

(b)(6)



**U.S. Citizenship
and Immigration
Services**

DATE: **APR 05 2013**

OFFICE: LOS ANGELES

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 waiver application was denied by the Field Office Director, Los Angeles, 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 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 attempting to obtain an immigration benefit through willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She 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 with her U.S. citizen spouse.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated June 11, 2012.

On appeal, counsel asserts that the director's decision violated the applicant's right of due process, was an abuse of discretion, and did not evaluate and weigh all the factors presented. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received July 13, 2012, and *counsel's brief*.

The record contains, but is not limited to: Form I-290B and counsel's brief; Form I-601; Forms I-130; Forms I-485, Application to Register Permanent Residence or Adjust Status; Form I-751, Petition to Remove Conditions on Residence; statements by the applicant and the applicant's spouse; medical documentation; financial documentation; naturalization, birth, marriage and divorce certificates; country-condition reports of the Philippines; and photographs. 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 record reflects that the applicant presented a false death certificate of her previous husband with the first Form I-130 filed on her behalf by her current husband. The applicant was therefore found to be inadmissible under section 212(a)(6)(C)(i) of the Act, and counsel does not contest her inadmissibility.

Counsel asserts that the director's decision violates the applicant's right to due process as the decision was "arbitrary," "capricious," and "boilerplate." Constitutional issues of due process are not within the appellate jurisdiction of the AAO, therefore this assertion will not be addressed in the present decision.

Section 212(i) of the Act states:

- (1) The Attorney General [now Secretary, Department of Homeland Security, "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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent 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. In this case, the applicant's spouse is the only qualifying relative. 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*, 22 I&N Dec. 560, 565 (BIA 1999), the 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 U.S. 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).

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 (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 spouse is a 57 year-old native of Iran and citizen of the United States. He states that he met the applicant in 2005, and they married in 2008. He indicates that he cannot relocate to the Philippines because of the poor standard of medical care as compared to the United States and the limited access to adequate health care, especially in the remote area where the applicant lived. Country-condition reports that were submitted as evidence corroborate his assertions. He states that he has numerous serious medical conditions, visits the hospital every three months, and needs access to a good hospital. He takes approximately ten different medications for his blood pressure, cholesterol, ulcers, kidneys, fluid retention, and knee and back pain. He has coronary artery disease, has had a stent implanted, and has had a heart attack and a stroke. Due to his cholesterol levels, he also suffers from optic nerve disorder. He indicates that the medications cause him side effects such as headaches, pain, numbness and bleeding. He states he has difficulty breathing, and anxiety and nervousness trigger this problem. Extensive evidence, including medical evaluations, letters from doctors, prescriptions and descriptions of the drugs he requires, corroborates his assertions.

The applicant’s spouse further worries that he would not be able to afford medical care in the Philippines. He states that even if he were employed there, the wages are not high enough to

cover his ongoing medical expenses. He indicates that he pays \$230 each month for his medications, and without insurance the costs may increase.

The applicant's spouse also fears being victim to crime and violence in the Philippines. He believes as a U.S. citizen he would be more likely to be attacked, kidnapped or robbed. Reports submitted about the Philippines and a Department of State travel warning issued in January 2013 support his assertions.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including his age, his length of residence in the United States, his chronic health conditions, the constant and consistent medical care he requires, the lack of adequate medical care in the Philippines, and his safety concerns. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to the Philippines to be with the applicant.

Addressing the hardship the applicant's spouse would experience if he were to remain in the United States separated from the applicant, he indicates that she is his only immediate family member, and he loves her and worries about her. The record does not reflect any other assertions or evidence of separation-related hardship to the applicant's spouse. The AAO acknowledges the seriousness of the emotional strain that the applicant's spouse would feel by being separated from the applicant; however, the evidence is not sufficient to demonstrate that her U.S. citizen spouse would suffer extreme hardship that is more than typical of spouses of those deemed inadmissible.

A waiver of inadmissibility pursuant to section 212(i) of the act requires that the applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. In this case, the applicant has only shown extreme hardship to her qualifying relative spouse based on the scenario of relocating to the Philippines. 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 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, the AAO cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.