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

(b)(6)

DATE: APR 2 2 2013 Office: LOS ANGELES FILE:

IN RE:

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:

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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion. The motion is granted and the underlying application remains denied.

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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved 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 remain in the United States with his U.S. citizen spouse.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director,* February 2, 2010. On appeal, the AAO found that the applicant had failed to establish that a qualifying relative would suffer extreme hardship and dismissed the appeal. *Decision of the AAO,* June 20, 2012.

In support of the motion, the applicant's husband submits his wife's and his own statements regarding hardships being experienced by the applicant's wife, and provides new evidence, including: a medical letter; medical/health coverage information; financial information, including pay stubs, a statement of profit/loss from self-employment, mortgage documents, utility bills, and documentation of other expenses. The record consists of the supporting documents submitted with the Form I-601, the appeal of the waiver denial, and the current motion. The entire record was reviewed and considered in rendering this decision.

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:

> (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.
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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, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. 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,* 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,* 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 v. INS*, 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.

Regarding hardship from relocation, the applicant contends that moving back to the Philippines would impose extreme hardship on his U.S. citizen wife, who has spent her entire adult life in this country since emigrating from her native Philippines. The record reflects that her U.S. ties are extensive: a widowed, 87 year old mother; 12 siblings; two teen age children; certification as a registered nurse, current employment as a nurse, and extensive work history; an ongoing relationship with healthcare providers; church membership and community involvement; automobile and real property ownership.[1] In addition to Type 2 diabetes for which she was already being monitored and receiving treatment in 2003, the record reflects that she was diagnosed with anemia in November 2011 and with ovarian cysts on both sides sometime thereafter. In addition, her doctor referred her to a urologist to evaluate dilated ureters and states she requires "further workup to evaluate any cancer related issues" related to an inguinal node. *See Letter of Teresita Gan, M.D.*, July 17, 2012. The evidence substantiates that she and the applicant have two sons in high school whom she claims do not speak the dialect of her husband's native province, while a U.S. government travel warning advises U.S. citizens against visiting the southern Philippine Islands, specifically , where her home province of is located, "due to the high threat of kidnapping of international travelers and violence linked to insurgency and terrorism there." *Travel Warning—Philippines*, U.S. Department of State (DOS), January 30, 2013. Country condition information establishes that high unemployment is a serious problem, that those able to find jobs receive much lower compensation than in the United States, that standards of medical care are below U.S. levels, and treatment typically requires cash payment in advance. *See Philippines--Country Specific Information*, DOS, February 14, 2013.

Although the applicant's wife is a native of the Philippines, the record substantiates that she has established significant ties in the United States since emigrating and has few, if any, ties left in the Philippines. The applicant has provided sufficient evidence for us to find that, in light of her length of residence and ties in the United States and the difficulties of readjusting to conditions in the Philippines as well as the effects of relocating on her two teenage children, the hardship his wife would experience by relocating to the Philippines would amount to hardship that is beyond the

[1] Documentation establishes that she and her husband have fallen behind in their residential mortgage payments, but the record is unclear whether "investment properties" noted in their statements have been lost to foreclosure.

common or typical result of removal or inadmissibility of a loved one. He has thus met his burden of establishing that a qualifying relative would suffer extreme hardship by relocating abroad to reside with her husband.

As regards whether the qualifying relative will experience extreme hardship due to separation from the applicant, they both contend that she will suffer emotional and physical hardship and has already experienced psychological distress due to worry over her husband's immigration problems. Other than a 2007 psychological evaluation diagnosing her with anxiety and depression, this claim is unsupported by documentation, and the evaluation itself noted that counseling had helped her cope with these issues. There is evidence that she is receiving care for her medical conditions, is being monitored for any changes in overall health, and will be treated accordingly under insurance linked to her job. The record reflects that, although the qualifying relative, assisted by her husband, used to care for her mother (at a time when the mother lived with the qualifying relative's family), another sibling has undertaken the caregiver role. While it is noted that the U.S. government warns U.S. citizens to defer non-essential travel to parts of the Philippines, *see Travel Warning—Philippines,* DOS, January 30, 2013, the record reflects that the applicant is a native of a province not mentioned in the advisory. There is no indication the applicant's wife would be unable to visit her husband overseas, in the Philippines or elsewhere, to ease the pain of his absence, and she has an extensive U.S. network of family and social ties to lend emotional support here.

Regarding financial hardship, the applicant has provided pay stubs for his wife and a self-generated profit/loss statement showing his own income, as well as a bank notice indicating a past due mortgage payment and a debt settlement agreement showing current expenses. The evidence suggests that the applicant's wife incurred an income reduction, which she claims resulted from a medical leave of absence from her second (part time) job, but the applicant's income as a construction worker is supported only by forms purporting to show quarterly estimated tax obligations. The qualifying relative asserts that many of her husband's contributions cannot be quantified, including the maintenance and repairs he performs on their investment properties, but there is no indication she has investigated the actual cost of hiring someone to perform these tasks in his absence. Further, as she reports that their investment properties were foreclosed upon due to "the current real estate situation," maintenance cost is no longer at issue. Therefore, the record continues to lack evidence of the applicant's specific economic contribution to the household. The AAO notes the bank notice shows the applicant and his wife had a monthly gross income of nearly $12,000 last year, but the applicant has not shown his portion of this amount. Despite indicating that the family has experienced a diminution in income and has outstanding debts, documentation does not establish that loss of the applicant's contribution to the household will cause his wife hardship beyond what the family is currently experiencing. The record reflects that the qualifying relative relinquished a substantial component of household income by resigning her part time job in April 2012 after her leave of absence, but does not establish that reacquiring this or finding a similar position as needed to address financial problems is not an option. Without documentation of the applicant's past earnings or current income, he cannot establish that his wife will experience financial hardship if he is not able to remain in the United States.

Based on the evidence on the record, the situation of the applicant's wife, if she remains in the United States, is typical of individuals facing separation as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant, but the applicant has not met his burden of providing evidence that without his presence she will experience hardship that rises to the level of extreme.

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 proceedings for application for waiver of grounds of inadmissibility, 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 prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The prior decision of the AAO is affirmed. The waiver application remains denied.