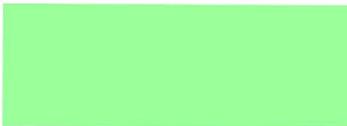


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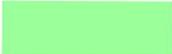


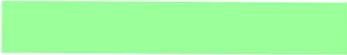
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



DATE: JUL 12 2013

Office: HONOLULU

File: 

IN RE: Applicant: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Honolulu, Hawaii, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 procuring or attempting to procure an immigration benefit by fraud or misrepresentation. The applicant contests the inadmissibility finding, but alternatively seeks a waiver of inadmissibility in order to reside in the United States as the beneficiary of the Petition for Alien Relative (Form I-130) filed by her husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director, July 24, 2012.*

On appeal, counsel for the applicant contends that USCIS: erred in misconstruing the extreme hardships that the applicant's husband will suffer as a result of the applicant's inadmissibility, if she is unable to remain in the United States; is collaterally estopped from denying adjustment of status; and USCIS's adjustment of status denial represents an abuse of prosecutorial discretion. In support of the appeal, counsel submits a brief and evidence of not having been previously married. The record contains documentation including, but not limited to: hardship statements; a naturalization certificate and a green card; passports and visas; birth, divorce, and marriage certificates; a medical letter; military letters, including a medical letter; financial information dated not later than 2007, including a mortgage settlement (2005), 2006 and earlier tax returns, a credit card statement, and military dependency data; and paperwork pertaining to immigrant petition and adjustment of status processing. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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:

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 [...].

Immigration records show that the applicant used a single entry visa to enter the country upon inspection in December 2001 to attend a youth rally. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) that she signed on May 3, 2002 based on a

claimed March 22, 2002 marriage to a U.S. citizen other than her current petitioner. This application was denied for abandonment in 2004. Meanwhile, the record reflects that she married the petitioner in December 2003, and the application denial came to light in 2005-2006 during processing of a Form I-130 filed by this petitioner for the applicant. She admitted having signed the adjustment application and supporting documentation listing another man as her spouse, but later recanted her admission of fraud.

Although claiming that she was duped by someone associated with the youth rally she attended in 2001, the applicant fails to meet her burden of proving admissibility under section 291 of the Act, 8 U.S.C. § 1361. She acknowledges having signed the 2002 Form I-485, but has provided no documentation other than her own statement refuting her complicity in the fraudulent claim of marriage as the basis for adjustment of status. The record reflects that she paid someone to help her obtain permanent residency, but contains no indication of the basis on which she reasonably believed herself eligible for this immigration benefit. While noting evidence submitted by the applicant showing the absence of the marriage on which her adjustment application was based, the AAO concludes that this showing does not establish her lack of participation in the fraudulent filing.

Counsel's contention that USCIS is estopped from denying the applicant adjustment of status is also without merit. Although USCIS first denied the Form I-130 filed by her husband based on marriage fraud under section 204(c) of the Act, USCIS allowed her to submit a new Form I-130. USCIS approved the petition upon determining that, since there had been no actual prior marriage, the section 204(c) bar on approving subsequent petitions did not apply. The finding she is not subject to section 204(c) is, however, separate from a finding of inadmissibility for seeking to obtain permanent residence by falsely claiming to be married to a U.S. Citizen. In the present case, because the applicant sought to procure an immigration benefit by fraud or misrepresentation, she must establish eligibility for a waiver of this inadmissibility.

A waiver of inadmissibility under section 212(i)(1) 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 or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating, the record reflects that the cumulative effect of problems impacting her husband represents hardship that rises to the level of "extreme." The record shows that the applicant

and his wife married in December 2003, and he thus became the stepfather of her child born in 1998 from another relationship. The record also reflects that he has spent 19 of his 46 years as a member of the U.S. Navy (USN), that as of early 2011 he was stationed in San Diego awaiting possible deployment, that he emigrated to the United States with his parents at three years old, and that his parents reside in the United States. We thus conclude that, due to his significant U.S. ties and difficulties associated with relocation of military personnel, were the applicant unable to reside in the United States due to her inadmissibility, a qualifying relative would suffer extreme hardship by departing his adopted country to live with the applicant overseas.

Regarding the physical or emotional hardship due to separation from the applicant, the record reflects that a naval doctor reported the applicant's husband as suffering from infrequent attacks of vertigo since early 2009. *See Medical Letter*, February 9, 2011. Although attributing this condition to stress connected to the applicant's immigration problems, the doctor does not describe its symptoms, prescribe any treatment, or indicate a prognosis other than to note that granting the applicant's waiver would be helpful to her husband. Absent a detailed explanation from the doctor regarding his vertigo or a USN determination that it made him unfit for duty, the AAO is unable to draw any conclusion regarding the seriousness of this condition.

The AAO observes that the applicant remained in [REDACTED] when her husband left for his posting rather than accompany him to San Diego, and she offers no evidence that this living arrangement was other than a personal choice. While mortgage documents show the couple acquired a residential property in Hawaii in 2005 in which they lived, we note that the applicant's address of record has been elsewhere in Honolulu for over three years. The record is silent about the status of their home ownership, as well as regarding the applicant's reasons for remaining apart from her husband for over four years. While we are sensitive that separation from his wife and stepdaughter will impose some hardship on the qualifying relative, the record reflects no special circumstances showing an emotional attachment among the applicant and his wife that goes beyond the commonplace.

Although the applicant's husband claims his wife's departure would require him to move back to Hawaii to care for his stepdaughter, the applicant's child is not a qualifying relative under the Act. We may consider hardship to the applicant's daughter only inasmuch as it imposes hardship on a qualifying relative. To the extent that concern for his 15-year-old stepdaughter's well-being may represent a hardship to the applicant's husband, we note there is no showing that she is unable to move to San Diego,¹ or to relocate with her mother to the Philippines.

Regarding the financial component of separation hardship, the latest documentation available -- from 2006 -- demonstrates that the qualifying relative was the family breadwinner, contributing nearly

¹ While the record contains February 2011 letters from officers of the [REDACTED] noting the applicant's husband was assigned to that ship at Naval Station San Diego and subject to a seven month deployment later that year, as well as his own statement claiming to be eligible for a six month deployment, nothing on record (e.g., military orders) establishes whether the temporary, six or seven month departure from San Diego took place. If this deployment actually occurred as foreseen in 2011, it would have ended by mid-2012. There is no indication where the applicant's husband has been stationed since early 2011 when he had been in San Diego for two years.

three-fourths of household income. The record reflects that he has been living apart from his family for over four years. There is no indication that his wife's absence currently imposes economic hardship on the qualifying relative or will do so after she departs to the Philippines. Nothing on record demonstrates that the applicant's husband is presently experiencing economic problems or that his wife's inability to remain here would make him unable to meet his financial obligations.

For all these reasons, the cumulative effect of the physical and emotional, as well as financial, hardships the applicant's husband will experience due to the applicant's inadmissibility does not rise to the level of extreme. The AAO concludes based on the evidence provided that, were her husband to remain in the United States without the applicant due to her inadmissibility, he would not suffer hardship beyond those problems normally associated with family separation.

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

The documentation on record, when considered in its totality, reflects the applicant has not established that her U.S. citizen spouse will suffer extreme hardship if she is unable to live in the United States. The AAO recognizes that the applicant's husband will endure hardship as a result of the applicant's inability to immigrate. However, his situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to her husband as required under the Act.

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