



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JAN 14 2013** Office: LOS ANGELES FILE: [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:

SELF-REPRESENTED

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,

[Handwritten signature]

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant 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 to remain in the United States with her U.S. citizen spouse.

The Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated January 7, 2009.

The AAO concluded that the applicant had failed to establish that her U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant as a result of her inadmissibility and alternatively, were he to remain in the United States while the applicant resided abroad due to her inadmissibility. The appeal was dismissed. *Decision of the AAO*, dated July 13, 2011.

On motion the applicant contends that her spouse's health condition is declining, including a recent hospitalization, and he cannot function without her assistance. The applicant submitted no additional documentation with the motion. The record contains previously-submitted documents including statements from the applicant and her spouse and medical documentation for the applicant's spouse. 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 that:

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 qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. 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-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).

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. *Salcido-Salcido v. INS*, 138 F.3d 1292 (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.

As noted above, the AAO determined that the applicant had failed to establish that her U.S. citizen spouse would suffer extreme hardship if he were to relocate abroad to reside with the applicant or if he were to remain in the United States while the applicant resided abroad due to her inadmissibility.

As the AAO noted

Although [two medical documents] indicate that the applicant's spouse has medical conditions, they do not describe the severity of these conditions or explain the frequency or level of treatment needed by the applicant. Neither document provides a basic statement confirming any medical diagnoses, or an explanation of the severity of the applicant's spouses' conditions or whether he is able to care for himself. Further, although the applicant states on appeal that her spouse would be unable to relocate to the Philippines because he would not be able to obtain adequate medical treatment there, the record does not contain any documentation to support this assertion. The applicant has not identified other elements of hardship her spouse may face should he reside in the Philippines. As such, the applicant has failed to establish extreme hardship to a qualifying relative upon relocation. Concerning remaining in the United States the applicant states that she provides continuous care and aid to her spouse. Similarly, the applicant's spouse states that separation for the applicant would cause extreme hardship due to his medical problems and the need for continual aid that the applicant provides. [T]he medical evidence in the record, while sufficient to establish that the applicant's spouse has medical conditions, does not describe the severity of these conditions or explain the frequency or level of treatment needed by the applicant spouse. Nor is there any evidence in the record indicating that the applicant's spouse would not be able to obtain necessary care in the applicant's absence. The applicant has not identified other elements of hardship her spouse may face should he reside in the United State without her. Considering the stated hardship factors in aggregate and in light of the lack of supporting evidence in the record, the applicant has not shown that her spouse will suffer extreme hardship should he reside in the United States.

On motion the applicant contends her spouse's medical condition has declined. In appealing the Field Office Director's decision the applicant had stated that she provides continuous care and aid to her spouse and that he cannot relocate because of insufficient medical resources in the Philippines.

In two previous declarations the applicant's spouse states he is dependent on the applicant for medical support and transportation needs. He stated that he needs help from the applicant because he suffers from diabetes, which requires monitoring, and that because of vision problems he needs help reading dosages. He also stated that because of his vision problems he cannot drive so he needs someone to drive him to medical appointments, and arthritis has caused him instability when walking. The spouse further stated that their three daughters from his and the applicant's previous marriages receive financial support from the applicant and him.

The AAO finds that the applicant has failed to establish that her qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. The applicant and spouse stated the spouse needs the applicant to assist him due to medical problems. Medical documentation submitted establishes the applicant's spouse has health problems, but do not describe the severity or support that the applicant's presence in the United States is required for her spouse's care. The applicant has also not established that no one else, such as one of her spouse's children, could provide him with the assistance and support he needs.

The applicant references no other hardship to her spouse due to separation other than the spouse's statement that he and the applicant provide financial assistance to their children from prior marriages. The children are not qualifying relatives so any effect on them due to the applicant's inadmissibility would only be relevant as it affects the applicant's spouse. In this case the children are adults and the record contains no documentation of support given to them by the applicant and her spouse. The applicant has not otherwise asserted her inadmissibility would cause financial hardship to her spouse, who stated that his income is derived from retirement income and social security. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The applicant asserts her spouse cannot relocate because of a lack of medical care in the Philippines, however, the record does not contain any country condition evidence and fails to establish the applicant's spouse has conditions for which he would be unable to access medical care. The applicant has not identified other elements of hardship her spouse may face should he reside in the Philippines. Therefore the record does not support that the applicant's spouse would suffer extreme hardship if he were to relocate abroad to reside with the applicant.

The record, reviewed in its entirety, 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 is removed from the United States or is

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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 rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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 to reopen is granted and the prior decision of the AAO is affirmed. The waiver application is denied.

ORDER: The motion to reopen is granted, and the prior decisions affirmed. The waiver application is denied