



**U.S. Citizenship  
and Immigration  
Services**

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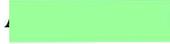


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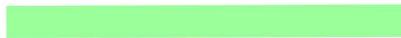
**JAN 14 2013**

OFFICE: HONOLULU

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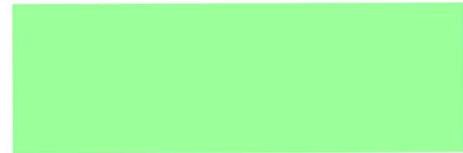


IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the 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 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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Honolulu, Hawaii, and 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 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 willful misrepresentation. The applicant is the wife of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, in order to remain in the United States to reside with her U.S. citizen spouse.

The Field Office Director concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, failed to show that her inadmissibility would cause extreme hardship to a qualifying relative, and denied the application accordingly. *Decision of Field Office Director*, dated September 27, 2011.

On appeal, counsel submits a brief, several medical records for the applicant's husband and an article on untreated depression. The record also includes, but is not limited to: hardship statements from the applicant's spouse, daughter and stepson; support letters from friends and community members; medical documents for the applicant's spouse and son, and a country conditions article on mental health systems in the Philippines. 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 Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

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)(1) of the Act provides, in pertinent part:

The [Secretary of Homeland Security] may, in the discretion of the [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 [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 in this case previously admitted in a sworn statement to presenting a fraudulent passport in someone else's name for admission into the United States. *Record of Sworn Statement*

in Affidavit Form, signed by the applicant on May 11, 2000. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission into the United States through fraud. Counsel concedes the applicant's inadmissibility on appeal. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. spouse.

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. 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 (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 record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s qualifying relative.

The record establishes that the applicant’s spouse would suffer extreme hardship if he were to relocate to the Philippines to reside with the applicant. The relevant evidence shows that the applicant’s husband is 62 years old, has resided in the United States for over 20 years, has no immediate family members in his native country of the Philippines and has held the same job for the past 23 years. The record also includes a letter from the applicant’s spouse’s doctor who has been treating the applicant’s spouse with prescription medicine for several years for extreme anxiety and depression. *Letter from Dr. [REDACTED]* dated December 20, 2010. The record contains articles showing that comparable mental health care in the Philippines would be difficult to access, especially in the applicant’s home town in rural Vigan, Ilocos Sur, and that untreated depression is dangerous to the health and well-being of affected individuals. The record further shows that that applicant’s son suffers from asthma for which he requires medication and new environmental triggers and air pollution in the Philippines may be harmful to him. *Letter from Dr. [REDACTED]* dated December 8, 2010. The applicant’s spouse states that he loves his stepson very much and is worried that he would not be prepared for the harsh living conditions in the Philippines, especially without the ability to speak the language, factors adding to the difficulties the applicant’s spouse would experience upon relocation. The relevant evidence, when considered

in the aggregate, demonstrates that the applicant's spouse would suffer extreme hardship upon relocation to the Philippines.

However, the record does not establish that the applicant's spouse would experience extreme hardship upon separation from the applicant. The applicant's husband states that he would face emotional hardship without the support of the applicant. The applicant's husband states that the applicant is his source of happiness after recovering from a traumatic divorce and several years of drinking excessively. The record indicates that the applicant's husband has suffered from extreme anxiety and depression for years and requires prescription medicine for treatment but the record does not include medical evidence discussing the impact of separation from the applicant on the applicant's mental health. The applicant's spouse further states that he relies on the applicant to take him to his doctor's visits, pick up his daughter from a previous marriage for weekly visitation, cook healthy food for him, make sure that he takes his medicine and manage the household while he works. However, the record does not show that no other family members are able to help support the applicant's husband with these needs. The present record is insufficient to show that the applicant's husband would suffer extreme emotional hardship upon separation from the applicant.

The applicant's spouse states that he has numerous medical conditions, in addition to the anxiety and depression mentioned above, for which he receives treatment and medication and relies on the support of the applicant. The applicant's spouse claims that he has suffered serious liver damage and high blood pressure. On appeal, medical records from November 2000 to March 2002 were submitted documenting a history of liver, jaundice, hepatitis B and hypertension problems. On appeal, counsel does not submit current medical records showing that the applicant's spouse continues to suffer from any of these conditions, or other evidence showing any specific medical needs of the applicant's spouse for which the applicant provides him with support and evidence that the applicant is the sole or primary source of support for her husband considering his extensive family ties in the United States. The medical records submitted on appeal are dated between nine and 11 years ago and are insufficient to show extreme medical hardship upon separation from the applicant.

While emotional and medical difficulties are common results of inadmissibility, the record, in the aggregate, does not establish that the applicant's spouse would suffer extreme hardship in the event of separation from the applicant.

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 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

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applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

On appeal, the applicant has failed to establish extreme hardship to a qualifying relative 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 determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for a 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.