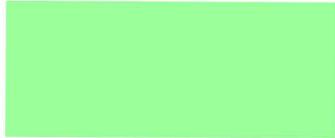




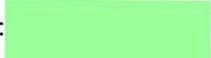
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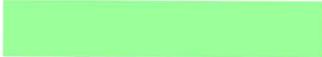
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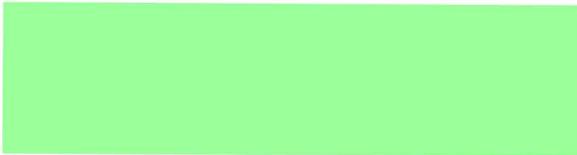
OFFICE: SANTA ANA

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Santa Ana, California denied the waiver application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before us on a motion to reopen and a motion to reconsider. The motion to reopen will be granted and the prior decision is affirmed.

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 extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated March 27, 2013. On appeal, we determined that the applicant had not established that his spouse would suffer extreme hardship if the waiver application is denied and dismissed the appeal. *See Decision of the AAO*, dated January 25, 2014.

On motion, the applicant's attorney asserts that our decision fails to properly account for the emotional and financial impact that would result from the qualifying spouse's separation from the applicant, and she provides additional documentation to support her assertion. In addition, the applicant's attorney states that the applicant did not provide contradictory statements regarding the documents he submitted relating to a prior marriage-based application and that he lacked the necessary intent to commit fraud.

A motion to reopen must state the new facts to be provided 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).

As the applicant's attorney has provided new facts and evidence regarding his qualifying spouse's emotional and financial situation, the motion to reopen the proceedings is granted.

In support of the instant motion, the applicant's attorney submits a declaration from the qualifying spouse, evidence regarding the applicant's financial support of his relatives in the Philippines and country-conditions documents about the Philippines. The record also includes, but is not limited to, identity documents; letters from the applicant, his spouse and daughter; letters of support; photographs; medical documentation for the applicant's spouse and her mother; and financial documentation. 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 his U.S. citizen spouse based on a marriage on December 14, 2001. The applicant submitted an accompanying Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), and Form G-325A, Biographic Information (Form G-325A), both signed by the applicant, also identifying his spouse as [REDACTED]. The applicant asserts that another individual offered to obtain immigration papers for him and that he never met or married a [REDACTED].

In this motion, the applicant's attorney asserts, as was asserted on appeal, that the applicant has continuously maintained that he is innocent of fraud or misrepresentation. The applicant contends that he believed that he was submitting an adjustment application based upon an employment-based petition. As such, the applicant's attorney explains that the applicant's testimony was not conflicting or contradictory, as he was unaware of what he signed and what was filed with U.S. Citizenship and Immigration Services (USCIS) on his behalf.

Concerning the willfulness of the applicant's stated misrepresentations, 9 FAM 40.63 N5, in pertinent part, states that:

The term "willfully" as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement.

We are unable to find that the applicant is inadmissible for making a willful misrepresentation of a material fact without “clear, unequivocal, and convincing evidence.” See *Kungys v. United States*, 485 U.S. 759, 771-72 (1988).

Pursuant to section 291 of the Act, the applicant bears the burden of demonstrating by a preponderance of the evidence that he is not inadmissible. See also *Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility “is of equal probative weight,” the applicant cannot meet his burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

We conduct appellate review on a de novo basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Applicant’s counsel claims that, although he submitted two signed documents misrepresenting his marital status to a [REDACTED], the applicant was unaware that the documents were related to a family-based rather than an employment-based application. Further, while the applicant upon initial questioning stated that his signatures on these documents were forgeries but later indicated that the signatures were his, his testimony was consistent because he has always maintained that he did not know that he signed forms relating to a marriage to [REDACTED] and thus lacked the intent to commit fraud or a material misrepresentation. Although the motion to reopen indicates his testimony should not be interpreted as inconsistent, the applicant submits no new evidence to substantiate assertions that he did not know that the forms he signed were based on a marriage to [REDACTED].

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Likewise, the assertions of the applicant are also relevant and have been taken into consideration, yet little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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 record indicates that the applicant signed and submitted Form I-485 and Form G-325A, both identifying his spouse as [REDACTED] in order to obtain an immigration benefit. The applicant asserts that another individual offered to obtain immigration papers for him and that he never met or married [REDACTED]. The circumstances within which the applicant provided such documents suggest that he made a material misrepresentation regarding a marriage to [REDACTED]. The evidence does not show that the applicant was incapable of exercising his judgment or understanding the documents that he signed. The evidence the applicant submits to

prove that he had no knowledge of their falsity is insufficient. The record establishes that the applicant is inadmissible under Section 212(a)(6)(C) 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 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.

In our January 25, 2014 decision, we previously found that, when considered in the aggregate, the evidence of record established that the applicant's spouse would experience extreme hardship if she were to relocate to the Philippines. As previously stated, the record establishes that the applicant's U.S. citizen spouse has resided in the United States since 1996 and has significant family ties to the United States. She would have to leave her family, most notably her children from a previous relationship, as well as her long-term employment and property. She also has medical reasons that require her to maintain her health insurance benefits in the United States. As such, it has been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

We also concluded previously, however, that the applicant failed to establish that the qualifying spouse would suffer extreme hardship as a consequence of being separated from him. Specifically, the applicant failed to provide sufficient evidence on appeal to illustrate how the qualifying spouse's emotional hardships upon separation are outside the ordinary consequences of removal or to demonstrate how she would be financially impacted by his departure.

In the instant motion, the applicant's attorney asserts that we failed to account for the emotional impact on the qualifying spouse upon separation and to take into consideration the length of the applicant and qualifying spouse's relationship, their "deep love and emotional connection," and her recent losses. The qualifying spouse also states that she will suffer emotional and mental strain worrying about the applicant's health if he returns to the Philippines.

Although we considered, on appeal, the applicant and qualifying spouse's relationship and connection, as well as the qualifying spouse's emotional stress and medical issues, the record lacked medical documentation concerning the severity and duration of the applicant's spouse's medical diagnoses, including the extent to which her symptoms have intensified. On motion, the applicant submits no medical documentation to address this deficiency.

Concerning the qualifying spouse's emotional hardship, the applicant's attorney states that she has recently suffered the loss of three family members and that she requires the emotional support from the applicant. In her declaration the qualifying spouse confirms that the deaths of her mother, brother, and sister-in-law within a short time period have been difficult for her, and she describes how her grief overwhelmed her at work.

The applicant's attorney also states that our previous decision fails to properly account for the economic impact a separation would have on the qualifying spouse. The applicant's attorney indicates that a significant portion of the applicant's income is used to provide for his family in the Philippines, and provides a list of remittances with this motion. However, the list indicates that the money was drawn from the joint bank account of the applicant and his qualifying spouse. The extent to which the qualifying spouse already contributes to support the applicant's family in the Philippines is unclear. Nonetheless, we previously considered the applicant's responsibilities in providing financial support to his three children and parents, as well as his debts and car payments, yet noted that the record does not reflect the applicant's financial contributions to the applicant's spouse. The applicant provides no additional evidence regarding his financial contributions.

The applicant's attorney further asserts that the applicant will be unable to find employment in the Philippines due to his age and submits country-conditions materials about age discrimination in hiring in the Philippines. The applicant's attorney indicates that the qualifying spouse will face the burden of supporting the applicant financially and also incurring his medical expenses, as he will be unable to find employment abroad. However, as noted above, the extent to which the qualifying spouse already supports the applicant and his family in the Philippines is unclear.

Further, we previously noted that the qualifying spouse and her daughter own the home in which they live and that they have assumed the bulk of associated expenses. However, the record lacks recent financial documentation for the applicant's spouse's children residing with her, including the daughter with whom she jointly owns property, to show the extent of the financial responsibility that she alone bears.

The record 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). It was 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.

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.

We therefore find that the applicant has not established 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 motion is granted and the underlying application remains denied.