), and January 2, 2010 (obstetrics and gynecology surgery).

The applicant’s spouse initially claimed extreme hardship based on his hypertension. However, on appeal, [REDACTED] indicates that this condition is well-controlled and, instead, reports that the applicant’s spouse is suffering from acute major depression. In a letter dated April 21, 2011, Dr. [REDACTED] states that [REDACTED] recently began medication to control his depression and requires the presence of the applicant to assist him in his activities and daily living. According to Dr. [REDACTED], it would be detrimental to [REDACTED] psychological well-being if the applicant is removed. He states that he anticipates a significant worsening of [REDACTED] symptoms if the applicant is not available to care for him. The record also contains a May 22, 2011 letter from a psychiatrist, [REDACTED], who indicates that he has been treating [REDACTED] since May 8, 2011 for Major Depression, recurrent and severe, and General Anxiety Disorder. Dr. [REDACTED] states that [REDACTED] was being treated by his primary care physician, but that his condition was getting worse. Dr. [REDACTED] also reports that [REDACTED] was referred by his employer as he has been unable to concentrate at work and that the applicant is her spouse’s main support and is essential for his complete treatment.

While the documents and statements submitted throughout the application process to establish extreme hardship have been taken into consideration, the AAO does not find them to provide a clear picture of the impact that the applicant’s removal would have on her spouse.

We note that although the applicant’s November 12, 2010 statement indicated that he had lost his job and health insurance, Dr. [REDACTED] statement indicates that the applicant’s spouse is again working. The record, however, contains no other evidence that establishes the nature of his employment, his income or whether he has health coverage through his employer. As a result, the AAO can reach no conclusion concerning [REDACTED] financial circumstances, including whether the loss of the applicant’s income would result in financial hardship for him.

The record further fails to establish the emotional impact of the applicant’s removal on her spouse. While the input of any mental health professional is respected and valuable, the brief statement provided by Dr. [REDACTED] indicates only that he is treating the applicant’s spouse for Major Depression and General Anxiety Disorder, that the applicant’s spouse was referred to him as a result of his inability to concentrate at work, and that his poor sleep and loss of appetite were making his condition worse. He provides no discussion of the severity of the applicant’s depression and anxiety, nor does he address the duration and severity of the applicant’s spouse’s symptoms, Dr. [REDACTED] also fails to indicate on what basis he has concluded that the applicant is essential for the “complete treatment” of the applicant’s spouse’s condition. Dr. [REDACTED] letter also lacks any discussion of the specific impacts of the applicant’s removal on her spouse’s mental or emotional

health. As a result, the AAO finds both statements to be of limited value to a determination of extreme hardship. We also note that although the record establishes that the applicant has undergone several recent medical procedures, it fails to indicate the purpose of these treatments or that her health is a cause of concern for her spouse. Therefore, while we acknowledge the applicant's spouse's concerns regarding his possible separation from his spouse, we do not find the record to demonstrate that his hardship would exceed that which commonly results from the removal or inadmissibility of a loved one.

On appeal, the applicant has not asserted that her spouse would also suffer extreme hardship if he returns with her to the Philippines. In the absence of clear assertions from the applicant, the AAO may not speculate as to what hardships the applicant's spouse would encounter if he returns to the Philippines. The AAO, therefore, must conclude that the applicant has also failed to establish that her spouse would experience extreme hardship upon relocation.

In the present case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise beyond the common results of removal or inadmissibility. Accordingly, the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required for a waiver under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying relative, the AAO finds that no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(j) 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.