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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

DATE: **APR 03 2013** OFFICE: SANTA ANA, CA

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Santa Ana, California, and 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 pursuant to 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 a visa by willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States near his lawful permanent resident mother.

In a decision dated January 4, 2012, the director determined that the applicant willfully misrepresented a material fact as set forth in section 212(a)(6)(C)(i) of the Act, by stating on his nonimmigrant visa application that he was married. The director also determined the applicant failed to establish that a qualifying family member would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

On appeal, counsel for the applicant asserts that the applicant did not misrepresent his marital status on his nonimmigrant visa application because his marriage to his first wife was not legally annulled under the *Philippine Rule of Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*; the applicant is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act. In the event the applicant is found to be inadmissible, counsel asserts that the applicant's mother would experience extreme hardship if the applicant were denied admission into the United States. In support of these assertions counsel submits affidavits from the applicant, his wife, his mother, and his sister; medical documentation for the applicant's mother; photographs; and legal information and cases discussing Philippine annulment law and material misrepresentation under section 212(a)(6)(C)(i) of the Act.

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 that:

- (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.

The elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

- a) the alien is excludable on the true facts, or

b) 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.

See Matter of S- and B-C-, 9 I&N Dec. 436, 448-49 (BIA 1960; AG 1961). A misrepresentation is generally material only if by it, the alien would or did receive an immigration benefit for which she or he would not otherwise have been eligible. *Kungys v. United States*, 485 U.S. 759; 108 S. Ct. 1537 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); and *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation must be made with knowledge of its falsity to be willful. Innocent misrepresentations do not establish a willful violation under section 212(a)(6)(C)(i) of the Act. *Matter of Tijam* at 427. The willful misrepresentation of a material fact must be made to an authorized official of the government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. *See Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961).

Counsel asserts that the applicant did not willfully misrepresent his marital status on his nonimmigrant visa application because under the *Philippine Rule of Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages* an annulment does not legally go into effect until it is registered with the local Philippine municipal civil registrar. Counsel submits evidence that the applicant's April 12, 2002 annulment judgment was not recorded with the Office of the Municipal Civil Registrar until November 21, 2007, and asserts the annulment became final in November 2007 instead of April 2002.¹ Counsel concludes that because the applicant was legally married when he completed his nonimmigrant visa application on May 21, 2007, he did not misrepresent his marital status.

The AAO finds counsel's assertions to be unconvincing. It is noted that the *Philippine Rule of Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*, A.M. No. 02-11-10-SC 2003-03-04, went into effect on March 15, 2003. In the applicant's case, an order declaring his marriage to [REDACTED] null and void was issued on April 12, 2002, almost a year before the *Rule of Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages* went into effect.

Moreover, Article 40 of the Family Code of the Philippines, Exec. Ord. 209, dated July 6, 1987, and in effect when the applicant's first marriage was ordered annulled provides that "[t]he absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void." This statute does not require registration of an annulment order with the local municipal civil registrar. The applicant's marriage to his first wife was therefore legally annulled on April 12, 2002.

The applicant stated on his U.S. nonimmigrant visa application, dated May 21, 2007, that he was married to [REDACTED]. The record lacks evidence to establish the applicant was unaware of the judicial annulment of his marriage in April 2002. Moreover, marriage is a material factor in

¹ The applicant's nullity of marriage certification is dated November 21, 2007, was issued to the applicant on November 22, 2007, and was recorded at the municipal civil registrar office on November 23, 2007.

determining whether an applicant has a substantial tie to his or her native country, and the applicant's statement that he was married shut off a line of inquiry that was relevant to his eligibility for nonimmigrant classification.

The burden of proof remains with the alien to show by a preponderance of the evidence that a material misrepresentation was not committed, and that she or he is not inadmissible. *See* Section 291 of the Act, 8 U.S.C. §1361. *See also, Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978). Upon review of the totality of the evidence, the AAO finds the record supports the director's conclusion that the applicant procured a nonimmigrant visa through willful misrepresentation of a material fact. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

- (1) 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 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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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*, supra 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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’s U.S. citizen spouse and lawful permanent resident mother are his qualifying relatives under section 212(i) of the Act.

The applicant’s wife states in a letter that she and the applicant have been married for four years, the applicant is thoughtful and helps her around the house, and he makes her smile and laugh. She adds that she was recently diagnosed with diabetes, the applicant helps her monitor her diet and eases her depression, and her depression and diabetes would worsen without him.

The applicant states in a letter that he took care of his mother for two years in the Philippines after she was treated for cancer in 1996; he cared for her in the United States after his father died in May 2007; his mother is used to his care, and she would suffer hardship without it. He drives his mother to appointments, prepares her meals, and helps her walk. His siblings are unable to assist their mother “on a full time basis” due to their work and family obligations.

The applicant's mother adds that the applicant has motivated her and given "sunshine" to her life since her husband passed away. She has arthritis and needs assistance with stairs and holding things, and the applicant helps her cook, takes her to monthly doctor appointments, checks her prescriptions and other needs on a daily basis, and also helps her financially. Although her two daughters and other son also live in the United States, they are unable to care for her because they work and "have their own family to attend to." Without the applicant, she would have to go back to the Philippines, where she would lack the medical resources she needs.

The applicant's sister also describes their mother's medical conditions and states the applicant helps their mother with medical and other needs. She indicates she could assist their mother, but that the applicant is stronger, and she also has work and family obligations.

Medical evidence reflects the applicant's mother needs help getting up and down stairs; that she has elevated cholesterol, anemia and degenerative osteoarthritis in her thumb; and that she has been prescribed cholesterol medication.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission into the country and she remained in the United States. The applicant submits no medical, psychological, or other evidence to corroborate the assertions made by his wife, and although her 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. *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)).

The applicant does not claim that his wife would experience hardship if she relocated to the Philippines, and he submits no evidence to establish such hardship. The applicant therefore also failed to establish that his wife would experience hardship that rises beyond the common results of removal or inadmissibility if he were denied admission into the United States and she relocated to the Philippines to be with him.

The AAO finds further that the evidence in the record, when considered in the aggregate, fails to establish the applicant's mother would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission into the country and she remained in the United States. Although medical evidence reflects the applicant's mother needs help getting up and down stairs, and that she suffers from anemia, elevated cholesterol and degenerative osteoarthritis in her thumb, the evidence fails to establish that the applicant's mother is dependent on the applicant for physical or medical needs; that she would be unable to take her medications or see her doctors without the applicant; or that her other children would be unable to assist her as necessary. The record also lacks evidence to corroborate assertions that the applicant's mother is financially dependent upon the applicant. In addition, the evidence in the record fails to establish the

applicant's mother would experience emotional hardship beyond that normally experienced upon removal or inadmissibility of a family member if she remained in the United States.

The cumulative evidence also fails to establish the applicant's mother would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States and she relocated to the Philippines to be with him. The record lacks documentary evidence to corroborate assertions that she would be unable to obtain medical care in the Philippines. The evidence in the record also fails to indicate or establish that the applicant's siblings and families would be unable to visit their mother if she moved to the Philippines. The record lacks evidence of other hardship the applicant's mother would experience in the Philippines. Moreover, it is noted that the applicant's mother is originally from the Philippines, she is familiar with the Philippine culture and language, and before becoming a lawful permanent resident of the United States in 2004, she spent most of her life in the Philippines.

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.