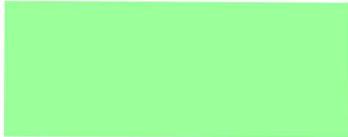


(b)(6)

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

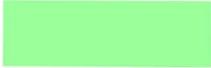


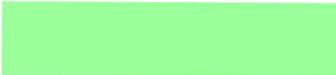
U.S. Citizenship
and Immigration
Services



DATE: JAN 25 2014

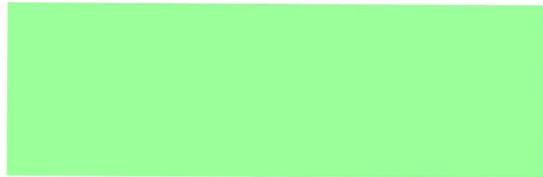
OFFICE: SANTA ANA

FILE: 

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:



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 Field Office Director, Santa Ana, California denied the waiver application and the matter 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 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 procuring an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated March 27, 2013.

On appeal, counsel for the applicant asserts that the applicant is innocent of any fraud or misrepresentation. Counsel further asserts that the applicant's spouse would suffer emotional and financial hardship if separated from the applicant and would leave behind responsibilities, employment, and family ties if she relocated to the Philippines.

In support of the waiver application and appeal, the applicant submitted identity documents, a letter from the applicant, a letter from the applicant's spouse and daughter, letters of support, family photographs, medical documentation for the applicant's spouse and her mother, financial documentation, and background documents concerning country conditions in the Philippines. The entire record was reviewed and considered in rendering this decision.

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 Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), 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 Attorney General (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...

The record reflects that a Form I-130, Petition for Alien Relative, was submitted on behalf of the applicant by a [REDACTED] claiming to be the U.S. citizen spouse of the applicant based upon a marriage on December 14, 2001. The applicant submitted an accompanying Form I-485, Application to Register Permanent Residence or Adjust Status, and Form G-325A, Biographic Information, both signed by the applicant, also identifying his spouse as [REDACTED]. The applicant subsequently asserted that another individual offered to obtain him immigration papers and that he never met or married a [REDACTED].

Counsel for the applicant asserts that the applicant has continuously maintained that he is innocent of any fraud or misrepresentation. The applicant contends that he believed that he was submitting an adjustment application based upon an employment based petition and did not read the entire application. The burden is on the applicant to demonstrate by a preponderance of the evidence that he was unaware of the false representations in his application. See Section 291 of the Act, 8 U.S.C. § 1361.

As noted, the applicant submitted two signed documents misrepresenting his marital status to a [REDACTED]. Further, the applicant, upon initial questioning, stated that his signatures on these documents were forgeries. In a subsequent declaration, the applicant asserts that his signatures are not forgeries, but he was unaware of any misrepresentation. The evidence is insufficient to find that the applicant did not willfully misrepresent a material fact to procure a benefit under the Act. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking an immigration benefit through fraud or misrepresentation.

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 spouse is the only qualifying relative in this case. 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 1292, 1293 (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 reflects that the applicant is a 47-year-old native and citizen of the Philippines. The applicant's spouse is a 52-year-old native of the Philippines and citizen of the United States. The applicant is currently residing with his spouse and her children in Anaheim, California.

Counsel for the applicant asserts that the applicant is an experienced caregiver who assists the applicant's spouse in caring for her mother, as necessary. The record contains medical documentation indicating that the applicant's spouse's mother suffered a stroke and is currently bedridden and requires constant care. Counsel contends that the applicant's spouse's sister also aids the applicant's spouse with the care of their mother, but the applicant communicates well with his mother-in-law.

Counsel for the applicant also asserts that the applicant aids the applicant's spouse in her financial responsibilities. Counsel contends that the applicant fills any financial gap in his spouse's obligations, as her children are either in school or are unable to provide financial assistance. Counsel further contends that the applicant's handyman skills allow him to perform any repairs in their home, saving them from extra expenses. The applicant's spouse asserts that she and her daughter purchased a house and she takes care of the bulk of associated expenses. The applicant's spouse contends that the applicant assists her with her financial obligations. The record contains recent financial documentation for the applicant's spouse, including pay stubs from 2012. The record does not contain any recent financial documentation for the applicant's spouse's non-dependent children residing with her, including the daughter with whom she jointly owns property. 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)).

It is noted that the applicant filed his tax return jointly with his previous spouse in 2011 and married his current spouse on May 15, 2012. The applicant asserts that he is responsible for providing full financial support to his three children and partial support to his parents, in addition to his debts and car payments. The record contains supporting documentation concerning the applicant's financial obligations as well as late payment and past due charges for the applicant's spouse, but there is no accounting indicating the extent to which the applicant financially contributes to the applicant's spouse's obligations. It is noted that the applicant's spouse filed her tax return with her previous spouse in 2011, but her former spouse was unemployed and did not contribute to her total household income.

The applicant's spouse asserts that she performs music with the applicant and is saddened by the idea that she may be separated from the applicant and lose his physical presence in her life. The applicant's spouse contends that due to her emotional stress, she has been experiencing GERD attacks for which she takes medication, has not been getting enough sleep, and suffered an eye infection and lip sore. The record contains a letter from a physician stating that the applicant's spouse followed up for hypertension, hyperlipidemia, and reflux disease on November 26, 2012. The record does not contain any medical documentation concerning the severity and duration of the applicant's spouse's medical diagnoses, including the extent to which any symptoms have intensified. The record also contains letters of support from the applicant's spouse's daughter and colleague asserting that the applicant's spouse has appeared sad, irritable, and lethargic, and complains of physical symptoms due to the possibility of the applicant's departure.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would experience hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer hardship beyond the common results of removal upon separation from the applicant.

The applicant's spouse asserts that she cannot relocate to the Philippines because she has been residing in the United States since September 1996 and has family ties in the United States. The applicant's spouse is residing with her children from her prior marriage and assisting with her daughter's college expenses and loan applications. The record contains a letter of support from the applicant's spouse's daughter stating that she and her three siblings currently reside with their mother. The applicant's spouse contends that she and two of her sisters have taken care of their mother's health over the years and that she could not leave her ailing and bedridden mother behind, as she relies upon the applicant's spouse's care and attention.

The applicant's spouse asserts that upon relocation, she would also leave behind her employment and property acquired with her daughter in the United States. The applicant's spouse states that she has been working for the [REDACTED] consistently since January 1997. Counsel for the applicant contends that the applicant's spouse is not eligible to retire from her long-term position, so she would lose income and benefits upon relocation. Counsel further asserts that the thought of losing her position is causing the applicant's spouse extreme emotional stress, severe headaches, and heartburn.

Counsel for the applicant asserts that the applicant's spouse's medical conditions require her to retain her employment with its attendant health insurance benefits in the United States. As noted, the record indicates that the applicant's spouse suffers from medical issues that require follow-up care. The medical documentation submitted for the applicant's spouse states that she is currently on maintenance medication for these conditions and requires a visit to her physician every 1-3 months. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if she relocated to the Philippines.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 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. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). 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 relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative 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 balancing positive and negative factors to determine whether the applicant merits this 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.