



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: OFFICE: LOS ANGELES, CA

FEB 19 2014

IN RE:

[Redacted]

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:

[Redacted]

INSTRUCTIONS:

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. The matter came before the Administrative Appeals Office (AAO) on appeal and was remanded to the field office to adjudicate the underlying Petition for Alien Relative (Form I-130). The Form I-130 was subsequently approved and the original appeal is again before the AAO to adjudicate on the merits. The appeal will be dismissed.

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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The record indicates that the applicant is the spouse of a U.S. citizen and the beneficiary of an approved Form I-130. The applicant 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 extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, dated July 19, 2010.

On appeal, the AAO found that in the absence of an approved Form I-130, the field office director's decision denying the Form I-601 was premature, and remanded the matter for adjudication of the Form I-130. *See Decision of the AAO*, dated August 13, 2012. The Form I-130 was subsequently approved on January 14, 2014. The AAO has before us again the original appeal of the Form I-601 denial which we will adjudicate on the merits.

In the appeal, dated August 20, 2012, counsel for the applicant contests inadmissibility. In the alternative, counsel contends that a psychological evaluation in the record indicates that the applicant's spouse would suffer extreme hardship, and there is no basis for disagreeing with that report.

The record contains, but is not limited to: Form I-290B; various immigration applications and petitions; a sworn statement by the applicant; a bank statement and a health insurance statement; documents relating to *United States v. Tabula*, No. SACR 04-240 JVS (C.D. Cal); a copy of a selected portion of a textbook on forensic psychological assessments; counsel's appeal brief and earlier brief in support of waiver; a psychological evaluation; unsigned statements from three of the applicant's spouse's family members; family photos; and birth and marriage-related documents. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

The record shows that a Form I-130 was submitted on the applicant's behalf on or about October 22, 2002, seeking to classify him as the spouse of a U.S. Citizen named [REDACTED]. An Application to Register Permanent Residence or Adjust Status (Form I-485), was filed concurrently. On the Form I-485, which the applicant signed and certified under penalty of perjury, he stated that he was married to a U.S. citizen named [REDACTED]. He likewise signed the Biographic Information sheet (Form G-325), submitted in support of the Form I-485, on which he again indicated that he was married to Evelyn Pereira. Based on the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Counsel asserts that there is no evidence in the record that the applicant attempted to commit fraud. He contends that [REDACTED] whom the applicant hired to prepare his application for permanent residence, is to blame as he was later convicted of operating an immigration fraud scheme. Counsel avers that the applicant neither consented to nor had knowledge of the existence of a fraudulent marriage certificate or marriage to [REDACTED]. However, in a sworn statement, dated September 9, 2008, the applicant testified that he obtained a divorce decree from [REDACTED] when advised to do so by his lawyer. Counsel asserts that there is no evidence that the applicant actually signed any of the immigration documents submitted by [REDACTED] on his behalf. The applicant testified in the same sworn statement, however, that he did sign the Form G-325A but not the Form I-485. Furthermore, when asked what he was told when signing immigration documents pertaining to his marriage to [REDACTED], the applicant replied that [REDACTED] "told" him to sign "blank" papers. Corroborating documentary evidence has not been submitted in support of counsel's assertions or the applicant's testimony. Although the marriage certificate submitted may have been falsified – as opposed to the applicant actually entering a marriage solely for immigration purposes – the applicant's testimony is insufficient to establish that he was not complicit in (or aware of) the submission of documents containing material misrepresentations on his behalf. The applicant has the burden to demonstrate "clearly and beyond doubt" that he is not inadmissible. *See* 8 C.F.R. § 1240.8(b). Therefore, while the applicant has not been found to be barred by section 204(c)(2) of the Act, we concur that he is indeed inadmissible under section 212(a)(6)(C)(i) of the Act. He requires a waiver under section 212(i) of the Act.

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. In the present case, the applicant's spouse is his only qualifying relative. 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 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 applicant's spouse is a 40-year-old native of the Philippines and citizen of the United States. Unsigned statements by her father, brother and sister aver that her marriage to the applicant is authentic and that their family life together is happy. The record does not contain a hardship affidavit from the applicant's spouse. Assertions of "extreme hardship" in the record are proffered only by way of a psychological evaluation, dated January 25, 2010, and in counsel's briefs, based largely on that same evaluation. [REDACTED] writes therein that it may be "assumed," on the basis of test data, that the applicant's spouse is experiencing a severe depressive and anxiety disorder, is markedly dependent, has an intense fear of separation from those who are supportive, and that if the applicant is deported, her daily functioning will be greatly impaired.

Counsel contends that the field office director erred in finding that while the opinion of any professional is worthy of consideration, [REDACTED] evaluation was based on a single encounter with the applicant and his spouse and does not reflect the insight that might be obtained through a more established relationship. Counsel references a September 2007 USCIS Memorandum by then-Acting Deputy Associate Director for the Domestic Operations Directorate, [REDACTED] which noted that an adjudicator is not a physician, should not engage in medical determination practices, and should assume that the medical professional's diagnosis is valid in the absence of credible doubt. Counsel avers that the same guidance should be applied to a psychologist's evaluation, the field office director should not have made a "medical decision" regarding how Dr. [REDACTED] conducts her interviews and her medical practice, and "should have accepted Dr. [REDACTED] evaluation as valid."

Although we note that [REDACTED] is not a medical doctor, we also find that no improper determination was made by the field office director concerning [REDACTED] interviews or medical practice, nor were the contents of her evaluation invalidated. We have considered, as did the field office director, [REDACTED] expert opinion as part of an overall assessment of hardship. In addition to conducting a lengthy interview and administering multiple diagnostic tests, Dr. [REDACTED] made a number of recommendations for the successful treatment of the applicant's spouse's symptoms. In her evaluation, in addition to reporting her assessment of the psychological condition of the applicant's spouse, [REDACTED] recommends that the applicant's spouse obtain a medical evaluation for symptoms of depression, a medication consultation for mental health symptoms, and cognitive-behavioral treatment for symptoms of depression and anxiety. She writes that despite the applicant's spouse's ambivalence and pessimistic outlook, there is good reason to operate on the premise that she can overcome past disappointments. She indicates that with a therapist who can convey genuine caring and firmness, she may be able to overcome her tendency to employ maneuvers to test the therapist's sincerity and motives.

The record contains no documentary evidence to suggest that the applicant's spouse followed any of [REDACTED] recommendations or sought any treatment, therapy or medication to improve her symptoms. No evidence has been submitted showing that the applicant's spouse has availed herself of a medical evaluation for symptoms of depression, cognitive-behavioral treatment for symptoms of depression and anxiety, or a medication consultation for mental health symptoms.

No evidence has been submitted to show that the applicant's spouse has been or is currently being treated pharmacologically, or showing what the result of such treatment has been. Similarly, the record contains no evidence showing that the applicant has engaged the services of a therapist, or the effects that therapy or any related treatment has had on her health and well-being. Given the professional recommendations and options for the treatment, management and improvement of her symptoms, and the lack of evidence to show whether the applicant's spouse has sought treatment and the impact thereof, or why she cannot or will not avail herself of treatment, we find that the assessment of the psychological impact of separation is incomplete. We acknowledge that the applicant's departure would result in significant emotional hardship to the applicant's spouse, but the implication that she would be unable to function in his absence is not wholly supported by the record. For instance, [REDACTED] evaluation indicates that despite the applicant's spouse's marked dependency in interpersonal relationships, and the number of her unsuccessful romantic relationships, she has managed to graduate from [REDACTED] with a Bachelor of Science degree in Biology and intends to pursue a graduate degree in Dentistry or Law. Similarly, despite her anxiety, depression and fear of separation from those on whom she depends, the applicant's spouse has not only maintained employment as an Information Technology Project Manager at Pacificare, but has garnered commendations and consistently receives strong performance evaluations, demonstrating that she functions at a high level. She purchased her own home in 2005 and appears to be the primary breadwinner for her family, supporting herself, the applicant, their children together and from other relationships, and an aunt who lives with them. The record further shows that the applicant's spouse has a strong family support system including her parents, siblings, aunts, uncles and cousins – totaling 17 U.S. citizens and two lawful permanent residents in all. Therefore, we do not find that the emotional and psychological hardship to the applicant's spouse would, in and of itself, constitute extreme hardship, though it is an important factor that we have considered in the aggregate along with all other asserted factors.

The record contains no direct assertions of economic hardship. [REDACTED] conveys, based on the reporting by the applicant, that his spouse works in her home office while he cleans, cares for the children, mows the lawn, and runs errands, in addition to working part-time at night as a ballroom dance instructor. Documentary evidence of income from employment or any other source has not been submitted for the record. Moreover, the record contains no budget or other documentary evidence delineating the couple's current expenses from which an accurate determination might be made as to whether the applicant's spouse would suffer economic hardship in the applicant's absence. While the AAO recognizes that the applicant's spouse may experience some reduction in income as a result of separation from the applicant, the evidence in the record is insufficient to demonstrate that she would be unable to meet her financial obligations in his absence. The record contains no other assertions of separation-related hardship to the applicant's spouse.

The AAO acknowledges that separation from the applicant would cause difficulties for the applicant's spouse. However, we find the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, [REDACTED] relays that if the applicant moves to the Philippines his spouse, will not go with him. [REDACTED] adds that the applicant's spouse believes her responsibility is to

raise her two American daughters in the United States and make sure they get the best education possible. No documentary evidence has been submitted addressing education in the Philippines or any other country conditions. [REDACTED] conveys that the applicant's spouse is extremely close to her American mother and siblings, "has the responsibility to care for her elderly aunt," and does not wish to separate from them. No documentary evidence has been submitted addressing the applicant's spouse's responsibility to care for her aunt or showing that her mother or siblings would be unable or unwilling to extend such care in her absence. The record contains no other assertions of relocation-related hardship to the applicant's spouse and no indication that she has any intent to relocate. Even were the AAO to consider whether the applicant's spouse would suffer extreme hardship as a result of relocation, the burden of proof in this proceeding lies with the applicant. And "while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts." *Matter of Ngai*, 19 I&N Dec. at 247.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether he 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. The appeal is dismissed.

ORDER: The appeal is dismissed.