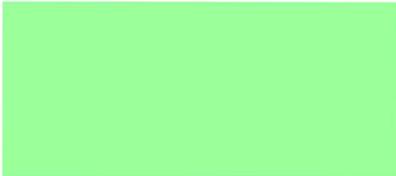
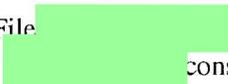




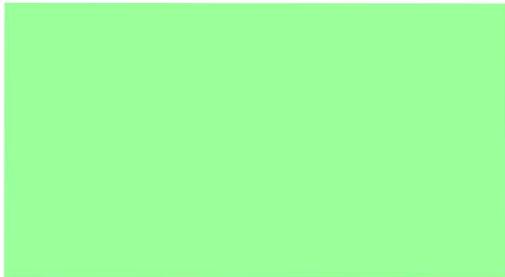
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 25 2014** OFFICE: LOS ANGELES (SANTA ANA) File  consolidated therein)

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:

SELF-REPRESENTED

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 District Director, Los Angeles, denied the waiver application. The applicant, through counsel, appealed the District Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The applicant submitted four motions, and we affirmed our previous decisions. The matter is now before the AAO on a fifth motion. The motion is granted, and we affirm our prior decisions.

The record reflects 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 procured admission to the United States through willful misrepresentation. The District Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative and denied her Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. We dismissed the applicant's appeal, finding that although the applicant established her U.S. citizen husband would experience extreme hardship if he relocated to the Philippines, she did not show his hardship if he were to remain in the United States would be extreme. We affirmed the District Director's decision and our previous decisions.

On motion currently before us, the applicant asserts additional documentary evidence and new facts demonstrate the ongoing emotional and psychological hardship her U.S. citizen spouse would experience because of her inadmissibility; her elderly U.S. citizen mother currently resides with her and relies on her for subsistence and care, which her spouse would be unable to provide in her absence; and her spouse would be unable to relocate to the Philippines, as he would be unemployable and his pension and retirement benefits in the United States would be disrupted. *See Form I-290B, Notice of Appeal or Motion*, dated January 31, 2014. The applicant also asserts the criteria for approval of her waiver application have been difficult to meet, and the "standards do not necessarily meet the interest of justice." *See Brief Submitted in Support of Motion to Reopen*, dated March 3, 2014.

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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). As the applicant has submitted new documentary evidence to support her claim, the motion to reopen will be granted.

In addition to the evidence described in our previous decisions, the record also includes, but is not limited to: a brief and an additional statement by the applicant submitted in support of the current motion; an affidavit by the applicant's mother; and a medical release. The entire record was reviewed and considered in rendering a decision on the applicant's motion.

Section 212(a)(6) of the Act provides, in relevant part:

(C) Misrepresentation.-

(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 Act is inadmissible.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The record reflects that the applicant obtained admission to the United States multiple times after the presentation of a Filipino passport and visa issued in another person's name. She therefore is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding of inadmissibility.

Section 212(i) of the Act provides, in relevant part:

- (1) The Attorney General [the Secretary of Homeland Security (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.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse and U.S. citizen mother are the only qualifying relatives in this case. 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-Moralez*, 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 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 Id.* at 568; *In re 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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. INS*, 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 support of her motion, the applicant contends her spouse would suffer hardship in her absence as: he would be deprived of happiness and love; he has been depressed since the denial of her waiver

application, which makes it more difficult for him to be left alone in the United States; it was “very damaging to his job” as an investigator for the medical board in ██████████ County to be seeing a psychologist weekly, because “it would create an unstable mind and would interfere in the performance of his job”; and her spouse has supplied “more than enough documentation” demonstrating his hardship.

To corroborate the claims of hardship to her spouse, the record includes a psychological evaluation dated May 7, 2009, based on a single visit over four years prior to the filing of the current motion. The applicant indicates that her spouse’s psychologist is preparing a report that will be provided as a supplement to the record. The record, however, does not include an updated psychological report submitted after the applicant filed the instant motion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As the record does not contain further details concerning the severity of the applicant’s spouse’s conditions or evidence of recent treatment or assistance, we are not in the position to reach a different conclusion concerning the severity of a mental-health condition and any hardships that may be related to this condition.

Also in support of her motion, the applicant contends her U.S. citizen mother would suffer hardship in her absence as: her father is deceased, and her 85-year-old mother has been in her care and custody since none of her siblings will take care of their aging mother.

To corroborate the claims of hardship to the applicant’s mother, the record includes a statement by the applicant’s mother, in which she states the applicant is the only child who takes care of her and serves as her primary caretaker given her “limited mobility and capacities.” The applicant’s mother also indicates the applicant transports her to medical appointments, attends to other daily medical needs, prepares her food, handles her mail and correspondence, and takes care of her financial matters and provides financial assistance when necessary. The record also includes an authorization form dated February 21, 2014, signed by the applicant’s mother, to permit ██████████ ██████████ to disclose her medical records, which she indicates the applicant would retrieve on her behalf. However, the record does not include evidence of the applicant’s mother’s current medical or mental-health conditions. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. As the record does not contain further details concerning the severity of the applicant’s mother’s conditions or any treatment or assistance provided, it is not possible to evaluate the nature of her hardships as they relate to her health conditions.

Though the evidence on the record is sufficient to establish the applicant’s spouse and mother may experience certain hardships in her absence, the evidence, considered in the aggregate, does not establish the applicant’s spouse or mother would suffer extreme hardship as a result of separation from the applicant.

In our previous decisions, we determined that the evidence on the record establishes that the applicant’s U.S. citizen spouse would suffer extreme hardship upon relocation to the Philippines to be with the applicant. The record continues to reflect the cumulative effect of the hardship the

applicant's spouse would experience upon relocation due to the applicant's inadmissibility rises to the level of extreme.

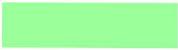
In support of the instant motion, the applicant contends that her mother would suffer hardship upon relocating to the Philippines to be with her. She explains that her mother had triple bypass surgery in 2006 that has affected her mobility. Moreover, her family "tried to send [her mother] to the Philippines to observe if she will survive the last remaining years of her life in her native country," but her mother always became ill. She adds that her mother's health did not improve there because of the lack of medical attention, so she returned to the United States. To corroborate these claims of hardship, the applicant's mother indicates she is unable to return to the Philippines because of her age and health, and her primary concern is to have access to medical care afforded to her as a U.S. citizen.

As stated previously, the record lacks evidence of the applicant's mother's current medical or mental-health conditions. However, the record includes sufficient evidence that the applicant's mother is 85 years old, she has been a U.S. citizen for almost 20 years, and she maintains social and family ties in the United States. Furthermore, in its latest country information report for the Philippines, the U.S. Department of State indicates that though medical care in major cities is adequate, "even the best hospitals may not meet the standards of medical care, sanitation, and facilities provided by hospitals and doctors in the United States"; medical care in rural and remote areas is "limited"; and "medical problems requiring hospitalization and/or medical evacuation to the United States can cost several or even tens of thousands of dollars." *Country Information, Philippines*, issued April 29, 2014.

Accordingly, the record demonstrates, in the aggregate, that the applicant's mother would suffer extreme hardship upon relocation to the Philippines.

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. In re Pilch*, 21 I&N Dec. at 632-33. 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 relatives in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's qualifying relatives, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find the applicant has not established extreme hardship to her U.S. citizen spouse or U.S. citizen mother as required under section 212(i) of the Act.



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. The prior decisions of the AAO are affirmed, and the underlying appeal is dismissed.