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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
and Immigration
Services

[REDACTED]

H5

Date: SEP 21 2012

Office: CHICAGO, ILLINOIS

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 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, Chicago, Illinois. The matter 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 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 procuring admission into the United States by fraud or the willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to live with his U.S. citizen spouse.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated August 12, 2010.

On appeal, the applicant's attorney asserts that the Field Office director relied upon Ninth Circuit cases in determining extreme hardship, which are not binding on this case in the Seventh Circuit. The applicant's attorney also states that the Field Office Director incorrectly applied a higher hardship level than "extreme hardship," and therefore the applicant's case was improperly adjudicated. The applicant's attorney also asserts that the Field Office Director considered the applicant's parents his qualifying relatives, when only the applicant's wife meets the requirements of a qualifying relative.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); an appeal brief; relationship and identification documents for the applicant, qualifying spouse and their children; financial documentation; a letter from the qualifying spouse's employer; letters from the applicant's son, nephew, parents, siblings, uncle and aunts; a car title and auto insurance documents; medical documentation regarding the applicant; photographs; an Application to Register Permanent Residence or Adjust Status (Form I-485) and an approved Form I-130. 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, in pertinent part:

- (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 includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's wife 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). Although the Field Office Director adjudicated the application by considering the applicant's parents as his qualifying relatives, the error is harmless, because the evidence submitted with the application also was insufficient to show hardship to the applicant's spouse.

With respect to counsel's assertion that the Field Office Director relied on cases from the Ninth Circuit to determine extreme hardship, the AAO acknowledges that, while Ninth Circuit case law may not be binding, these cases were considered as persuasive authority for the application of the extreme-hardship analysis. Counsel also contends that a higher hardship level was applied in this case. In particular, counsel claims the Field Office Director's decision relied on a cancellation of removal case that required that the hardship be substantially beyond that which would ordinarily be expected to result from the alien's deportation. However, the Field Office Director's decision did not apply this hardship level, but used the case to demonstrate that extreme hardship does not have a fixed meaning.

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.

The AAO finds that the applicant failed to establish that his qualifying spouse would suffer extreme hardship if she remained in the United States and he were removed to the Philippines. The applicant’s attorney indicates that the applicant’s wife would have the burden of supporting herself and their children, should he be forced to leave the United States. The record contains financial documentation including tax returns, earning statements for the qualifying spouse, banking information, credit card bills and evidence of other expenses, showing that the qualifying spouse has significant debts and her expenses exceed her income. However, the record does not contain evidence demonstrating that the applicant is currently contributing to the family’s expenses. With regard to the qualifying spouse’s emotional hardship, the applicant’s sister states that the qualifying spouse would be “crushed” if the applicant returned to the Philippines. However, the record provides no other details regarding the specific emotional hardships that the qualifying spouse may experience.

The applicant’s son indicates that he does not want to be separated from the applicant again and would suffer if the applicant had to return to the Philippines. Other members of the applicant’s family primarily describe the hardship to the applicant should he have to return to the Philippines. However, the record does not indicate how the hardships of the applicant and his son would affect the qualifying spouse. It is noted that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the

present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant or his children will not be separately considered, except as it may affect his spouse. The applicant failed to provide sufficient evidence to establish that the qualifying spouse would suffer emotional or financial hardships as a result of separation from the applicant that, considered in the aggregate, are extreme.

The AAO also finds that the applicant has not met his burden of showing that his qualifying spouse, a native of the Philippines, would suffer extreme hardship if she relocated to the Philippines to be with him. The evidence concerning the qualifying spouse's hardship upon relocation to Philippines is limited. The applicant's family indicates in their letters that the qualifying spouse and applicant would suffer financially if they relocated to the Philippines. The applicant's mother indicates that the qualifying spouse would be unable to find a job in the Philippines because she does not know anyone there, and the applicant would have difficulty finding a job due to his heart problems. Although the assertions of the applicant's mother and other family members are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). Further, the applicant's family letters express their concern for the applicant's medical care, given his heart condition, should he return to the Philippines, stating that his health would be jeopardized in the Philippines. However, the record does not contain any documentation regarding healthcare in the Philippines. Further, the record does not address how the applicant's health will affect the qualifying spouse nor does it address other hardships that the qualifying spouse would face upon relocation to the Philippines. Even were the AAO to take notice of general conditions in the Philippines, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by any adverse conditions there. The current record does not establish that the applicant's spouse would experience extreme hardship upon relocating to the Philippines.

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 his U.S. citizen spouse 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 the applicant 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.