

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **APR 15 2013** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 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 with the field office or service center that originally decided your case by filing a Form I-190B, 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 a 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 "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, 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)(6)(C)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or willful misrepresentation of a material fact. The applicant is the husband of a U.S. lawful permanent resident (LPR) and the parent of a U.S. citizen. On October 12, 2011, he filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182 (i), in order to remain in the United States with his LPR spouse and U.S. citizen daughter.

In a decision dated November 15, 2011, the director of the California Service Center concluded that the applicant failed to establish that his qualifying relatives would experience extreme hardship as a consequence of his inadmissibility and denied the Form I-601 accordingly.

On appeal, counsel for the applicant contends that the director erred in denying the applicant's Form I-601 waiver application as "[u]nder [section] 245(i) [of the Act], his illegal entry into the [United States] was erased when he paid the penalty fee of \$1,000 before April 30, 2001."

The record includes, but is not limited to: a U.S. Department of Justice, Questions and Answers Sheet for Section 245(i) Provision of the LIFE Act dated March 23, 2001; copy of the applicant's marriage certificate; copy of the applicant's daughter's birth certificate; documentation concerning the applicant's terminated removal proceeding; copy of the applicant's daughter's certificate of naturalization; documentation concerning the applicant's wife's lawful residence in the United States; copies of income tax returns and other financial documentation; and police records concerning the applicant's arrest for grand theft auto in California.

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 has been reviewed and considered in rendering a decision on the appeal.

The director of the California Service Center found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or willful misrepresentation of a material fact. 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 shows that on or about July 29, 1992, the applicant entered the United States using a visitor's visa he obtained under the assumed identity of [REDACTED]. The record includes a copy of the visitor's visa, which clearly reflects that the applicant assumed the identity of one [REDACTED] when he applied for a nonimmigrant visa at the U.S. Embassy in Manila, Philippines.

On appeal, counsel contends that “[u]nder [section] 245(i) [of the Act], his illegal entry into the [United States] was erased when he paid the penalty fee of \$1,000 before April 30, 2001.” However, the Board of Immigration Appeals (Board) in *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007) noted that as a threshold matter, section 245(i) of the Act unambiguously requires an applicant for adjustment of status to prove that he is “admissible to the United States for permanent residence.” *Matter of Briones*, 24 I&N Dec. at 362. The Board further noted that to satisfy this admissibility requirement, “the applicant must prove that he or she ‘is not inadmissible’ under any of the various paragraphs of section 212(a) of the Act, or that any ground of inadmissibility has been waived.” *Id*; see also 8 C.F.R. § 245.10(b)(3).

The Board has clarified that section 245(i) of the Act implicitly waives only the ground of inadmissibility under section 212(a)(6)(A)(i) of the Act relating to unlawful entries without inspection. *Matter of Briones*, 24 I&N Dec. at 363. Consequently, an alien who is inadmissible under section 212(a)(6)(C) of the Act, or any ground of inadmissibility other than 212(a)(6)(A)(i), is therefore not eligible to adjust to lawful permanent resident status under section 245(i) of the Act, absent a discretionary waiver of the ground of inadmissibility. See e.g., *Matter of Lemus-Losa*, 24 I&N Dec. 373, 377-80 (BIA 2007); *Matter of Briones*, 24 I&N Dec. at 362-71.

Turning to the facts of the present case, the AAO first notes that the payment of \$1,000 serves as a penalty for violating the immigration laws of the United States and cures solely the ground of inadmissibility under section 212(a)(6)(A)(i) of the Act. The record of proceedings establishes that the applicant made willful misrepresentations of material facts at the time he applied for a nonimmigrant visa at the U.S. Embassy in Manila in 1992 and when he presented himself for inspection and admission into the United States. Consequently, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, and he needs to apply for a waiver of the ground of inadmissibility pursuant to section 212(i) of the Act.

Section 212(i) of the Act provides, in pertinent part, 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 immigrant 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 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 or other family members can be considered only insofar as it results in hardship to a 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). Here, the record reflects that the applicant is the spouse of a U.S. lawful permanent resident. The applicant's U.S. lawful permanent resident wife therefore meets the definition of a qualifying relative.

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 the 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 is 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 now turns to the issue of whether the applicant has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

The asserted hardship factor to the qualifying relative in this case is the financial hardship the applicant's wife would experience in the event of separation from him. Counsel contends that the applicant's denial of admission would result in "loss of financial support to [the applicant's wife] due to loss of employment of the applicant." In support, counsel submitted copies of income tax returns from 2000 through 2010. The financial documentation submitted indicates that the applicant was employed as a warehouse supervisor at [REDACTED] from 2000 to 2004; as a maintenance engineer at [REDACTED] in 2005; as a warehouse supervisor at [REDACTED] in 2008; and as a warehouse manager at [REDACTED] in 2010. The family's reported income has ranged from a high of \$46,032 in 2004 to a low of \$6,422 in 2010. The record evidence further contains copies of monthly bills for what appears to be a cable television company and three credit cards.

Here, the AAO finds that the hardships related to separation presented in this case do not rise to the level of extreme hardship. The AAO notes that the reported income for the applicant's family is below the 2012 Federal Poverty Level Guidelines for a household of three. However, the record evidence does not address if the applicant's qualifying relative is currently experiencing financial hardship. In fact, the financial documentation indicates that the applicant's wife has been employed in the past as a caregiver and has contributed financially to their household. The record evidence does not demonstrate that the applicant's wife is presently unemployed, disabled, or that she now depends entirely upon the applicant for financial support. Thus, while the evidence indicates financial challenges, neither counsel nor the applicant has indicated how his removal would affect his family's financial situation in such a way as to constitute extreme hardship.

Other than income tax returns reflecting the incomes of both the applicant and his wife, the record does not contain documentary evidence in support of the asserted financial hardships. That is, the record does not contain utility bills, lease agreements, mortgage statements, or other financial documentation which would lead the AAO to determine that the combined incomes of the applicant and his spouse, as reflected in the submitted income tax returns, were sufficient to maintain their household and cover their monthly obligations. Similarly, the AAO notes there is insufficient evidence in the record to show that without the applicant's financial support, the applicant's wife would experience financial hardship. No evidence detailing monthly expenses related to the care of the applicant's family has been submitted. Additionally, the record does not contain hardship letters, attestations, or declarations from the applicant, his wife or their daughter specifically explaining the financial hardship the qualifying relative would suffer if the applicant is denied admission. 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)).

Based on the foregoing, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish that the applicant's qualifying relative would experience financial hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States and she remained in the United States.

With regards to hardship upon the applicant's relocation to the Philippines, the applicant has not asserted that his qualifying relative would experience extreme hardship upon relocation. The submitted evidence in the record of proceedings does not otherwise demonstrate extreme hardship from relocation to the Philippines.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* 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.