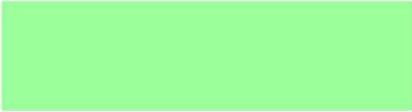


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

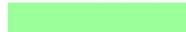


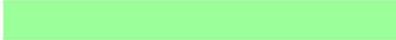
U.S. Citizenship
and Immigration
Services



DATE: **AUG 27 2013**

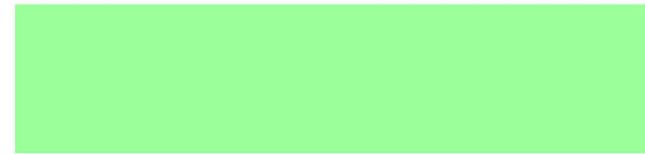
Office: SAN FERNANDO VALLEY

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Fernando Valley, California, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of the Philippines, 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 procuring an immigration benefit through fraud or willful misrepresentation of a material fact. He is applying for a waiver of inadmissibility under section 212(i), 8 U.S.C. § 1182(i) of the Act to reside in the United States with his U.S. lawful permanent resident spouse. The applicant is the derivative beneficiary on his spouse's application for adjustment of status.

In a decision dated July 21, 2012, the Field Office Director concluded that the applicant did not establish extreme hardship to a qualifying relative and the waiver was denied accordingly.

On appeal, counsel for the applicant states that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, but in the event that the applicant requires a waiver of inadmissibility, he has established extreme hardship to a qualifying relative and merits a waiver in the exercise of discretion.

In support of the waiver application, the record includes, but is not limited to: legal briefs by counsel; biographical information for the applicant, his spouse, and their daughter; an affidavit from the applicant's spouse; an affidavit from the applicant; a psychosocial/mental health status evaluation; documentation concerning the applicant's spouse's mother; financial and property ownership records for the applicant and his spouse; documentation concerning family ties; letters regarding the applicant's moral character; a declaration from the applicant's spouse; declarations from two of the applicant's daughters; country conditions information regarding the Philippines; and documentation of the applicant's immigration history.

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 was reviewed and considered in rendering a decision on the appeal.

The applicant was found to be inadmissible under section 212(a)(6)(C) of the Act, which 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.

...

The applicant was found to be inadmissible under section 212(a)(6)(C) of the Act as a result of his application for permanent residence filed on August 28, 2002 based on a marriage that he says he

never entered into and that cannot be verified. Counsel for the applicant states that the applicant “did not misrepresent any material fact” and does not need a waiver of inadmissibility. Counsel contends that because the applicant states that he has never been married to anyone other than his current spouse, that the applicant was not present in the United States at the time of the stated marriage, and that the State of California cannot verify that the marriage occurred, that the applicant is not inadmissible. Counsel further states that the applicant “is a victim of an immigration fraud ring.” The applicant states that he paid an individual by the name of [REDACTED] \$5,000 to help him remain in the United States. He says that he provided [REDACTED] with his personal information and copies of his “birth certificate and other documents” but that he was “never contacted by [REDACTED] to sign paperwork.” The applicant further states that “a few months later, I received a work authorization card in the mail.” He states that it was not until “February 12, 2007” that he became aware that fraudulent documents had been submitted in connection with his paperwork.

A misrepresentation is generally material only if by making it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* 495 U.S. at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. 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.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

“It is not necessary that an ‘intent to deceive’ be established by proof, or that the officer believes and acts upon the false representation,” but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)).

In regards to the willfulness, the Foreign Affairs Manual contains a definition consistent with relevant Board decisions and other case law. 9 FAM 40.63 N5.1, in pertinent part, states that:

The term “willfully” as used in section 212(a)(6)(C)(i) of the Act is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. In order to find the element of willfulness, it must be determined that the alien was fully aware of the

nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement.

The record contains an application for adjustment of status (Form I-485) submitted with the applicant's signature. Although the applicant states that he did not sign the form which falsely claimed that he was married to a U.S. citizen, there is no documentation in the record beyond the applicant's statement to support this assertion. Counsel claims that the only fraud or misrepresentation in this case was committed by an immigration fraud ring, and not by the applicant. No details were provided regarding the purported fraud ring, aside from the name of the individual [REDACTED] to whom the applicant says he paid \$5,000. Moreover, the applicant is responsible for action taken by a representative if the applicant is aware of that action. See Memo, from Lori Scialabba, Act. Assoc. Dir., Dom. Ops., Donald Neufeld, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators* 13 (March 3, 2009). In this case, the record indicates that the applicant appeared for fingerprints in connection with his adjustment of status application, resulting in the issuance of an employment authorization document, despite the applicant's contention that the employment authorization card was issued to him without any knowledge or action on his behalf.

The record does not contain any other documentation to support counsel's or the applicant's claim that the applicant was not aware of the application for adjustment submitted in his name and bearing his signature and personal information. Counsel and the applicant state that the applicant was not present in the country at the time of the purported marriage that was the basis for the application for adjustment of status; however, the basis for the finding of inadmissibility is not that the applicant necessarily entered into a sham marriage, which would also subject him to section 204(c) of the Act, but that the applicant knowingly submitted false documentation and made material misrepresentations asserting the existence of marriage as the basis for the application for adjustment of status bearing his signature that was submitted when the applicant was in fact present in the United States. The burden of proof is on the applicant to establish by a preponderance of the evidence that he is not inadmissible. See section 291 of the Act; see also *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978). Although the applicant's 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. *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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO finds that to the extent that the applicant claims that he did not attempt to procure and procure a benefit under the Act through fraud or material misrepresentation, this contention lacks merit.

The applicant is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [*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 Attorney General [*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 U.S. citizen or lawful permanent resident spouse or parent. The record indicates that the applicant's only qualifying relative is his U.S. lawful permanent resident spouse. The AAO will consider hardship to the applicant, his mother-in-law, and his adult daughter only insofar as the hardship to them is shown to affect the hardship to the applicant's spouse. 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*, 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).

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 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.

We will first consider the hardship claimed to the applicant's U.S. lawful permanent resident spouse if she were to remain in the United States and be separated from the applicant. Counsel states that the applicant's spouse needs the applicant's presence for emotional and physical support, further adding that the applicant's spouse relies on the applicant's assistance with the care of her mother and daughter. The AAO notes that the applicant and his spouse have been married since August 15, 1994 and have an 18-year-old daughter. The applicant's spouse stated to [REDACTED] as relayed in [REDACTED] psychosocial report dated March 26, 2012, that the applicant is responsible for taking their daughter to and from school as well as driving her to her activities. There is no further documentation in the record to illustrate what hardship the applicant's spouse would suffer if the applicant no longer served that role. For

instance, there is no information concerning public transportation available to the 18-year-old or carpooling options, nor is there any documentation concerning what activities she attends. The applicant's spouse also relayed to [REDACTED] that the applicant "shops, cooks, cleans, and takes" his mother-in-law to appointments. In regards to the applicant's mother-in-law, the AAO notes that the record contains a letter from the applicant's 83-year-old mother-in-law's physician dated August 28, 2007. This medical information is outdated and does not allow us to make any conclusions regarding that individual's present needs. A list of the applicant's spouse's mother's medications is included as well and that printout is dated December 1, 2011 to May 31, 2012; however the report does not indicate that the applicant's spouse's mother is disabled or requires her daughters care. Additionally, the AAO notes that the applicant's spouse states that she has a brother and sister in the United States, as well as her 18-year-old daughter. There is no indication in the record why those individuals would be unable to help care for the applicant's spouse's mother. The applicant's spouse states that her sister suffers from lupus, but the record does not contain any documentation to support that statement. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence.

Counsel states that the psychological impact on the applicant's spouse would be severe as she is already suffering from mental and emotional conditions. In [REDACTED] report, she states that the applicant's spouse reported suffering chest pains, heartburn, headaches, insomnia, nightmares and numbness in her arms. The applicant's spouse states that "ever since she found out about her husband's situation, she has been extremely depressed." The applicant's spouse states that she is "tortured every day by her husband's situation" and cannot eat and sleep. The AAO notes that the record indicates that both the applicant and his spouse were living without authorization in the United States since the mid-1990s and the applicant's spouse only recently obtained her lawful permanent residence in 2012. The applicant's spouse reports that her "boss noticed her poor concentration" and asked her what was going on. The record does not contain any documentation of problems with the applicant's spouse's employment. [REDACTED] also states that the applicant's spouse consulted a physician concerning the numbness in her arms and was told that it was a symptom of stress. [REDACTED] also reports that the applicant's spouse was prescribed "Ativan" for stress by a medical professional. The record does not contain any documentation from a medical professional concerning the applicant's spouse's stated physical symptoms, or any medical diagnoses concerning her mental state.

Counsel states that the cost of travel to the Philippines would make visiting the applicant extremely difficult and that reunification of the couple would be unlikely; however, the record does not show that the applicant's spouse would be unable to afford the cost of travel to the Philippines. The record indicates that the applicant's spouse earns approximately 84,000 per year and her expenses are not documented in the record. As stated above, 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. at 165. The AAO recognizes the applicant's spouse's difficult position; however, the hardships presented, even when considered in the aggregate, do not rise to the level of extreme hardship.

In regards to the hardship to the applicant's spouse were she to relocate to the Philippines to reside with the applicant, the applicant's spouse states that her age, 46, and length of time that she has lived in the United States, 22 years, would make it "difficult, if not impossible to start a new life in the Philippines." She also states that the applicant will also have a hard time re-establishing his career in the Philippines as he is 52 years old. The AAO notes that the applicant's spouse has worked as a bookkeeper and pharmacy assistant in the United States and has years of experience in those professions. Additionally, the record indicates that the applicant's spouse earned her Bachelor of Science degree in Nutrition in the Philippines in 1988, and went on to work as a hospital nutritionist there between 1988 and 1990. The record does not establish that she would not be able to obtain work based on her skills in the Philippines. Additionally, the record indicates that the applicant reports being unemployed in the United States and neither counsel nor the applicant's spouse mention what career the applicant would "re-establish" in the Philippines; however, a letter in the record from an automotive instructor at [REDACTED] dated March 19, 2012 indicates that the applicant was a student in the auto tech program at the Center and that he also was a "shop foreman" at the auto tech program. Additionally, a letter in the record indicates that the applicant is a photographer whose photographs "have appeared in many national and international online galleries, and his action photos have graced the pages of a recent high-profile publication in outdoor sports." That individual also states that the applicant has "performed commercial photography for his company." The record does not establish that the applicant would be unable to support his family in the Philippines by working in the automotive field or through his photography. Additionally, the lack of information regarding the family's savings, value of property ownership, and other financial variables does not assist us drawing any conclusions concerning the degree of financial hardship that the applicant's spouse would experience if she were to relocate to the Philippines. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to the Philippines, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is not granted a waiver of inadmissibility. Although the AAO acknowledges that the applicant's U.S. citizen spouse will suffer some hardship, the record does not establish that the hardship rises to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief under section 212(i) of the Act, no purpose would be served in discussing whether the applicant merits a waiver under section 212(h) or as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.