

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

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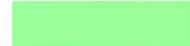


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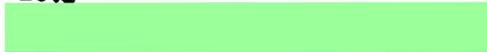
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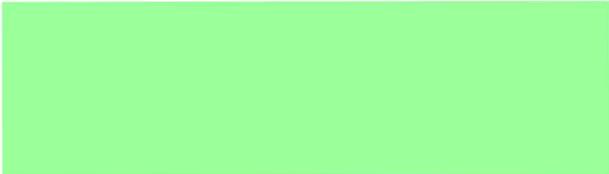
IN RE: Applicant:



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:



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,

R. Rosenberg

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and a subsequent appeal 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 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 having obtained a visa, other documentation or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and daughter, born in 1991.

The district 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 Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 15, 2010.

On appeal, the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The appeal was subsequently dismissed. *Decision of the AAO*, dated September 18, 2012.

On motion, counsel submits a motion and financial documentation. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 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 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 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...

As noted in the AAO's decision, the record establishes that in January 1991, the applicant entered the United States with a valid B-2 Visa, as a visitor for pleasure, although her intention was to resume unauthorized employment. As stated by the applicant in a sworn statement,

When I returned in January 1991, I claimed to the INS Immigration Officer at Port Entry that I need to go back to the U.S. just to accompany my aunt [REDACTED]. I told the Immigration that I will stay in the U.S. for only three months and that the Officer gave me six months. I did not mention to the Officer that my purpose of coming back in the U.S. was to continue my work with [REDACTED]

....

I have read this affidavit consisting of two (2) pages and discussed its contents with the Anti-Fraud Unit Investigator who assisted me in translating my statement from Tagalog into English. I fully understand this affidavit and it is true and complete to the best of my knowledge and belief....

See Affidavit of [REDACTED], dated January 28, 1998.

On motion, counsel first asserts that the above-referenced affidavit was never shown to the applicant and thus, a finding of inadmissibility for misrepresentation should not be made. *See Brief in Support of Motion*, dated October 15, 2012. The AAO notes that counsel has been representing the applicant since at least 2003. *See Form G-28, Notice of Entry of Appearance as Attorney or Representative*, dated June 20, 2003. Counsel has been aware of the above-referenced affidavit since at least 2008, when a Notice of Intent to Deny was issued to the applicant outlining the details of said affidavit. Despite having knowledge of the affidavit for over four years, there is no indication that counsel has filed a request for a copy of the record through the Freedom of Information Act (FOIA).

Moreover, even after the AAO quoted the applicant's affidavit in its dismissal, counsel has not provided any statement from the applicant that asserts that she never was shown the above-referenced affidavit that she signed or that the contents of the affidavit are false. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). As such, based on the evidence in the record, most notably, a two-page affidavit, initialed by the applicant on page 1 and signed under penalty of perjury on page 2 on January 28, 1998, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 U.S. citizen spouse is the only

qualifying relative in this case. Hardship to the applicant or her daughter can be considered only insofar as it results in hardship to a qualifying relative. 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. 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.

On appeal, the AAO noted that the applicant had failed to establish that her spouse would experience emotional hardship beyond that typically experienced by others in the same situation. Further, it had not been established that the applicant's daughter would experience extreme hardship as a result of her mother's relocation abroad and that by extension, her step-father would experience hardship. Finally, regarding the financial hardship referenced, the AAO noted that counsel had not provided any documentation on appeal establishing the applicant's and his spouse's current expenses and overall financial situation to support the assertion that without the applicant's continued financial contributions, the applicant's spouse would suffer financial hardship. Nor had counsel established that the applicant would be unable to obtain gainful employment in the Philippines that would permit her to assist her husband financially in the United States should the need arise. *Supra* at 6.

On motion, in regards to emotional hardship to the applicant's spouse and/or daughter, counsel quotes from statements provided by the applicant, her spouse and her daughter in early 2009, more than four years ago, and references the applicant's spouse's "advanced age..." *Supra* at 6. These statements, already reviewed by the AAO when adjudicating the appeal in 2012, do not address the issues raised by the AAO in its dismissal. Further, said statements fail to establish the current hardships the applicant's spouse, the only qualifying relative in this case, would experience were the applicant to relocate abroad. Moreover, with respect to financial hardship, counsel submits a mortgage payment coupon from May 2005, a mortgage statement from July 2008, a credit line statement from February 2009, car statements from February 2009 and a 2008 real estate statement. As previously noted by the AAO when it dismissed the appeal, no documentation has been provided establishing the applicant's and his spouse's current expenses and overall financial situation to support the assertion that without the applicant's continued financial contributions, the applicant's spouse would experience financial hardship. Finally, counsel has failed to address whether the applicant would be able to obtain gainful employment in the Philippines that would permit her to assist her husband financially in the United States should the need arise. As such, on motion counsel has failed to establish, based on a totality of the circumstances, that the applicant's spouse would experience extreme hardship were he to remain in the United States while the applicant relocated abroad as a result of her inadmissibility.

In regards to relocating abroad to reside with the applicant, the AAO found on appeal that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility. As such, this criterion will not be re-addressed on motion.

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 qualifying relative in this case.

On motion, the record 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 refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. 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.

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 will be granted and the underlying application remains denied.

ORDER: The motion will be granted and the underlying application remains denied