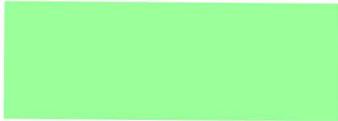




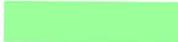
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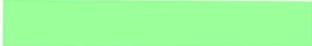
(b)(6)



DATE: DEC 23 2013

OFFICE: FRESNO

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Fresno, 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 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 procuring an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated June 4, 2013.

On appeal, counsel for the applicant asserts that the applicant's spouse would suffer emotional, financial, medical, and practical hardship if he were separated from the applicant. Counsel further asserts that the applicant's spouse would suffer financial and medical hardship upon relocation to the Philippines. Counsel also contends that, upon relocation, the applicant's spouse would lose his strong ties to the United States and also experience hardship based upon the suffering of his children.

In support of the waiver application and appeal, the applicant submitted a letter, a letter from her spouse, medical documentation, family photographs, background country conditions for the Philippines, identity documents, and financial documentation. 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 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 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 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...

The applicant asserts that she entered the United States using the passport and visa of another individual on April 4, 1994. The applicant further asserts that she made false claims in an application for asylum in the United States in order to obtain work authorization. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring and attempting to procure an immigration benefit through fraud or misrepresentation. The applicant does not dispute this ground of inadmissibility on appeal.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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 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.

The record reflects that the applicant is a 42-year-old native and citizen of the Philippines. The applicant’s spouse is a 52-year-old native of the Philippines and citizen of the United States. The applicant is currently residing with her spouse and children in Modesto, California.

Counsel for the applicant asserts that the applicant’s spouse needs the applicant with him in the United States to care for their children and take them to school. Counsel further asserts that, in the absence of the applicant, the applicant’s spouse would be exhausted from working and caring for their children, as he is unable to afford a childcare provider. The record reflects that the applicant takes their children to and from school, but there is also no indication that the applicant’s spouse would be unable to continue in his employment while arranging for the care and transportation of their children. Further, the record contains financial documentation concerning the applicant’s spouse, including a chart indicating monthly household expenses, but does not contain supporting documentation concerning these expenses. As such, the record is insufficient to find that the applicant’s spouse would be unable to afford childcare for his children, as necessary. 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)).

Counsel for the applicant contends that the applicant's spouse suffers from medical ailments including excessive anxiety most days of the week. Counsel asserts that granting the applicant's waiver application would allow the applicant's spouse to recover from his anxiety. The record contains medical progress notes for the applicant's spouse that contain abbreviations and medical terminology that are not explained as well as a list of current prescriptions. However, without an explanation in plain language from the treating physician of the exact 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 condition or the treatment needed. The record also contains a letter from a psychiatrist stating that the applicant's spouse has been diagnosed with generalized anxiety and is taking Lexapro once a day and Ativan, as needed. The record does not contain any other medical documentation concerning the applicant's physical or psychological diagnoses.

The applicant's spouse asserts that he and the children love the applicant very much and they would all experience emotional suffering if separated from the applicant. The applicant's spouse also asserts that one of their children suffers from asthma and hives and he would be concerned about that child's health and all the children's emotional hardship in the absence of the applicant. It is noted that the applicant's children are not qualifying relatives in the context of this application so that any hardship they would suffer will be considered only insofar as it affects the applicant's spouse.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would experience emotional hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to the Philippines because of his ties to the United States and the country conditions in the Philippines. Counsel also asserts that the applicant's spouse would be concerned about the integration of his children, natives and citizens of the United States, upon relocation to the Philippines.

The record reflects that the applicant's spouse is a native of the Philippines. As noted, the applicant's children are not qualifying relatives in the context of this application. However, it is also noted that the Department of State's Country Specific Information for the Philippines indicates that English is widely spoken throughout the country. Counsel contends that the applicant's spouse has been residing in the United States for 23 years, since 1990. The applicant's spouse asserts that he and his children are accustomed to life in the United States and he has stable employment. The record contains a letter of employment stating that the applicant's spouse has been employed as a phlebotomy tech in [REDACTED] since July 6, 2009. The record also contains school records for the applicant's three children.

Counsel for the applicant asserts that the applicant's spouse and his children would suffer economic and medical hardship upon relocation to the Philippines. The applicant's spouse also

contends that he would fear for the safety of his children upon relocation. Counsel asserts that the United States reports a significantly higher gross domestic product and that the health care system in the Philippines is inferior to the United States. It is noted that the applicant attended college in the Philippines and there is no indication that she would be unable to seek employment in that country. The record also reflects that the applicant's spouse was employed as an accountant in the Philippines and, likewise, there is no indication that he would be unable to secure employment upon relocation. The applicant's Form G-325A, Biographic Information, indicates that the applicant's mother is currently residing in the Philippines. There is no information concerning the extent to which she could or would assist the applicant's family in relocation. Finally, the Department of State's Country Specific Information for the Philippines, dated February 14, 2013, states that adequate medical care is available in major cities in the Philippines, and there is no indication that the applicant's spouse or children would be unable to secure medical care, as necessary, upon relocation.

The Department of State also issued a travel warning for the Philippines, dated July 5, 2013, warning of travel to, particularly, Sulu Archipelago and Mindanao. It is noted that the applicant's spouse was born in [REDACTED] and the applicant's mother resides in the applicant's place of birth, [REDACTED] Mindoro. The travel warning does not contain any information specifically concerning these two areas. In this case, the record contains insufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if he relocated to the Philippines.

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 spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or child is removed from the United States or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rises to the level of extreme as contemplated by statute and case law.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in balancing positive and negative factors to determine whether the applicant merits this 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.