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DATE: **OCT 09 2012** Office: MANILA 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 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, Manila, The Philippines, 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)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude,<sup>1</sup> and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure U.S. admission through fraud or misrepresentation. She is married to a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant is seeking a waiver of inadmissibility in order to come to the United States and live with her husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, December 2, 2010.<sup>2</sup>

On appeal, the applicant's counsel contends that USCIS misapplied the legal standard for extreme hardship and provides new hardship evidence. In support of the appeal, counsel submits an additional medical letter. The record on appeal also includes all documentation submitted regarding the waiver request, as well as evidence of the underlying inadmissibility. The entire record was reviewed and considered in rendering this decision.

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

(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)(1) of the Act provides:

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

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<sup>1</sup> A waiver for this ground of inadmissibility is not before the AAO, as the field office director granted the applicant's request for a "rehabilitation" waiver under section 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A).

<sup>2</sup> The field office director erroneously treated the first appeal as a motion in order to deny it. By regulation, "[t]he official who denied an application or petition may treat the appeal from that decision as a motion for the purpose of granting the motion." 8 C.F.R. § 103.5(a)(8); *see also* 8 C.F.R. § 103.3(a)(iii) ("Favorable action instead of forwarding appeal to AAU"). However, "[i]f the reviewing official will not be taking favorable action [...], that official shall promptly forward the appeal and the related record of proceeding to the AAU in Washington, DC." 8 C.F.R. § 103.3(a)(iv). In this case, filing of the first appeal removed jurisdiction from the field office director to reopen the decision *sua sponte*, except in order to issue a favorable decision; she lacked authority to replace one denial with another.

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 reflects that the applicant sought a B-1/B-2 “tourist” visa on November 29, 2001 and a K-1 “fiancée” visa on September 4, 2008. Although both applications were denied, information came to light as a result of the K-1 visa interview that the applicant had misrepresented<sup>3</sup> the following aspects of her status when she applied for the tourist visa – she claimed: to be single, but was married; to have a managerial job and salary, but was a non-manager making less than half the claimed amount; to have no relatives in the United States, but had a mother and several siblings who were U.S. lawful permanent residents; to be a college graduate, but had never attended college; to own land and have a bank account with a substantial balance, but owned no land and had no such savings; to be planning a pleasure trip for three weeks, but actually intended to remain permanently in the United States. In a September 9, 2008 affidavit confirming the foregoing misrepresentations, the applicant also stated that she was marrying her fiancé for the sole purpose of immigrating. The petitioner married the applicant in The Philippines on March 10, 2009.

A waiver of inadmissibility under section 212(i) is dependent 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 U.S. citizen spouse 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 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 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

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<sup>3</sup> For his part, the applicant’s fiancé (and current husband) misrepresented on the Form I-129F having met the applicant personally during the two years prior to filing – a requirement of the K-1 visa – when they had not met face-to-face.

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 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 applicant contends, through her designated representative, that her husband will suffer extreme hardship if she is unable to reside in the United States. To establish such a claim, the applicant must show that a qualifying relative will incur extreme hardship both as a result of separation from the applicant and in the event of relocating overseas to live with the applicant.

Regarding relocation, counsel for the applicant asserts that the qualifying relative has medical conditions for which he is unable to receive treatment in The Philippines. The record contains statements from the qualifying relative’s treating physicians that his conditions requiring regular monitoring and medication include type 2 diabetes, high cholesterol, high blood pressure, asthma, coronary artery disease, colon polyps, and kidney. There is no evidence, however, regarding the nature or severity of these conditions, frequency of doctor visits, medications prescribed, prognosis, or for the contention that appropriate care is unavailable in The Philippines.

Other than a U.S. residence address, his doctors’ letters, and a naturalization certificate, there is no evidence of the qualifying relative’s ties to the United States. The record shows that the applicant’s husband is a 72 year-old, naturalized U.S. citizen who traveled to The Philippines to marry the

applicant in 2009. Documentation shows that his previous wife, whom he married in 2003, died in 2005, but there is no indication that he has living relatives, either here or in his native Philippines.

The applicant has provided insufficient evidence of the difficulties her husband would experience by returning to the country of his birth. She has, therefore, not shown a qualifying relative would suffer extreme hardship were he to relocate abroad to reside with her due to her inadmissibility.

Regarding hardship due to the qualifying relative's separation from his wife, there is little information and no documentary evidence on record. The applicant does not claim that her absence has caused her husband financial hardship. The only statement relating to emotional hardship is the applicant's assertion in the waiver application that she wishes to join her husband so they may live their lives together. Their only documented meeting was at their March 2009 wedding, and the record has no details about any time they have spent together. The record also contains the applicant's sworn admission dated September 9, 2008 that she sought a fiancée visa in order to marry the petitioner for the sole purpose of immigrating to the United States to see her mother and siblings. While the qualifying relative's medical issues have been established, there is no indication that the applicant has special qualifications to act as her husband's caregiver. 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)).

The record does not show that the cumulative effect of any emotional and financial hardships the applicant's husband is experiencing due to his wife's inadmissibility goes beyond the hardship normally imposed by separation from a family member. Further, the couple were aware prior to marrying of obstacles to the applicant's ability to immigrate. The AAO thus concludes that, based on the record evidence, were the applicant's husband to remain in the United States without the applicant due to her inadmissibility, he would not suffer extreme hardship.

The documentation in the record, when considered in its totality, reflects that the applicant has not established her husband is suffering extreme hardship due to the applicant's inability to reside in the United States. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation is typical of individuals separated as a result of removal and inadmissibility, and the AAO therefore finds that the applicant has failed to establish extreme hardship to his wife as required under section 212(i) of the Act.

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.