



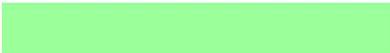
U.S. Citizenship  
and Immigration  
Services

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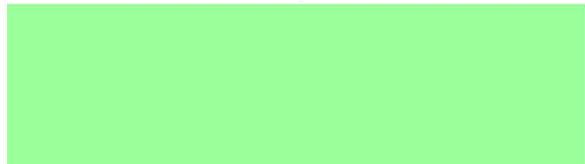
DATE **AUG 13 2014** OFFICE: NEWARK, NJ

FILE: 

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 (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 of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who has resided in the United States since July 11, 1989, when he was admitted to the United States after presenting a fraudulent, photo-substituted passport and non-immigrant visa to immigration officials. He 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse and son of United States citizens and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks 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 his (U.S. relatives).

The Field Office Director concluded that the applicant did not demonstrate that any of his qualifying relatives would experience extreme hardship given his inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated November 15, 2013.

On appeal, counsel submits: a brief; copies of USCIS correspondence and decisions; a copy of the applicant's Notice to Appear; and a copy of the applicant's October 2007 submission to the immigration judge related to his waiver application. In the brief, counsel contends the Field Office Director's failure to issue a Request for Evidence ("RFE") or a Notice of Intent to Deny ("NOID") constituted an abuse of discretion, especially as the waiver was filed in January 2007, and the applicant requested an RFE when he attended an I-485 interview in September 2013.

The record includes, but is not limited to: the documents listed above; evidence of birth, marriage, residence, and citizenship; financial, educational, and medical records; statements from the applicant and his spouse; letters of support from family, friends, and members of the community; articles on country conditions in the Philippines; photographs; documentation of removal proceedings; and other applications and petitions. 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:

- (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 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.

In the present case, the record reflects that the applicant admitted he used a photo-substituted passport and visa in the name of "Angelito Sumera" to procure admission into the United States on July 11, 1989. See *applicant's declaration*, June 8, 1999. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation.<sup>1</sup> The applicant's qualifying relatives are his U.S. citizen spouse and father.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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,

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<sup>1</sup> The record also reflects that the applicant made false statements on a 1992 application for asylum and withholding of removal, and that he used his twin sister's information, who was then a lawful permanent resident, to apply for naturalization in 1998. As the applicant has admitted he misrepresented material facts with respect to his 1989 admission, we need not decide on appeal whether the applicant's 1992 and 1998 applications also render him inadmissible under section 212(a)(6)(C)(i) of the Act.

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-I-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. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 record contains references to hardship the applicant’s step-children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children or step-children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse and father are the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant’s step-children will not be separately considered, except as it may affect the applicant’s spouse or father.

On appeal, counsel claims that the applicant should have been granted an opportunity to supplement his waiver application, filed with the immigration judge and received by USCIS in January 2007. Counsel asserts that the Field Office Director’s refusal to issue an RFE or a NOID constitutes an abuse of discretion. Counsel lastly requests the appeal be granted, or that the AAO should remand the matter to the Field Office Director for issuance of an RFE and consideration of updated documentation in support of the waiver application.

We need not reach whether the Field Office Director should have issued an RFE or a NOID, because regardless of whether an RFE or a NOID was issued, the applicant had opportunities to present new evidence in support of his waiver application. First, the applicant could have supplemented his waiver application at his 2013 immigration interview, but he did not do so. The applicant had a second opportunity to submit updated documentation when he filed the present appeal, but again, he provided no new evidence in support of his waiver application.

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). In this case, it is the applicant's burden to provide updated evidence in support of his waiver application. As the applicant has not done so, the present appeal must be adjudicated based on the evidence submitted with his waiver application in 2007, and on the remainder of the record.

In a separate brief, counsel contends the applicant's spouse would experience financial, medical, and emotional hardship if the applicant remained inadmissible. Counsel explains that the spouse's emotional difficulties will be exacerbated by her concern over her ability to take care of her children. In support of assertions of psychological hardship, a 2006 psychological evaluation is submitted. Therein, the psychologist declares that the spouse's first husband was a severe alcoholic, and abused her physically and verbally. The psychologist adds that the marriage left the spouse a frightened, tight, and tense woman, and that she has developed adjustment disorder with mixed anxiety and depressed mood. The psychologist further states that the applicant, who is warmhearted, conscientious, and loving, has provided his spouse with emotional support, and if the applicant returned to the Philippines, her depressive symptomatology would be exacerbated. The spouse declares in a December 8, 2006, letter that the applicant is a caring husband, he helps her with chores and groceries, and he acts as a doting stepfather to her two daughters. In support of assertions of financial hardship, U.S. federal income tax returns from 1996 to 2006 are present in the record, as are letters from the applicant's and the spouse's employers, as well as paystubs from 2007.

The psychologist indicates in the evaluation that the applicant's father is 80 years old, retired, and infirm. In addition, the psychologist claims that the father has poor physical mobility, walks with a cane, and has hearing difficulties. The psychologist opines that the father is still depressed about his wife's death, and given the circumstances, the applicant's absence would precipitate a decline in his health because it would usher in a period of depression. The applicant's mother's death certificate is submitted in support. In a 2007 letter, the father's physician states that the father has hypertension, COPD, GERD, acute gout, and osteoarthritis. The physician adds that the father needs continued care. Medical records and bills, as well as a copy of a New Jersey disability parking permit, are present in the record.

The applicant has not submitted sufficient, current evidence to demonstrate that his spouse would experience extreme hardship in the event of separation. The latest documentation supporting

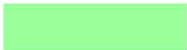
assertions of financial evidence is from 2007, and as such, the record does not contain a clear, current depiction of the spouse's finances, or the difficulty she would experience without the applicant present in the United States. Similarly, the psychological evaluation, dated December 4, 2006, does not provide an indication of the spouse's current psychological difficulties, and the hardship which would result if the applicant were not present to provide her with emotional support. Furthermore, while counsel asserts on appeal that the spouse would experience medical difficulties without the applicant present, there is no documentation from the spouse's physician to show that she has any medical conditions. Without such documentation, we are not in a position to determine what medical hardship, if any, the spouse would experience without the applicant.

While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find current evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to the Philippines without his spouse.

The applicant provides documentation on medical care, the economy, employment, and education in the Philippines, purportedly to indicate that his spouse and father would experience extreme hardship were they to relocate to that country. However, the applicant has made no assertions on this matter, nor does the record contain any other statements on how the spouse and father would experience extreme hardship in the event of relocation. Therefore, the applicant has not met his burden of proof in demonstrating that either his spouse or his father would experience extreme hardship if they relocated to the Philippines with him.

The assertions on the applicant's father's hardship in the event of separation, like statements made on the applicant's spouse's hardship, are not supported by current documentation. As with the spouse's emotional difficulties, the applicant has not provided updated evidence on his father's psychological hardship. Moreover, while the applicant has submitted an October 10, 2007, letter from his father's physician which contains a list of the father's medical conditions, there is no updated documentation on the father's present medical conditions. Furthermore, the record does not contain an explanation from the physician on the severity of the father's complete medical condition, and how it affects his quality of life to allow an assessment of the father's medical needs and whether the applicant can assist with those needs. 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, or the nature and extent of any hardship the applicant's father would suffer as a result of the applicant's inadmissibility.

We again note that the applicant's father would experience difficulties, such as emotional hardship, in the event of separation from the applicant. However, the applicant has not submitted



updated evidence to show that his father's hardship would rise above the hardship which usually occurs when families separate as a result of inadmissibility or removal. Therefore, the AAO cannot find the applicant has established that his father would experience extreme hardship if the applicant relocated to the Philippines without the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by a qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has not established extreme hardship to his U.S. Citizen spouse or father as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant 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 appeal is dismissed.