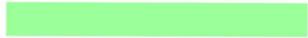




(b)(6)



Date: **APR 03 2014** Office: LOS ANGELES, CALIFORNIA

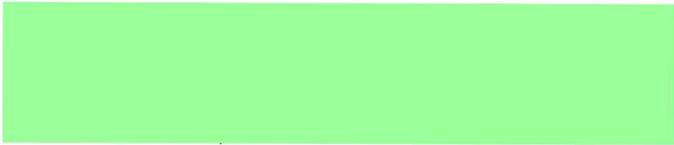


IN RE:



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

ON BEHALF OF APPLICANT:

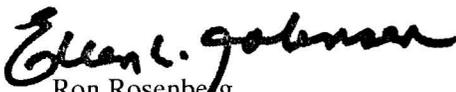


INSTRUCTIONS:

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and the Administrative Appeals Office (AAO) dismissed the appeal. 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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. The AAO dismissed the appeal, concluding that although the applicant established that her husband would suffer extreme hardship upon relocation to the Philippines, the applicant did not establish that her husband would suffer extreme hardship if he decided to remain in the United States.

On motion, filed on February 23, 2012 and received by the AAO on January 22, 2014, counsel contends that the applicant's husband has no intention of separating from his wife. Counsel further contends that the AAO has constructed a hypothetical situation and that the assumption the applicant's husband will remain in the United States without his wife is inappropriate and contrary to precedent.

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. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted a brief stating the reasons for reconsideration and has cited a precedential decision in support of his contention that the AAO's decision was incorrect at the time of the initial decision. The applicant's submission meets the requirements of a motion to reconsider. Accordingly, the motion is granted.

Section 212(a)(6)(C)(i) of the Act provides:

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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien

In this case, the AAO previously found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. Counsel does not contest this finding of inadmissibility on motion.

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.

The AAO previously found that if the applicant's husband, [REDACTED], relocated to the Philippines to be with his wife, he would experience extreme hardship. The AAO will not disturb that finding. The AAO nonetheless denied the waiver application because [REDACTED] a U.S. citizen, has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Counsel does not contest this factual finding. Rather, counsel's contention is that [REDACTED] has no intention of separating from his wife. According to counsel, the government should not substitute its "governmental choice" over [REDACTED] reasoned, personal decision to not separate from his wife. Counsel cites *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994), to support this contention that "the separation resulting from the individual's decision to for example leave a U.S. citizen child behind should not be the basis for finding hardship since it is a 'parental choice' and not a result of the parent's deportation." *Motion to Reconsider* at 5, dated February 22, 2012.

In *Matter of Ige*, the Board of Immigration Appeals (BIA) held that because the applicant did not establish extreme hardship to his U.S. citizen children if they were to relocate to Nigeria with him, leaving them in the United States would be the result of parental choice and not the result of the applicant's deportation. *Matter of Ige*, 20 I&N Dec. at 885. The BIA explained their reasoning as follows:

[I]f a parent's eligibility for suspension of deportation could be established by demonstrating that an infant or unemancipated child abandoned in the United States would face extreme hardship, then the birth of a United States citizen child or the presence of a lawful permanent resident child would likely render any alien parent who had been in the United States for 7 years eligible for suspension, even if the child would not face extreme hardship abroad. The younger the child, the more forceful the argument for extreme hardship, since an infant unnecessarily abandoned by his parents in the United States would almost always face extreme hardship. It is the Board's view that Congress did not intend section 244(a)(1) of the Act to be interpreted in this manner. Consequently,

absent proof of extreme hardship to a child if he returns to his parents' native country with them, we will generally consider the decision to leave the child in the United States to be a matter of personal choice. . . . [I]f the male respondent believes it would be an 'extraordinary hardship' for his children to remain here, he should by all means take them with him.

Id. at 886. Likewise, in the instant case, marriage to a U.S. citizen does not give the citizen's spouse the right to reside in the United States and if the applicant's eligibility for a waiver could be established by the spouse's simple claim that he has no intention of separating from his spouse, then any applicant who was married to a U.S. citizen would be eligible for relief. In this case, absent proof of extreme hardship if Mr. Bella remains in the United States, the decision to relocate to the Philippines is a matter of personal choice.

It is unclear how *Matter of Ige* supports the applicant's contention that the government is substituting its judgment over [REDACTED] decision to not separate from his wife. The mere assertion that [REDACTED] has never been separated from his wife since getting married and that they intend to spend their lives together are unsupported assertions that do not meet the burden of proof required to show that [REDACTED] would experience extreme hardship if he decided to remain in the United States. The applicant has not met her burden of proof to establish that [REDACTED] would suffer extreme hardship if he decides to remain in the United States. *Cf. Matter of Ige*, 20 I&N Dec. at 887 (stating that the applicant's "statement that she would be 'forced' to leave her children here [in the United States] is unproven and unexplained"); *Matter of Pilch*, 21 I&N Dec. 627, 632 (BIA 1996) ("With respect to the children remaining in the United States without their parents, no evidence was presented.").

As noted in the AAO decision on appeal, 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(s) in this case.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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 but the underlying waiver application remains denied.