

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



(b)(6)

[Redacted]

Date: JAN 07 2014

Office: LOS ANGELES, CA

[Redacted]

IN RE:

[Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Field Office Director, Los Angeles, California, denied the waiver application. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and motion. The matter is now before the AAO on a second motion. The motion will be granted and the prior AAO decision withdrawn. The waiver application will be approved.

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 fraud or willful misrepresentation of a material fact in order to obtain 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 and children in the United States.

The acting field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. The AAO dismissed the appeal, also finding that the applicant failed to establish extreme hardship to a qualifying relative. The AAO granted a subsequent motion, but denied the underlying waiver application, 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.

Counsel has now filed a second motion, contending that the AAO failed to consider relevant factors in the aggregate. Counsel contends the applicant established extreme hardship, particularly considering, among other things, the couple's child's medical conditions. Counsel submits additional evidence in support of the applicant's waiver application.

A motion to reopen must state the new facts to be proved in the reopened proceeding 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). 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 and additional documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion is granted.

In addition to the documents specified in the AAO's previous decisions, the record also contains an updated declaration from the applicant's husband, [REDACTED] a letter from the couple's son's physician, letters from [REDACTED] siblings, documentation from after-school programs, and copies of medical records. The entire record was reviewed and considered in rendering this decision.

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.

After a careful review of the entire record, including the additional documentation submitted with the motion, the AAO finds that the applicant’s husband, [REDACTED], will suffer extreme hardship if the applicant’s waiver application were denied. The AAO previously found that if [REDACTED] relocated to the Philippines to be with his wife, he would experience extreme hardship. The AAO will not disturb that finding. The AAO also finds that if [REDACTED] remains in the United States without his wife, he would suffer extreme hardship. An updated declaration from [REDACTED] clarifies that he and his wife both work full-time, but that they work different shifts in order to care for their two children who are currently four and eight years old. According to [REDACTED], he works from 2:45 p.m. until 12:15 a.m. so that he can take his children to school in the morning, and his wife works from 11 p.m. to 7:30 a.m. so that she can care for them after school. He contends that if he remains in the United States without his wife, he would have to pay approximately \$700 per month for after-school care and he submits documentation from different after-school programs to corroborate this claim. In addition, a letter from the couple’s son’s pediatrician submitted with the motion describes the son’s medical problems. According to the physician, the couple’s four-year old son

developed eczema and allergic dermatitis when he was four months old, and developed severe asthma when he was nine months old. The physician states that the applicant must bring her son into the office frequently, and that the son requires twice-daily administration of two medicines given via nebulizer, one pill daily, and a daily application of emollients for his eczema. The physician emphasizes that the son's stability requires "constant vigilance" and that any disruption to the family would put him at risk for pneumonias and hospitalizations. In addition, letters submitted from Mr. [REDACTED] siblings corroborate the contention that he has no family members available to assist him in caring for his children. Considering the new evidence submitted with the motion, in conjunction with the evidence already in the record including a psychological report describing [REDACTED] anxiety and depression, the AAO finds that the hardship [REDACTED] would suffer if he remains in the United States without his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case include the applicant's willful misrepresentation of a material fact in order to procure an immigration benefit, and periods of unauthorized presence and employment. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her U.S. citizen husband and two children; the extreme hardship to the applicant's entire family if she were refused admission; the fact that the applicant has paid taxes while working in the United States; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 been met.

ORDER: The motion is granted and the prior AAO decision dismissing the appeal is withdrawn. The waiver application is approved.