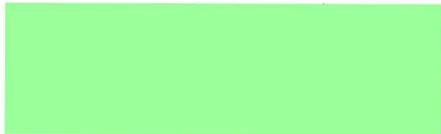


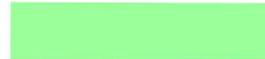


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 22 2014** Office: SAN FERNANDO VALLEY

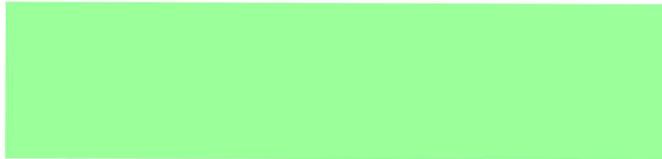


IN RE: Applicant:



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 application was denied by the Field Office Director, San Fernando Valley, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of the Philippines, 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 procuring admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant had 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.¹ *See Decision of the Field Office Director*, May 22, 2013.

On appeal, counsel contends that the Field Office Director erroneously denied the applicant's Form I-601, stating that the applicant's departure would result in extreme hardship to the applicant's spouse, based on a statement from the applicant's spouse and supporting documents previously submitted. Counsel also submits additional country-conditions information on the Philippines.

The record includes, but is not limited to, the following documentation: a brief filed by counsel in support of the Form I-290B, Notice of Appeal or Motion (Form I-290); briefs by applicant's former attorneys in support of her previously filed Forms I-601; statements by the applicant, the applicant's spouse, and the applicant's children; medical documentation for the applicant's spouse and son; financial documentation; and letters from the applicant's church. 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.

The record reflects that the applicant entered the United States on February 23, 2001 as a non-immigrant, using a passport and a visa belonging to another person. The applicant does not contest this finding of inadmissibility.

¹ The record indicates that the applicant previously filed two Forms I-601 in 2009 and 2010. The Field Office Director, Los Angeles, California, concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Forms I-601 accordingly. *See Decisions of the Field Office Director*, June 4, 2009 and June 10, 2010. There is no indication in the record that the applicant appealed either of these two previous denials.

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

The Attorney General [now Secretary of the Department 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.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, U.S. Citizenship and Immigration Services considers a child's hardship a factor in the determination whether a qualifying relative experiences extreme hardship. 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 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.

Counsel asserts that the applicant’s spouse suffers from chronic obstructive pulmonary disease (COPD) and will experience medical hardship if the applicant’s waiver application is not approved and he remains in the United States without her. Medical documentation in the record confirms that the applicant’s spouse has been diagnosed with COPD and arthritis of the knees and lower back. Counsel contends that the applicant’s spouse is dependent upon the applicant’s professional expertise as a respiratory therapist.

Counsel also contends that the applicant’s spouse is wholly dependent on the applicant for financial support. Financial documentation in the record indicates that the applicant’s spouse was employed as a carpenter and worked until 2008. The applicant’s former counsel indicated in a 2010 brief in support of Form I-601 that the applicant’s spouse is no longer employed due to record lows in new home construction and his health issues. However, the applicant provides no corroborative evidence to establish that her spouse currently is unable to find employment. The record, moreover, lacks comprehensive documentation concerning her spouse’s assets and overall financial status. The evidence submitted is insufficient to conclude that the qualifying spouse is unable to meet his financial obligations in the applicant’s absence.

In addition, the record also indicates that the applicant's spouse has two adult daughters in the United States. The record further indicates that the applicant's spouse owns property in the area of California, and that one of his daughters resides nearby. However, the applicant does not address whether her spouse's daughters are capable or willing to provide medical and financial support to him, should he require it.

The applicant's spouse asserts that he may become depressed if he is separated from the applicant, and the applicant asserts the same. However, no corroborating evidence was submitted to support these assertions. 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)).

The AAO recognizes that the applicant's spouse will endure some level of hardship as a result of separation from the applicant. However, the record lacks sufficient evidence demonstrating that the medical, financial, or other impacts of separation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, such that the applicant's spouse would experience extreme hardship if the waiver application is denied and he remains in the United States.

Regarding hardship that the applicant's spouse would experience upon relocation to the Philippines, counsel asserts that the applicant would not be able to find suitable employment to sustain her and her family's needs due to the poor economic and political conditions in the Philippines. Although the applicant submits country-conditions information regarding the economic situation in the Philippines, the record lacks specific information regarding the employment opportunities that would be available to individuals with the applicant's qualifications. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, economic disadvantage alone does not constitute extreme hardship. *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

Counsel also contends that it would be dangerous for the applicant's spouse to relocate to the Philippines, citing a human-rights report issued by the U.S. Department of State and other country conditions information to support his contention. Counsel notes that according to the U.S. Department of State report, the country has a history of terrorist acts, disrespect for human rights and an overall climate of corruption, disappearances, and killings by the Philippine government and non-government political groups. Moreover, the most recent U.S. Department of State travel warning for the Philippines emphasizes the risks of travel to the Sulu Archipelago and the island of Mindanao. *See Travel Warning-Philippines, U.S. Department of State*, dated January 10, 2014. While living in some areas of the Philippines may involve some challenges, the State Department's travel warning focuses on conditions in the southern areas of the Philippines. The website of the Embassy of the United States in Manila states that approximately 130,000 U.S. citizens reside in the country, and several hundred thousand Americans visit the Philippines each year for business and pleasure. Based on the evidence in the record, the applicant has not established that her spouse would experience specific threats to his safety if he were to relocate to the Philippines to reside with her.

The applicant's spouse states that he cannot relocate to the Philippines because of his medical conditions; he is worried about the pollution in the Philippines and its effect on his health. He also is worried about natural disasters in the Philippines. The applicant's spouse adds that he does not know if people in the Philippines have or accept medical insurance. Although the applicant submits evidence describing pollution in the Philippines, she offers no evidence to support her spouse's concerns about health-care costs and providers or to show that his medical conditions could not be treated there.

The applicant's spouse also states he does not know what kind of work they could do in the Philippines. Reports in the record indicate that the rate of unemployment in the Philippines is high; however, neither the applicant nor her spouse has shown that they would be unable to find employment in their respective fields of experience. Considering the evidence of potential hardship in the aggregate, the AAO finds that applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to the Philippines to reside with her.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of extreme as contemplated by statute and case law.

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.