



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JAN 24 2013

Office: SAN FRANCISCO, CA

FILE: [REDACTED]

IN RE: [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)

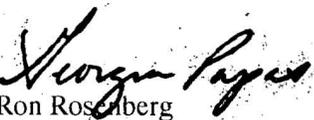
ON BEHALF OF APPLICANT: [REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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, San Francisco, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). Subsequently, the applicant filed a motion to reopen. Upon review of the motion, the AAO decided that the underlying application remained denied. The matter is now before the AAO on second motion to reopen. The motion will be granted and the underlying waiver application will remain denied.

The record reflects that the applicant is a native and citizen of the Philippines who 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 entry into the United States by willful misrepresentation of a material fact by using an assumed name and different date of birth. The record indicates that the applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130).¹ The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, in order to reside in the United States with her spouse and children.

The director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on her qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated March 28, 2006. The AAO also found that the applicant had not established that denial of her waiver application would cause extreme hardship to her spouse and dismissed the appeal accordingly. *See AAO's Decision*, dated March 3, 2009. Upon review of the applicant's motion, the AAO decided that the underlying waiver application remained denied. *See AAO's Decision*, dated January 6, 2012.

On motion, counsel submits new evidence for consideration and asserts that the applicant's spouse would experience extreme financial and emotional hardship if the applicant's spouse were to separate from the applicant. *See Counsel's Brief*, dated February 29, 2012.

A motion to reopen must state the new facts to be proved in the reopened proceedings and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Counsel's motion meets the requirements for a motion to reopen, and therefore the motion is granted.

The record includes, but is not limited to: briefs from the applicant's counsel, statements from the applicant's spouse, financial evidence, medical information for the applicant and her spouse, and information about employment opportunities for the applicant in the Philippines. The entire record was reviewed and considered in rendering this decision on the motion.

¹ The AAO notes that the applicant married the petitioner under her assumed name and birthdate.

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.

Section 212(i) of the Act provides that:

- (1) The [Secretary] may, in the discretion of the [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 [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.

In the present case, the record reflects that after being denied a non-immigrant visa under her true name, the applicant obtained a passport with an assumed name and birthdate. Thereafter, the applicant obtained a non-immigrant visa and entered the United States on March 26, 1989 with this assumed name and birthdate. The AAO concludes that the applicant therefore is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having procured admission into the United States through material misrepresentation. Counsel does not contest the applicant's inadmissibility.

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. 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). In the instant case, the applicant's spouse is her qualifying relative.

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, 631-32 (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, "[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., In re 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 AAO now turns to the question of whether the applicant in the present case has established that her qualifying relative would experience extreme hardship as a result of her inadmissibility. In its previous decisions, the AAO concluded that the applicant established hardship to her spouse if he relocates to the Philippines. Therefore, in this decision, the AAO addresses only whether the applicant has established hardship to her spouse if he remains in the United States.

On motion, counsel states that the applicant's spouse would have difficulty supporting his family in the United States and the applicant in the Philippines with his income alone. Counsel asserts that the applicant's spouse's health problems limit his ability to perform his work duties and the type of jobs for which he can apply. Moreover, according to counsel, the applicant's spouse "is not emotionally prepared" to handle the applicant's relocation to the Philippines, and stress resulting from separation would worsen his physical health.

The applicant's spouse states that living in the United States with their two children would be very difficult for him financially. He states that without the applicant's financial contribution, he would not be able to pay his expenses. He claims to owe approximately \$20,000. On motion, the applicant submits copies of their car-payment bill and an electricity utility bill. The applicant's spouse also states that the applicant could find a licensed vocational nurse position easily in the United States but not in the Philippines, because the "position does not exist there." The applicant submits an employment rejection letter for a position in the Philippines for which she applied, indicating that the employer considers job applicants' ages and prefers graduates of their own school. The applicant's spouse also is concerned about his ability to perform his work duties and to find additional employment because of "mild degenerative changes" to his left shoulder. He also is concerned about not being able to spend time with their children, should he need to work extra hours or at a second job, to financially compensate for the applicant's absence.

The record indicates that the applicant had a carcinoid tumor removed in 2010, and her physician recommends an annual sigmoidoscopy for the next three to five years. The applicant's spouse is concerned that the applicant would be unable to receive adequate medical care in the Philippines.

Having reviewed the evidence in the record and considered counsel's assertions on motion, the AAO concludes that the applicant has failed to demonstrate that her spouse would experience extreme hardship if he remains in the United States. With respect to financial hardship, the AAO in its decision dated January 6, 2012, concluded that the record lacked evidence demonstrating the applicant's financial contribution to the household income and detailed information about the family's expenses. Without such documents, it was not possible to conclude that the applicant's spouse would experience financial hardship if the applicant were in the Philippines. On motion, the applicant has not submitted evidence of her financial contribution to the household income. We further note that the only evidence the applicant submits to demonstrate their household expenses are copies of their car-payment bill and a utility bill, totaling less than \$400 in monthly expenses. The evidence submitted fails to corroborate the applicant's spouse's assertion of his debt of \$20,000 and that he would be unable to support his family if the applicant returns to the Philippines. The assertions of the applicant's spouse are relevant evidence and have been

considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *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 generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Regarding the applicant’s spouse’s emotional hardship, we acknowledge that the applicant and her spouse have a loving relationship, and nothing in this decision should be interpreted as suggesting otherwise. The record, however, contains no evidence corroborating the applicant’s spouse’s concerns that the applicant would be unable to receive adequate healthcare in the Philippines. In the absence of current medical or psychological evaluations or other objective reports providing information about the applicant’s spouse’s emotional and mental state, the AAO is unable to consider the degree of emotional hardship the applicant’s spouse would experience as a result of separation. Furthermore, the medical evidence in the record does not provide details regarding whether the applicant’s spouse has physical limitations and the type of assistance, if any, he may need for his daily activities. The AAO concludes, considering the evidence of hardship in the aggregate, that the applicant has failed to establish that her spouse would experience extreme hardship if he were to remain in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant’s spouse, when considered in the aggregate, rise beyond the common results of removal or inadmissibility. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(i) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the waiver application remains denied.

ORDER: The motion is granted and the waiver application remains denied.