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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAR 2 7 2013 Office: SAN FRANCISCO 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:

[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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of the Philippines, 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 admission to the United States through fraud or misrepresentation. The applicant entered the United States on April 26, 2000 using an A-2 non-immigrant visa that belonged to another person. The applicant does not contest this finding of inadmissibility, but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his U.S. Citizen spouse, children, and mother.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director,* dated September 20, 2011.

The current appeal is based on a Form I-601 that the applicant filed in conjunction with an application for adjustment of status pursuant to a Form I-130 Immigrant Petition filed by his wife on April 20, 2011. Prior to filing the waiver application currently on appeal, the applicant initially filed a Form I-601 on February 22, 2006 in conjunction with an application for adjustment of status as a derivative to his wife's Form I-140 employment-based petition. The District Director, Los Angeles, California, denied the waiver application on September 12, 2006, concluding that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The AAO dismissed the appeal of that denial on August 26, 2009. The applicant filed a Motion to Reopen on September 24, 2009. However, subsequent to that motion, the applicant's spouse became a naturalized U.S. Citizen, and on April 18, 2011, counsel requested that the motion be withdrawn, stating that the naturalization of the applicant's wife severed the ability of the applicant to adjust status as the derivative spouse beneficiary of his wife's employment petition. On April 28, 2011, the AAO granted this request, and the motion to reopen was withdrawn.

On appeal, counsel contends that the field office director relied too much on the previous AAO decision without giving adequate weight to new evidence and arguments which had not previously been presented.

The record contains the following documentation: a brief by applicant's counsel submitted with the Form I-290B, Notice of Appeal or Motion; a brief by applicant's counsel submitted with the Motion to Reopen (which was subsequently withdrawn); a brief filed by applicant's former counsel submitted with the applicant's initial Form I-290B, Notice of Appeal or Motion; affidavits submitted by the applicant's spouse; an affidavit submitted by the applicant's mother; a psychological evaluation dated September 10, 2009 and a psychological re-evaluation dated March 28, 2011 for the applicant and his family; financial documentation; medical documentation for the applicant; medical documentation for the applicant's children; medical documentation for the applicant's mother; and other documentation submitted in conjunction with the applicant's Form I-601 waiver applications

and previous appeal. The entire record was reviewed and considered in rendering a decision on the appeal.

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:

> 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse and U.S. citizen mother are the only qualifying relatives in this case. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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.

This decision will first examine whether the denial of the applicant's waiver will cause extreme hardship to the applicant's spouse.

Counsel asserts that the applicant's spouse is suffering emotional and psychological hardships due to the applicant's immigration problem. The applicant's spouse states that she is overwhelmed by the applicant's immigration problem, that she feels tired most of the time, feels stressed, and has a hard time getting out of bed. The applicant's spouse states that she is an outgoing person, but due to the

applicant's immigration problems, she has retreated, and avoids being around people to socialize. The record includes two psychological reports from a licensed psychologist. The first, dated September 10, 2009, indicates a diagnosis of Major Depression, moderate, and Generalized Anxiety Disorder for the applicant's spouse. As a treatment plan the psychologist referred the applicant's spouse to her employer's Employee Assistance Program, to assist in finding appropriate counseling services, and to further assess whether a referral for medication to help her sleep was warranted. The same psychologist issued a second report on March 18, 2011. The report indicated that the applicant's spouse continued to have a diagnosis of Major Depression, moderate, and Generalized Anxiety Disorder. This report states that although the applicant's spouse was referred to an Employee Assistance Program for counseling, the applicant' spouse did not follow through with this referral as cultural values strongly dictate that one should keep problems within the family. However, there is no evidence in the record to support an assertion that cultural values prevent the applicant's spouse from seeking counsel to treat a psychological condition. There is no further explanation from the applicant's spouse concerning why she did not follow the advice of the psychologist, and seek the recommended treatment for the diagnosed condition. Absent further evidence that the applicant's spouse is suffering from a serious psychological condition that is interfering with her daily activities, the record does not indicate that the applicant's spouse will suffer emotional and psychological hardship beyond the common results of removal or inadmissibility if the applicant's waiver is not approved.

Counsel also asserts that the applicant's spouse will suffer financial hardship if the applicant's waiver is not approved. The record indicates that the applicant's spouse is employed as a full-time registered nurse, and derives a monthly income of about $8,300. A copy of the applicant's 2010 federal income tax return indicates an adjusted gross income of $135,051, and that a majority of that income is derived from the salary of the applicant's spouse. There is no evidence in the record to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant's absence. 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 record indicates that the applicant's two children have medical conditions. Both children have a chronic type of skin disorder, and the older child has a speech and language problem and is undergoing speech therapy. As stated above, under section 212(i) of the Act, children are not deemed to be qualifying relatives, and a child's hardship will only be considered to be a factor to the extent that it results in hardship to a qualifying relative. Counsel contends that the medical hardships of the applicant's children directly impact that the applicant's spouse, as the inability of the applicant to remain in the United States will force the applicant's spouse to quit her job to replace the applicant's primary and full-time care for the children, hire a full-time nanny to care for the children, or send the children to the Philippines to live with the applicant. With respect to the hiring of a full-time nanny, counsel contends that the applicant's spouse cannot afford to hire a person to help care for the children. However, as noted above, the applicant's spouse has an annual income in excess of $100,000, and no evidence has been presented in the record to support the contention that the applicant's spouse would be unable to afford some type of child care for the children.

The record further includes medical documentation for the applicant, indicating that he suffers from hyperlipidemia and hypertension. As noted above, hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. There is no evidence or indication in the record to establish that the medical conditions of the applicant are affecting the applicant's spouse.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

Regarding relocation, the evidence fails to establish that the applicant's spouse would experience extreme hardship were she to move to the Philippines to reside with the applicant. The applicant's spouse was born in the Philippines, resided in the Philippines until she was 28 years of age, and is familiar with the language and customs of that country.

Counsel asserts that the applicant's spouse, should she return to the Philippines, would not be able to find suitable employment to sustain her and her family's needs due to the poor economic and political conditions in the Philippines. However, as noted above, 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 has not addressed whether the applicant's spouse has family ties in the Philippines, and thus the AAO is unable to ascertain whether and to what extent the applicant's spouse would receive assistance from family members for both herself and her family. The applicant's spouse submitted a Form G-325A, Biographic Information, which indicated that her father is deceased, but that her mother continues to reside in the Philippines. There is no further information on the record regarding other family members of the applicant's spouse that reside in the Philippines. The applicant's spouse contends that although she has some relatives in the Philippines, she cannot rely on them for financial support because they themselves seek her assistance for their financial needs. However, there is no evidence in the record to support this contention.

Counsel also contends that it would be dangerous for the applicant's spouse to relocate to the Philippines and cited a travel warning issued by the U.S. Department of State and other country conditions information in support of this contention. As noted in the decision of the field office director, the travel warning emphasizes the risks of travel to the Sulu Archipelago and the island of Mindanao. Counsel notes that the Country Specific Information issued by the U.S. Department of States also indicates that kidnap-for-ransom gangs operate in the Philippines and have targeted foreigners, including Filipino-Americans. The AAO acknowledges the potential risks of living in the Philippines, but notes that the Website of the Embassy of the United States in Manila states that approximately 130,000 U.S. citizens reside in the country, and several hundred thousand Americans visit the Philippines each year for business and pleasure. Based on the evidence on the record, the applicant has not established that his spouse would experience specific threats to her safety or other

hardship beyond the common results of removal if she were to relocate to the Philippines to reside with the applicant.

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

This decision will now examine whether the denial of the applicant's waiver will cause extreme hardship to the applicant's mother.

Counsel states that the applicant's mother suffers significant health problems. The record includes medical documentation to show that applicant's mother suffers from osteoporosis, but contains no further detail concerning the nature and severity of her condition or any treatment or assistance needed.

Counsel further asserts that the applicant's mother will experience psychological and emotional stress if the applicant's waiver application is not approved. The psychological evaluations of the applicant's family, dated September 10, 2009 and March 18, 2011, indicate that the applicant's mother has a diagnosis of Major Depression, moderate, and Generalized Anxiety Disorder. The first evaluation recommended a treatment plan for the applicant's mother to seek pastoral counseling from her local church. However, there is no indication in the second evaluation that the applicant's mother followed this recommendation for treatment, and the psychologist states that due to cultural issues, this family does not appear to be open to seeking counseling services. As with the applicant's spouse, absent further evidence that the applicant's mother is suffering from a serious psychological condition or explanation as to why recommended treatment is not being sought, the record does not indicate that the applicant's mother will suffer emotional and psychological hardship beyond the common results of removal or inadmissibility if the applicant's waiver is not approved.

The record indicates that the applicant's mother entered the United States in 2001 as the beneficiary of an immigrant visa petition filed by her U.S. citizen daughter, a sister of the applicant. The record indicates that the applicant's mother currently resides with her daughter at a location that is separate from but near the applicant's residence. Counsel contends that, even though the applicant's mother lives with his sister, the applicant's sister is unable to take care of his mother because his sister works full time, is going through a divorce, and is preoccupied with her own son, who has multiple problems. However, there is no evidence in the record to support the contention that the applicant's sister is facing these difficulties, and no evidence to support the contention that the applicant's sister is unable to take care of the applicant's mother. 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)).

The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of an alien being denied admission to the United States and does not rise to the level of extreme hardship based on the record.

With respect to relocation, the AAO notes that the applicant's mother has resided in the United States for more than ten years, and is now a U.S. citizen. The applicant's mother is suffering from osteoporosis, and, according to counsel, the applicant's mother relies on medical insurance available to her in the United States that allows her to meet a treatment plan to control her medical condition. Counsel states that if the applicant's mother moves to the Philippines, she will lose her insurance coverage. Based on the evidence on the record, the applicant has established that his mother would suffer hardship beyond the common results of removal if she were to relocate to the Philippines to reside with 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 applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the applicant's mother.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed

ORDER: The appeal is dismissed.