



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **AUG 28 2013** OFFICE: SAN FERNANDO VALLEY [Redacted]

IN RE: Applicant: [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 (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,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Fernando Valley, California denied the waiver application and the matter 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 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The field office 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 October 2, 2012.

On appeal counsel contends that if a waiver is not granted, the applicant's U.S. citizen spouse will suffer extreme hardship. *See Form I-290B, Notice of Appeal or Motion*, received November 2, 2012.

Counsel further contends that the field office director's adverse decision violates the due process rights of the applicant and his spouse, is contrary to statute (though counsel does not indicate the statute to which it is contrary), and is arbitrary and capricious. Like the Board of Immigration Appeals, the AAO does not have appellate jurisdiction over constitutional issues. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529 (BIA 1992). Furthermore, it is unclear what remedy would be appropriate beyond the AAO's appellate review itself. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Thus, the field office director's decision is not binding on the AAO, and the entire record has been considered in reaching a decision on appeal. It is noted, however, that counsel has not shown any violation of the regulations by the field office director or that any such violation resulted in "substantial prejudice" to applicant or his spouse. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). A review of the record and the adverse decision indicates that the field office director applied the appropriate statutes and regulations to the applicant's case. In her brief, counsel asserts that the field office director's decision contains string-citations of BIA cases and outdated U.S. Circuit Court cases issued in the context of suspension of deportation, which counsel argues are not applicable: "[redacted] waiver is based on hardship to *his spouse*-- which is not the factual scenario in ANY of the cases cited."

However, in *Matter of Cervantes-Gonzalez*, 22 I & N Dec. 560, 565 (BIA 1999), the BIA, assessing a section 212(i) waiver of inadmissibility case, wrote:

Although it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion [S]ee . . . *Hassan v. INS*, 927 F.2d 465, 467 (9th Cir. 1991) (noting that suspension cases interpreting extreme hardship are useful for interpreting extreme hardship in section 212(h) cases). These factors related to the level of extreme hardship which an alien's "qualifying relative," . . . would experience upon deportation of the respondent.

The field office director's legal citations appropriately reflect legal principles of general application, if not factual scenarios similar to that presented in this case.

The record contains, but is not limited to: Form I-290B, counsel's statement thereon and counsel's appeal brief; various immigration applications and petitions; a hardship declaration and a declaration from the applicant; a psychological evaluation; marriage and divorce records; tax returns and financial-related records; and family photographs. The entire record was reviewed and considered in rendering this 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 shows that the applicant entered the United States on May 1, 2005 by presenting a C-1/D1 visa bearing an identity not his own and asserting to be a crewman. The applicant subsequently admitted during his adjustment of status interview that he has never worked as a crewman and he obtained his visa with no intention of working a crewman on a ship. Based on the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. He requires a waiver under section 212(i) of the Act.

A waiver of inadmissibility under sections 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 and his children can be considered only insofar as it results in hardship to a qualifying relative. In the present 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-Moralez*, 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).

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 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 32-year-old native of the Philippines and citizen of the United States who has been married to the applicant since February 2011. The couple has no children together, though the applicant has two minor children in the Philippines. The applicant's spouse states that it would be devastating if the applicant was removed and separation from him would leave her in a state of utter depression and unhappiness. [REDACTED] indicates that he interviewed the applicant's spouse on February 20, 2012 and she told him that when she and the applicant were separated for two months in 2008 she lacked energy, did not look forward to the next day or going home because he was not there, she was sad, and she would be depressed with a prolonged separation. [REDACTED] diagnoses the applicant's spouse with adjustment disorder with mixed anxiety and depressive mood. [REDACTED] recommends that the applicant's spouse see a psychotherapist but does not indicate whether he prescribed any medications or recommends that she be evaluated for any medicinal treatment. No evidence has been submitted showing that the applicant's spouse is seeing a psychotherapist as recommended or demonstrating the impact of any such therapy. As noted by the field office director, [REDACTED] finds the applicant's spouse to be in good health emotionally and physically and notes that the causes of her stress and anxiety relate to the possibility of separation from the applicant, a difficulty which while not insignificant, is commonly associated with a love one's inadmissibility or removal.

The applicant's spouse states that she would suffer economic hardship if the applicant is removed. She states that there are no jobs available in the Philippines where even people who have completed college have difficulty finding employment. The record contains no corroborating documentary evidence addressing employment in the Philippines. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). The applicant's spouse indicates that the applicant currently supports his two minor daughters in the Philippines and would be unable to do so if he were removed. As noted by the field office director, financial hardship to the applicant's children - Filipino citizens residing in the Philippines with their mother, is not a consideration for a waiver under section 212(i) of the Act unless it can be shown that such hardship rises to the level of extreme hardship to the applicant's qualifying relative. There is no evidence in the record showing the amount of support the applicant provides for his children in the Philippines or that his inability to do so would result in extreme hardship to his qualifying relative spouse. [REDACTED] writes that "it is obvious" that the loss of the applicant's income would be a major hardship for the applicant's spouse. The record contains no income evidence, however, for the applicant and does not demonstrate that he is employed or has ever contributed financially to his and his spouse's household. The 2011 income tax return submitted for the record, through a joint return filed by husband and wife, lists only the applicant's spouse's income and includes a Form W-2, Wage and Tax Statement for her alone. No documentary evidence has been submitted to demonstrate that that applicant earns income from employment or has income from any other

source. Moreover, the record contains no budget or other documentary evidence delineating the couple's current expenses from which an accurate determination might be made as to whether the applicant's spouse would suffer economic hardship in the applicant's absence. While the AAO recognizes that the applicant's spouse may experience some reduction in income as a result of separation from the applicant, the evidence in the record is insufficient to demonstrate that she would be unable to meet her financial obligations in his absence.

The AAO has considered in the aggregate all assertions of separation-related hardship to the applicant's spouse including the likely emotional, psychological and physical impact of separation, as well as her asserted economic concerns. The AAO acknowledges that separation from the applicant would cause various difficulties for his U.S. citizen spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse indicates that returning to the Philippines is not an option for her due to the lack of jobs there. As discussed above, the record contains no country conditions-evidence for the Philippines addressing employment in the country, and no other documentary evidence demonstrating that the applicant or his spouse would be unable to obtain employment there. The applicant's spouse states that her elderly parents rely on her for monthly support for their medicine, doctors' appointments and daily living. No corroborating documentary evidence has been submitted showing the amount of support provided by the applicant's spouse for her parents or demonstrating that she would be unable to continue supporting them in the applicant's absence or from the Philippines were she to relocate to be with the applicant. Dr. [REDACTED] relays that the applicant's spouse is the youngest of ten children and that both her parents resided in the Philippines. The applicant's spouse does not address whether any of her elder siblings are currently supporting their parents or whether they would be willing and able to do so in the event that she decides to relocate to the Philippines to be with the applicant.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including her stated economic and employment concerns. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to the Philippines.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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.

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.