



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

APR 30 2013

OFFICE: MILWAUKEE, WISCONSIN

FILE:

IN RE:

Applicant:

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:

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 with the field office or service center that originally decided your case by filing a 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Milwaukee, Wisconsin, denied the waiver application. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. On August 17, 2010, the applicant attempted to file a motion to reopen and reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The AAO rejected the motion in accordance with 8 C.F.R. § 103.2. On August 3, 2012, the applicant filed a subsequent motion to reopen and reconsider the AAO's decision. The applicant's motion will be granted. The previous decision of the AAO will be affirmed.

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 having procured admission to the United States through willful misrepresentation. The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative, and denied her Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO affirmed the Field Office Director's decision on appeal. The applicant attempted to file a motion to reopen and reconsider the AAO's decision, but the AAO rejected the motion as not properly filed.

On subsequent motion, counsel contends, "one of the purposes of this waiver is to provide for the unification of families, *Matter of Lopez[-]Monzon*, 17 I&N De. 280 (Commissioner 1979), and failure to weigh all family factors is reversible[,] *Delmundo v. INS*, 43 F.3d 436 (9th Cir. 1934)." *Brief in Support of Motion*, dated August 2, 2012. Counsel also contends, "the factors deemed relevant in *Matter of Cervantes-Gonzalez* [citation *infra*] are clearly present in this case, in the respect that there is a financial impact on the qualifying family members, significant conditions of health, both physical and psychological that are impacted in this case, and the fact that [the applicant's spouse] does not any longer have close family relatives residing in the Philippines are all present. Two small children of the parties reside in the USA, and . . . it is undeniable that this does exacerbate the hardship level for the [applicant's spouse]." *Id.*

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has submitted new documentary evidence to support her claim and asserted reasons for reconsideration, the motion to reopen and reconsider will be granted.

The record includes, but is not limited to: correspondence, briefs, and motions from counsel; letters of support; identity, psychological, medical, employment, and financial documents; and documents on conditions in the Philippines. 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) In general.- 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.

(iii) Waiver Authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The Field Office Director found the applicant inadmissible for failing to reveal her true marital status during her consular interview when she applied for a B1/B2 nonimmigrant visa in 2006. The record reflects the applicant was married when she obtained the nonimmigrant visa, and she was subsequently admitted to the United States as a B-2 visitor on June 27, 2006. On motion, the applicant does not contest the finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and she requires a waiver under section 212(i) of the Act.

Section 212(i) of the Act provides, in relevant part:

(1) The Attorney General [now Secretary 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.

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. Hardship to the applicant, her child, or her in-laws can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse and lawful permanent resident parents are the only demonstrated qualifying relatives in this case.¹ 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 of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has

¹ The record reflects the applicant's father and mother became lawful permanent residents in 2008, after the applicant's submission of her appeal on August 27, 2007.

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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 (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.

In support of the applicant's motion, counsel contends the applicant's spouse would suffer extreme hardship upon separation from the applicant as: he has been diagnosed with a major depressive disorder, which has resulted in his inability to control his eating habits and weight gain of more than 100 pounds; he is "clearly at risk" as he has compromised his long-term physical health with his inability to control his anxiety, depression, and stress; he and the applicant have two small, U.S. citizen children, "which only exacerbates the personal dynamics impacting [him] and affecting his emotional and physical health"; and he suffers from various medical conditions. Counsel also contends the applicant's parents would suffer extreme hardship upon separation from the applicant as each of them has significant health problems, and they are at risk because of their anxiety and stress. Counsel further indicates "there is a financial impact on the qualifying family members."

Although the applicant's spouse and parents may experience some hardship in the applicant's absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record includes a letter from the applicant's spouse's treating physician, Dr. [REDACTED], indicating the applicant's spouse has been diagnosed with uncontrolled hypertension, morbid obesity, and gout, and he has been asked to consider testing to "rule out" obstructive sleep apnea. However, the AAO notes Dr. [REDACTED] letter generally describes the applicant's spouse's treatment for his medical conditions, and it does not include a specific discussion concerning how the applicant's presence would be advantageous in her spouse's treatment.

The record also includes a letter from the applicant's mother's physician, Dr. [REDACTED] indicating the applicant's mother is under her care for diabetes mellitus and hypertension. Dr. [REDACTED] further indicates that the applicant's father "has a history of cerebrovascular accident and hypertension"; however, the AAO notes the record does not include evidence of the applicant's father's medical history, other than what appears to be self-reported to Dr. [REDACTED] who claims he soon "will establish" his patient status with her medical practice. Additionally, the AAO notes Dr. [REDACTED] letter does not include a discussion of the applicant's parents' treatment for their medical conditions or an indication the applicant's presence would be advantageous in such treatment. Absent an explanation in plain language from the treating physician or mental health professional of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical or mental health condition or the treatment needed.

Further, the record is sufficient to establish that licensed clinical psychologist, Dr. [REDACTED] has diagnosed the applicant's spouse with major depressive disorder. However, Dr. [REDACTED] does not specifically discuss a course of treatment for the applicant's spouse or how the applicant's participation in that treatment would be advantageous. Rather, Dr. [REDACTED] generally concludes that the applicant's spouse "has so many stressors . . . and it is strongly recommended

that the stress of deporting [the applicant] be removed to lessen the extreme hardship on his psychological well-being." *Psychological Report*, dated August 3, 2010.

Additionally, Dr. [REDACTED] states, "The stress [the applicant's parents] are both under from living in different states and worrying about [the applicant] is causing their health conditions to worsen. Therefore, the extreme hardship waiver must be granted to ensure their health and survival." *Id.* However, Dr. [REDACTED] does not include a specific discussion of any diagnosis of the applicant's parents' current mental health and related treatment.

Further, the record establishes the applicant's spouse has been employed by [REDACTED], in a permanent capacity as a machine operator since November 27, 2006. However, the record does not include evidence of the applicant's spouse's current income and financial obligations, demonstrating his inability to meet those obligations in the applicant's absence. Moreover, on appeal, the AAO noted the record did not include evidence of the "claimed financial impact" on the applicant's family if she were removed from the United States, and the applicant had been employed as a bank officer in Makati, Philippines. Accordingly, the AAO concluded the record did not indicate the applicant would be unable to support herself in the Philippines. The AAO notes the motion does not include additional evidence to address these concerns. 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)). And, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO notes the concerns regarding the hardship the applicant's spouse or parents may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish the applicant's spouse or parents would suffer extreme hardship as a result of separation from the applicant.

On motion, counsel contends the applicant's spouse would be unable to relocate to the Philippines as he: "has the burden of being a care giver" to his father and sisters and provides for their financial and psychological wellbeing; and he does not have any close relatives residing in the Philippines. Also, Dr. [REDACTED] report states, "In all likelihood, [the applicant's spouse] would make only pennies on the dollar in the Philippines and his health would not be monitored as closely as it is here." *Psychological Report, supra*. And, counsel notes the applicant's parents have immigrated to the United States.

Although the applicant's spouse and parents may experience some hardship upon relocating to the Philippines to be with the applicant, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record does not include any evidence of the applicant's spouse's father and sisters' current mental health and their inability to function in the applicant's spouse's absence, or of their financial

dependency on the applicant's spouse. Also, the record reflects the applicant's parents are nationals of the Philippines, and thereby, should have reduced difficulty in acclimating to the culture and society there. And, the record does not include sufficient evidence regarding the extent to which they maintain familial or social ties there. Moreover, the record reflects the applicant's father was an accountant in the Philippines, and the record does not include any evidence of economic, employment, labor, political, or social conditions in the Philippines and their impact on the applicant's spouse and parents other than what was reported in Dr. [REDACTED] report.

The AAO notes the concerns regarding the hardship the applicant's spouse or parents may experience upon relocation to the Philippines, but finds that even when evidence of this hardship is considered in the aggregate, the record fails to establish the applicant's spouse or parents would suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relatives, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to her U.S. citizen spouse or lawful permanent resident parents as required under section 212(i) of the Act. As the applicant has not established extreme hardship to qualifying family members, 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 motion will be granted and the previous decision of the AAO will be affirmed.

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