

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

[REDACTED]

DATE: **OCT 10 2012** OFFICE: SAN FRANCISCO 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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of the Philippines, was found inadmissible 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 made a willful misrepresentation of a material fact to obtain other documentation or a benefit under the Act. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen daughter. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), based on extreme hardship to his U.S. lawful permanent resident wife.

In a decision dated December 3, 2010, the Field Office Director concluded that the applicant did not establish extreme hardship to a qualifying relative and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant states that the applicant did not make a willful misrepresentation or that any misrepresentation made was timely retracted. Counsel also states that in the event that the applicant is inadmissible, he has established that his U.S. lawful permanent resident wife would suffer extreme hardship as a result of his inadmissibility.

In support of the waiver application, the record includes, but is not limited to, briefs by applicant's counsel, a declaration by the applicant, a declaration from the applicant's spouse, biographical information for the applicant and his spouse, biographical information for the applicant's daughters, documentation of the applicant and his spouse's income and expenses, medical records for the applicant's spouse, medical records for the applicant's daughter, financial records for the applicant's daughter, country conditions information for the Philippines, and documentation concerning the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C) of the Act, which 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.

...

A misrepresentation is generally material only if by making it the alien received a benefit for which he would not otherwise have been eligible. See *Kungys v. United States*, 485 U.S. 759

(1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* 495 U.S. at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

"It is not necessary that an 'intent to deceive' be established by proof, or that the officer believes and acts upon the false representation," but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)).

In regards to the willfulness of the applicant's stated misrepresentations, 9 FAM 40.63 N5.1, in pertinent part, states that:

The term "willfully" as used in section 212(a)(6)(C)(i) of the Act is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

The record contains an application for a travel document (Form I-131) submitted with the applicant's signature and with a copy of the applicant's fraudulent I-551 card (resident alien or alien registration card). The applicant states that he did not submit the application for a travel document. The applicant also states that he hired an attorney to obtain permanent resident status for him. He said that when he "received the green card from the attorney," he did not use it. He said "it looked odd" and he "started to become suspicious." The record, however, indicates that the applicant used the card on at least two occasions, first to obtain financial aid at Western Career College in January 1995 and then in August 1995, to obtain a travel document. The application for a travel document, claiming that the applicant was a lawful permanent resident (or conditional permanent resident) was submitted with the applicant's signature in August 1995. There is no

evidence in the record to support the applicant's assertion that he was not using his fraudulent I-551 card or that he was unaware that the attorney was submitting the application for a travel document on his behalf. *See* Memo, from Lori Scialabba, Act. Assoc. Dir., Dom. Ops., Donald Neufeld, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators* 13 (March 3, 2009) (stating that the applicant is responsible for action taken by a representative if the applicant is aware of that action). To the contrary, the evidence suggests that the applicant was, in fact, using his fraudulently obtained I-551 card, despite his statement that though the I-551 card "looked odd" and "suspicious." Moreover, there is no indication in the record that the applicant reported the "suspicious" card to the authorities or filed any complaint against the attorney that he claims obtained this card on his behalf. The burden of proof is on the applicant to establish by a preponderance of the evidence that he is not inadmissible. *See* section 291 of the Act; *see also* *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978). Although the applicant'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)). The AAO finds that to the extent that the applicant claims that his misrepresentation was not willful, this contention lacks merit.

Counsel also contends that because the applicant did not pursue the application for a travel document after it was requested that he submit the actual I-551 card in support of the application, that the applicant timely retracted any misrepresentation that he may have made. A timely retraction has been found in cases where applicants used fraudulent documents *en route* to the United States and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. *See, e.g.,* *Matter of D-L-&A-M-*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel*, 18 I&N 33 (BIA 1984). A timely retraction of a misrepresentation can serve as a defense to inadmissibility under section 212(a)(6)(C)(i) of the Act. *See* *Matter of R-R-*, 3 I&N Dec. 823 (BIA 1949); *Matter of M-*, 9 I&N Dec. 118 (BIA 1960). For the retraction to be effective, however, it must be done "voluntarily and without prior exposure of [the] false testimony." *Matter of R-R-*, 3 I&N Dec. at 827; *see also* *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973) (holding that recantation of false testimony one year after the event, and only after it became apparent that the disclosure of the falsity of the statements was imminent, was not voluntary or timely); *see also* *Valadez-Munoz v. Holder*, 623 F.3d 1304, 1309-10 (9th Cir. 2010) (affirming that the doctrine of timely recantation is not available if a person recants only when confronted with evidence of his prevarication). In this case, the applicant failed to pursue his application for a travel document after receiving a request from the Nebraska Service Center that he submit the original I-551 document. Presumably, the applicant did not submit that document because he knew it was fraudulent. No evidence has been submitted to suggest otherwise. This is not a timely retraction.

The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having made a willful misrepresentation of a material fact in order to procure other documentation or a benefit under the Act.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which in this case is the applicant's U.S. lawful permanent resident spouse. Hardship to the applicant or the applicant's U.S. citizen daughters is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. 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 deportation, 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, 885 (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.

This matter arises in the San Francisco District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

On appeal, counsel for the applicant states that the applicant's U.S. citizen spouse will suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. Counsel states that the applicant's spouse will suffer from emotional, physical and financial hardship as a result of separation from the applicant. In regards to the emotional hardship, counsel for the applicant states that the applicant's spouse would suffer emotional hardship if she were separated from the applicant as result of the fact that she has shared her life with him for over 20 years. The applicant's spouse states that it would be "extremely difficult" for her to live in the United States without the applicant. The AAO must turn to the evidence in the record to support these assertions. The record establishes that the applicant and his spouse have two daughters, one who is 25 years old and the other who is 17 years old. The record also establishes that the applicant and her spouse have commingled finances and that the applicant's spouse relies on the applicant for her health insurance. There is no further indication in the record of the impact that separation from the applicant would have on the applicant's spouse emotional health. As stated above, although the applicant'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. at 175. 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. at 165. 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).

Counsel also states that the applicant's spouse would be unable to support herself financially or obtain full-time employment with health care coverage in the applicant's absence. In support of that statement, the applicant's spouse states that she suffers from hypothyroidism and her condition prevents her from working full-time. The record does not support that assertion. A letter from [REDACTED], dated June 30, 2010 states that "this letter is to certify that I am following the above named patient for mild hypothyroidism." The letter is accompanied by medical records for the applicant's spouse. In support of these assertions counsel submitted copies of medical records for the applicant's spouse. The records consist of laboratory results and physician's notes. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that seriousness of the applicant's spouse's condition. The record contains copies of medical records, including hand-written progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's spouse. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition, the treatment needed by the applicant's spouse, or the applicant's spouse's inability to work full-time.

The AAO recognizes the importance of family ties, however, the applicant's spouse continues to have strong family ties in the United States, most notably her two children. The AAO recognizes the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

In regards to the hardship that the applicant's spouse would suffer if she were to relocate to the Philippines, the record reflects that the applicant's U.S. lawful permanent resident spouse is a native of the Philippines but has resided in the United States for over 20 years. The record also indicates that the applicant's spouse's U.S. citizen daughter is 17-years-old and relies on her mother's support. As noted above, considerable, if not predominant, weight must be given to the hardship that will result from the separation of family members. *See Salcido-Salcido, supra; see also Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979) (the court explicitly stressed the importance to be given the factor of separation of parent and child). The applicant's spouse also states that she would not be able to obtain health care in the Philippines to treat her hypothyroidism, for which she is receiving care in the United States. The record contains documentation of the economic and health care situation in the Philippines. This information does not establish that the applicant's spouse would be unable to obtain care in the Philippines. The record, however, does indicate that the applicant's spouse would likely need to pay for that care out of pocket and at high cost, and that it would be difficult for her to find employment in the Philippines. Although the record does not establish the severity of the applicant's spouse's condition, her medical condition, considered in aggregate with her ties to the United States, especially her responsibility to her youngest daughter who remains under 18 years old at the time of this decision, establishes that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

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 the qualifying relative in this case.

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 qualifying relative as required under section 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 he 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.