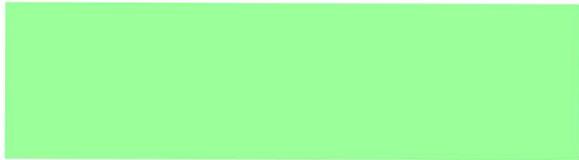




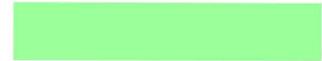
U.S. Citizenship
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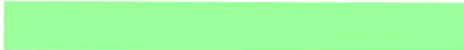


Date: **JAN 31 2014**

Office: LAS VEGAS

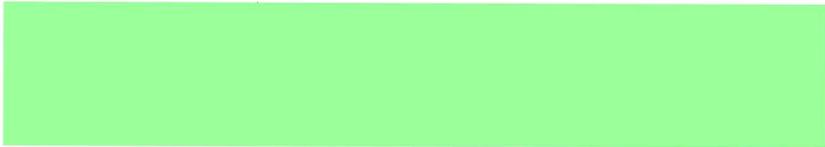


IN RE: Applicant:



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, Las Vegas, Nevada. 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 his 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*, June 5, 2013.

On appeal, counsel contends that U.S. Citizenship and Immigration Services (USCIS) abused its discretion in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, as the director failed to address the applicant's contention that preconceived intent to immigrate alone is insufficient to support a finding of inadmissibility. Counsel also contends that the applicant did not verbally misrepresent any facts when he entered the United States; the applicant only failed to volunteer information, and silence or failure to volunteer information does not support a finding of inadmissibility. Counsel further contends that the Department of State's 30/60-day rule, which was cited in the AAO's decision of April 4, 2011, dismissing the applicant's initial appeal, is inapplicable to proceedings before USCIS, and that marriage is a permissible activity of individuals admitted with a B-2 non-immigrant visa. Alternatively, counsel asserts that USCIS abused its discretion in finding that the applicant did not establish that his qualifying relative would suffer extreme hardship if the applicant was removed from the United States. See *brief submitted in support of appeal*, July 23, 2013.

The record includes, but is not limited to, briefs filed by counsel in support of Forms I-290B, Notice of Appeal or Motion and Forms I-601; statements from the applicant and the applicant's spouse; medical documentation for the applicant's spouse; a 2009 psychological evaluation for the applicant's spouse; financial documentation; and letters of reference. 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

¹ The record indicates that the applicant previously filed a Form I-601 on June 16, 2009, which was denied on December 17, 2009. The applicant appealed this decision to the AAO on January 15, 2010. The AAO dismissed the appeal on April 4, 2011. The applicant filed a motion to reconsider on April 28, 2011. On December 20, 2012, the AAO granted the motion and affirmed its previous decision to dismiss the appeal.

documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record indicates that the applicant arrived at the United States on November 15, 2005, as a visitor for pleasure with a B-2 non-immigrant visa. A U.S. immigration inspector referred the applicant to secondary inspection for further examination regarding his purpose for coming to the United States and to verify his intent for his visit. In a written declaration the applicant submitted in support of his initial Form I-601 dated September 12, 2009, the applicant stated that when asked about the purpose of his visit, he told the immigration officials that he was coming to visit his relatives. The applicant further stated in his 2009 declaration that he did not disclose his true intention to immigration officials, which was to marry his fiancée, for fear of not being allowed to enter the United States. Counsel states, as he has in previously submitted briefs, that the applicant understands that what he did is wrong and apologizes for misrepresenting his intentions in order to gain entry to the United States.

Counsel concedes that finding the applicant entered the United States with a preconceived intent to remain here is appropriate in this case, but he asserts that the record fails to show that the applicant verbally misrepresented himself to a U.S. immigration officer. Counsel cites the U.S. Department of State's Foreign Affairs Manual (FAM), which states that there is a distinction between silence or failure to volunteer information and misrepresentation. Counsel also notes that although the FAM is not binding on USCIS, its interpretation of laws is informative.

As discussed in the AAO's decision of December 20, 2012, affirming the decision to dismiss the applicant's initial appeal, a misrepresentation is material if either:

- (1) The alien is excludable on the true facts; or
- (2) The misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility and that might well have resulted in a proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436 (BIA 1950; AG 1961).

By claiming he intended to visit relatives and not revealing his true intent to marry a lawful permanent resident, the applicant shut off a line of inquiry relevant to his eligibility for admission as a visitor that might well have resulted in a proper determination that he be excluded. Inhibiting the inspector's ability to exercise discretion over admission decisions defines the misrepresentation as a material one. See *Kungys v. U.S.*, 485 U.S. 759 (1988) and *Matter of S- and B-C-*, *supra*; see also *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975).

Counsel also asserts that the U.S. Department of State's 30/60 day rule is inapplicable to proceedings before USCIS, and any citation to this rule to support a finding of inadmissibility would be in error. The Foreign Affairs Manual (FAM) states that the 30/60 day rule applies when "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry (POE), that the purpose of his or her visit is . . . to visit relatives, etc., and then violates such status

by ... [m]arrying and taking up permanent residence.” 9 FAM 40.63 N4.7-1. If conduct occurs within 30 days of entry to the United States, a presumption of misrepresentation arises. 9 FAM 40.63 N4.7-2. If conduct occurs within 60 days of entry, a presumption of misrepresentation does not arise but may be established based on facts leading to a reasonable belief the applicant misrepresented his or her intent. 9 FAM 40.63 N4.7-3. The AAO cited the 30/60 day rule in the decision to dismiss the applicant’s first appeal. Although the AAO is not bound by the FAM, it finds its analysis in these situations to be persuasive. Counsel presents no legal support to support his assertion that no presumption of misrepresentation may arise in the applicant’s circumstances.

Counsel also asserts that marriage is a permissible activity of individuals admitted with a B-2 non-immigrant visa. While certain individuals lawfully admitted as non-immigrants may marry in the United States, this matter does not concern the applicant’s legal capacity to marry, but rather his misrepresentation of a material fact to gain entry into the United States.

Counsel further contends that preconceived intent to immigrate alone is insufficient to support a finding of inadmissibility and is insufficient to justify a denial as a matter of discretion. He cites *Matter of Cavazos*, 17 I&N Dec. 215 (BIA 1980), *Matter of Ibrahim*, 18 I&N Dec. 55 (BIA 1980), and *Matter of Battista*, 19 I&N Dec. 484 (BIA 1987). As the AAO noted in its decision of December 20, 2012, these cases address denial of adjustment of status, finding that preconceived intent alone is insufficient to justify a denial as a matter of discretion. The authority on which counsel relies refers to the applicant’s intent upon entering the United States as a discretionary factor and does not address inadmissibility. Only after an applicant has established eligibility to adjust status does the Secretary consider whether the applicant merits a waiver of inadmissibility as a matter of discretion. In this particular case, the applicant was found inadmissible for misrepresenting his intent to remain in the United States and marry a lawful permanent resident at the time of his inspection and admission as a non-immigrant. His application for adjustment of status was denied based on this ground of inadmissibility rather than as a matter of discretion, and the cases relied upon by counsel do not preclude finding that he is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO concurs with the Field Office Director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for willful misrepresentation of a material fact with respect to his immigrant intent upon his arrival in 2005. As the applicant has been found to be inadmissible under section 212(a)(6)(C)(i) of the Act, the applicant requires a waiver under section 212(i) of the Act in order to overcome his inadmissibility.

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. 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 will experience medical hardship if the applicant's waiver application is not approved, because she requires regular checkups following breast surgery in 2004 and she is pre-diabetic. Medical documentation in the record shows that the applicant's spouse had a lumpectomy in 2004 to remove a benign tumor in her right breast, and annual mammogram checkups were suggested following the surgery. The medical documentation in the record indicates that the applicant's spouse had a mammogram on September 15, 2011, without mammographic evidence of malignancy. In addition, the record includes a doctor's statement dated February 11, 2013, indicating that the applicant's spouse has multiple medical problems, including lumpectomy due to breast cancer,² gastroesophageal reflux disease, and being a pre-diabetic.

The Field Office Director noted that the lumpectomy of the applicant's spouse in 2004 was successful, that a follow-up mammogram has shown no recurrence of tumors, that the applicant's spouse has no family history of breast cancer, and that the diagnosis of being pre-diabetic is treatable. While the record establishes that the applicant's spouse has these medical conditions, it supports concluding that her conditions are manageable. The evidence is insufficient to establish that she depends on the applicant for medical support or that she cannot manage her medical conditions in his absence.

Counsel further asserts that the applicant's spouse is very depressed because of the applicant's immigration status, stating that she has trouble sleeping and is terrified that the applicant will not be allowed to remain with her in the United States. Counsel refers to a psychological evaluation conducted in August 2009 to support the assertion that the applicant's spouse will suffer emotional hardship if the applicant's waiver application is not approved. The record, however, lacks evidence of further treatment of the issues identified in the evaluation four years ago. Although the AAO is

² Although this doctor states that the 2004 lumpectomy of the applicant's spouse was due to breast cancer, the record indicates that the surgery was performed to remove a benign tumor. The applicant does not present other evidence to show that the applicant's spouse had breast cancer.

sympathetic to the family's circumstances and recognizes that the input of any health professional is respected and valuable, the record does not show that the applicant's spouse's emotional hardship is atypical or unique compared to others separated from a spouse. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Counsel contends without the applicant's income in the United States, the applicant's spouse will suffer financial distress. The applicant's spouse states that she has been employed with Citigroup, Inc., since July 2003 and currently earns \$29,000 per year, or \$2,416 per month. The applicant's spouse indicates that the family's monthly household expenses are approximately \$2,964 and that their joint monthly net income is \$3400. The record indicates that the applicant is employed as a taxi driver, and he earned \$44,051 in 2012. The record also indicates that the applicant had supplemental jobs in 2012, earning \$5,330. While the record indicates that the applicant contributes to the family's annual income, the record fails to establish the overall financial position of the applicant's spouse. For example, the record indicates the applicant and his spouse purchased their home in 2006, which was then worth \$296,750, and they pay a monthly mortgage of \$810; however, there is no detailed description of other assets available to the applicant's spouse in the record. The evidence in the record is insufficient to conclude that the qualifying spouse would be unable to meet her financial obligations in the applicant's absence.

The AAO recognizes that the applicant's spouse will experience some difficulties 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 as a result of removal, such that the applicant's spouse would experience extreme hardship if the waiver application is denied and she remains in the United States.

Regarding hardship that the applicant's spouse may experience if she were to relocate to the Philippines, the applicant's spouse contends that if she accompanies the applicant to the Philippines, she is not confident that her medical needs would be satisfied by the facilities there and she would lose her health-care coverage. Additionally, the applicant's spouse states that although the economic situation in the Philippines is starting to improve, unemployment is high.

The applicant's spouse further states that her life may be endangered and her mobility hampered due to political conditions in the Philippines. The U.S. Department of State has issued a travel warning for the Philippines, emphasizing 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.

The record reflects that the applicant's spouse was born in the Philippines and is familiar with the language and customs of that country. Moreover, according to the record, the applicant and his spouse have strong family ties to the Philippines: The applicant's mother and siblings reside in the Philippines, as do the applicant's spouse's parents and two brothers. Furthermore, it has not been established that the applicant would be unable to support his spouse were they to relocate to the

Philippines, because the evidence does not address whether he has assets or business opportunities there. Additionally, while living in certain parts of the Philippines may involve some challenges, the State Department's travel warning focuses on conditions in the country's southern areas. 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.

Although counsel submits additional country-conditions reports, such as the Department of State's 2011 Human Rights Report for the Philippines, to support assertions of hardship upon relocation, no evidence in these reports supports concluding that the applicant's spouse would not be able to find suitable treatment for her medical conditions, that she would not be safe, or that she would not find employment in the Philippines. 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)).

Although the applicant provides evidence of some hardship to his spouse, he has not established that she would suffer hardship beyond the common results of removal if she were to relocate to the Philippines to reside with him. The AAO finds, considering the evidence of hardship in its cumulative effect, including the information in the submitted country-conditions reports, that the applicant has not established his spouse would experience extreme hardship were she to move to the Philippines with him.

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 she will face no greater hardship than the unfortunate but expected disruptions 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 she 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.