(b)(6)

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

[redacted]

Date: NOV 2 0 2013 Office: SACRAMENTO FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

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,

for
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Sacramento, California, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision affirmed.

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 willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the beneficiary of a spousal Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility in order to reside with his wife in the United States.

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,* December 18, 2012. On appeal, the AAO found that while the applicant had established a qualifying relative would suffer extreme hardship by virtue of relocating to live with the applicant, he had not established a qualifying relative would suffer extreme hardship by virtue of separation from the applicant and, accordingly, dismissed the appeal. *Decision of the AAO,* August 22, 2013.

On motion, the qualifying relative contends the AAO erred in not finding that separation from her husband would cause her extreme hardship. In support of the motion, counsel provides several new documents, including an updated hardship statement; medical information, including a doctor's summary report and medication list; and financial documentation, including weekly pay stubs, a tuition plan, and bills for household expenses. The record contains documentation including, but not limited to: supportive statements; a naturalization certificate and a green card; birth, divorce, and marriage certificates; financial information, including tax returns, pay stubs, bank statements, and property tax and utility bills; and country condition information, including a travel warning and news articles. 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 [...].

The record indicates the applicant procured entry to the United States in 1993 using a fraudulent passport and thereafter filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the spousal petition of a U.S. citizen despite already being married to another person. The applicant does not contest inadmissibility,[1] but contends that his wife will suffer extreme hardship unless he is granted a waiver permitting him to remain in the country.

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 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-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 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.

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[1] Although the field office director also found the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act based on accrual of one year or more of unlawful presence, the AAO determined that he accrued no unlawful presence due to having complied with the terms of advance parole obtained prior to his departure. We stated, "as the applicant filed an application for adjustment of status on July 17, 1996 and departed and returned to the United States while his Form I-485 was pending, he did not accrue unlawful presence after April 1, 1997 before departing the United States." *AAO Decision,* August 22, 2013.

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.

We previously determined the applicant had established that relocating to the Philippines would impose extreme hardship on his wife and will not revisit this finding on motion. On appeal we detemined that the applicant did not establish that his wife would suffer extreme hardship due to separation from her husband. For the following reasons, we conclude that the hardship a qualifying relative would experience if the applicant is unable to remain in the United States does not go beyond those hardships ordinarily associated with inadmissibility or exclusion.

Even considering the qualifying relative's updated medical and financial documentation, the record does not establish that the difficulties resulting from the applicant's departure are sufficiently beyond the typical consequences of removal or inadmissibility to rise to the level of extreme. Offered to support the qualifying relative's emotional hardship claim are her primary care physician's progress notes stating the applicant's wife reported experiencing symptoms of stress – including depressed mood, fatigue, panic attacks, and insomnia – that she attributes to worry about her husband's immigration status. In dismissing the appeal, we stated these "notes contain no actual diagnosis or prognosis and there is no evidence that her doctor prescribed treatment, referred her to a specialist for further evaluation, or did more than summarize her patient's reason for visit." *AAO Decision,* August 22, 2013. Counsel now offers a brief medical letter listing ailments for which the applicant's

wife is under care by her family doctor and copies of patient information regarding pharmacy-filled prescriptions. Neither this letter nor other documentation discusses the basis for the diagnoses, the prognosis, or any needed treatment. This evidence is thus insufficient for the AAO to change its prior finding:

> Although medical records substantiate that the qualifying relative takes prescription medication for several ailments, including allergies, asthma, high cholesterol, and sinusitis, and had surgery for varicose veins in mid-2012, documentation fails to establish the seriousness of these conditions. Counsel for the applicant indicates that the applicant's wife is receiving ongoing medical monitoring, and there is no evidence she requires her husband to assist in her care. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

Id.

The record shows that the applicant's wife is taking antidepressants prescribed by her family doctor, but fails to provide any more detail about her current condition and any treatment and assistance needed. The record establishes that the qualifying relative has a support network here that includes her two children and her mother. While claiming limited resources, the applicant's wife offers no information regarding travel costs to show an inability to visit her husband overseas to ease the pain of separation.

Regarding financial hardship, the couple's joint 2011 tax return shows the applicant's earnings represented slightly over two-thirds of household income and prior years' tax returns show the qualifying relative's yearly earnings to be in the low $20,000 range, but there is no current evidence indicating the applicant remains the primary wage earner. While the record contains updated documentation of several monthly expenses claimed, including additional past due bills, there is insufficient evidence to establish that the qualifying relative's income is insufficient to meet these expenses. Regarding claimed college expenses, tuition documents state a 2010 completion date for the vocational nursing program of one of her two children,[2] indicate that three installment payments totaling $23,000 were timely made, and show the final payment was due May 12, 2010; there is no evidence the last payment was not made on time more than three years ago. And, while there is nothing in the record regarding educational expenses of her second child, evidence of completed vocational training by the first indicates the presence of another potential wage earner for the household. The record contains no documentary support for the claim that the qualifying relative's mother, who has lived here as a lawful permanent resident for 17 years, is dependent on her daughter and son-in-law. Based on the record, the AAO is unable to conclude that the applicant's inability to remain here would make his wife unable to meet her financial obligations. While we are sensitive that her husband's departure will have financial repercussions for the family, the evidence is insufficient for us to evaluate the extent of her hardship.

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[2] The record reflects that the children's ages are 15 and 23, indicating that only one has attended college.

For all these reasons, the cumulative effect of the emotional and financial hardships the applicant's wife 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 his wife to remain in the United States without the applicant due to his inadmissibility, she 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 his wife will suffer extreme hardship if he is unable to live in the United States. The AAO recognizes that the applicant's wife will endure hardship as a result of the applicant's inability to immigrate. However, her 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. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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 and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The prior decision of the AAO is affirmed.