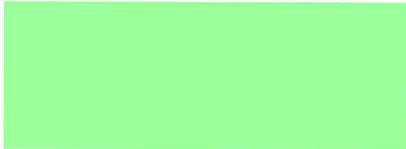




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: OCT 04 2013

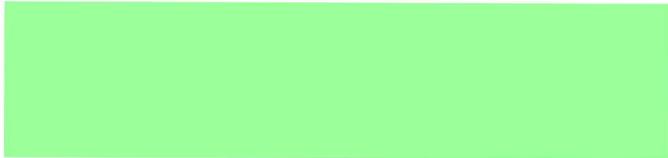
OFFICE: SAN FRANCISCO, CA

FILE: 

IN RE: 

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 (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,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California and the Administrative Appeals Office (AAO) sustained the applicant's subsequent appeal. The AAO then reopened the matter on motion, withdrew the prior decision and dismissed the appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision is affirmed.

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 admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in an "extreme hardship" to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated September 25, 2007.

On appeal, counsel asserted that United States Citizenship and Immigration Service (USCIS) had abused its discretion in finding that the applicant's spouse would not suffer extreme hardship if the applicant were removed from the United States. *Form I-290B, Notice of Appeal or Motion*, dated October 22, 2007. In support of the waiver application, counsel submitted additional evidence.

On October 7, 2010, the AAO considered the evidence of record and sustained the applicant's appeal, finding her to have met the waiver requirements of section 212(i) of the Act and to merit a favorable exercise of discretion. Based on the evidence elicited during the applicant's June 7, 2011 adjustment interview, and pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii), the AAO reopened the applicant's proceeding on motion, withdrew the prior decision and denied the application. *See Decision of the AAO*, dated August 25, 2011.

On September 22, 2011, the applicant, through counsel, filed an appeal of the AAO's decision. The AAO dismissed the appeal. *Decision of the AAO*, dated April 20, 2013. The applicant subsequently, through counsel, filed a motion to reconsider the AAO's decision of April 20, 2013.

According to 8 C.F.R. § 103.5(a)(3), 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. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the applicant presents additional evidence of emotional and medical hardship to the applicant's spouse, and additional financial evidence. As the applicant has submitted new documentary evidence to support her claim, a motion to reopen will be granted.

The record includes, but is not limited to, medical documentation for the applicant's spouse; psychological evaluations of the applicant's spouse; financial documentation; statements from the applicant, her sisters, her spouse, and children of her spouse; and letters from employers of the applicant and her spouse. The entire record has again been reviewed and all relevant evidence considered in arriving at a decision on the waiver application.

Section 212(a)(6)(C) of the Act states in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record reflects that, on June 14, 1994, the applicant entered the United States with a passport and visa that were not issued to her. Accordingly, she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having obtained a benefit through fraud or willful misrepresentation. The applicant has conceded her inadmissibility.

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 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 [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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 husband 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 BIA 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 1292, 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.

In the AAO's first decision, October 7, 2010, the AAO concluded that the applicant's spouse would suffer extreme hardship if he returned to the Philippines with the applicant. In reaching our initial

decision, the AAO considered the travel warning for the Philippines issued by the Department of State; the separation of the applicant's spouse from his children and grandchildren; his health concerns, including diabetes, hypertension and depression; and the financial hardship he would experience as a result of returning to the Philippines. The evidence submitted, considered in the aggregate, supported a finding that the applicant's qualifying relative would experience extreme hardship if he were to relocate to the Philippines. In its August 25, 2011 decision, the AAO upheld this finding, and further upheld this finding in its decision of April 2, 2013. *See Decisions of the AAO*, dated August 25, 2011 and April 2, 2013. The applicant has established that her qualifying relative would experience extreme hardship if he were to relocate to the Philippines.

With respect to the issue of whether the applicant's qualifying relative would experience extreme hardship if he were to be separated from the applicant, the AAO initially found that the applicant was her spouse's healthcare provider and that the applicant had established that her spouse would experience hardship if she were removed from the United States. However, it was subsequently learned through testimony on June 7, 2011 that the applicant was working in Torrance, California, 350 miles from her spouse, and had not lived with or provided health care for her spouse on a daily basis since at least August 2006. Accordingly, the AAO found the record failed to demonstrate that the applicant's spouse would experience extreme hardship as a result of their separation because he depended on her for his healthcare needs. *See Decision of the AAO*, dated August 25, 2011.

In the appeal of this decision, counsel asserted that, even though the applicant and her spouse lived apart, the qualifying spouse's health conditions would be exacerbated as they speak with each other on the phone several times a day, and that the applicant makes sure during their phone conversations that he is taking his daily medication. Applicant's counsel further asserted on appeal that the new information obtained at the June 7, 2011 interview did not change the impact their separation would have on the qualifying spouse's mental health, and that the qualifying spouse would suffer financial hardship upon separation from the applicant. The AAO found that these assertions made by counsel on appeal were not substantiated through corroborating evidence, and that without documentary evidence to support the claim, the assertions of counsel did not satisfy the applicant's burden of proof.

On motion, counsel contends that the applicant's spouse will suffer psychological hardship if the applicant's waiver is not approved. The record previously contained a psychological evaluation conducted by Dr. [REDACTED] in February 2006, which diagnosed the applicant's spouse as having Adjustment Disorder with Mixed Anxiety and Depressed Mood. On motion, counsel submits a second psychological evaluation by Dr. [REDACTED] which states that the applicant's spouse still suffers Adjustment Disorder with Mixed Anxiety and Depressed Mood, and further states that if the applicant is removed from the United States, that it is his expectation that her spouse's depression would worsen.

The AAO notes that the two psychological evaluations were conducted in 2006 and 2013, seven years apart. The two psychological evaluations lack details concerning any treatment recommendations, and there is no indication regarding any response by the applicant's spouse to any counseling or medical treatments he may have received. Although the AAO is sympathetic to the

family's circumstances and recognizes that the input of any health professional is respected and valuable, the record does not show that the applicant's spouse's hardships, and the symptoms he has experienced, are extreme when compared to others separated from a spouse. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Moreover, the AAO notes that medical documentation in the record indicates that on October 17, 2011, the applicant's spouse was treated at a medical clinic with the chief complaint of depression. According to the doctor's notes, the applicant's spouse "also is in process of getting [a] divorce, [and] has being separated for . . . more than 1 year." The notes further state that the patient indicated his marriage is not going well, his mood was sad, and he "has [a] girl friend who is supportive." This information undermined the applicant's claim that her spouse would suffer extreme hardship if she departed the United States, as they are already living apart and in the process of getting a divorce.

Counsel also contends that the applicant's spouse suffers from serious medical conditions. The record includes evidence that the applicant's spouse suffers from diabetes, hypertension, and a mild ulcer, and underwent surgery for his gall bladder in 2011. Counsel contends that the applicant provides care for her spouse, and that he would experience extreme hardship if the applicant's waiver is not approved and she is unable to provide this care. As noted above, evidence on the record indicates that the applicant is not residing with her spouse and that they may be in the process of divorcing. The record further indicates that the applicant's spouse has four children in the United States. The record includes a letter from the daughter of the applicant's spouse, which states she lives in a home with her husband and four children, and that the applicant's spouse lives in the in-law bedroom behind the garage at her home. Medical documentation in the record indicates that the applicant's spouse was treated for Adjustment Disorder with Depressed Mood on October 17, 2011. The doctor's notes indicate that the applicant's spouse declined to be treated with medications for this ailment, as he has a "strong support system that his kids and girl friend [provide]."

With respect to financial hardship, there is no recent documentation in the record to establish the current financial situation of the applicant's spouse. The record includes copies of federal income tax returns from 2004 and 2005, but there are no copies of recent income tax returns to establish the current income of the applicant's spouse. The record indicates that the applicant's spouse was working for the [REDACTED] but there is no evidence that he currently maintains that position. The record indicates that the applicant resigned from her position at the [REDACTED] on September 19, 2011, but there is nothing in the record to establish the applicant's current employment status. The evidence in the record is insufficient to conclude that the qualifying spouse would be unable to meet his financial obligations in the applicant's absence.

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.

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 motion is granted and the prior AAO decision is affirmed.