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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

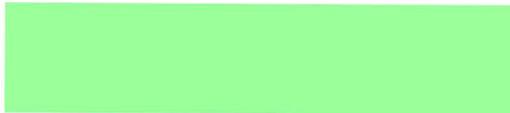


Date: **JUN 11 2014** Office: SAN FERNANDO VALLEY

FILE:



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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Fernando Valley, California and was appealed to the Administrative Appeals Office (AAO), which dismissed the appeal. The matter is now before the AAO on motion. The motion will be granted, and the prior decision to dismiss the appeal is affirmed.

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. *See Decision of the Field Office Director*, dated May 22, 2013.

Reviewing the applicant's Form I-601 on appeal, we concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established and dismissed the appeal. *See Decision of the AAO*, dated January 22, 2014.

On motion, counsel contends that we erroneously concluded that the applicant had not established that her qualifying relative would experience extreme hardship if they were separated, citing to case law listing factors to be considered in evaluating extreme hardship under section 212(i) of the Act.

According to 8 C.F.R. § 103.5(a)(3), 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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). As the applicant has stated reasons for reconsideration supported by precedent decisions, the motion to reopen and reconsider will be granted.

The record includes, but is not limited to, the following documentation: briefs filed by counsels for the applicant in support of the Forms I-290B, Notice of Appeal or Motion (Form I-290); briefs by applicant's former attorneys in support of her previously filed Forms I-601¹; 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.

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(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.

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 (USCIS) 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-Moralez*, 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 *Matter of O-J-O* stands for the proposition that hardship does not have to be unique or unusual in this context. Counsel, however, relies on the concurring opinion, not the majority opinion, in so asserting. 21 I&N at 400. Counsel also restates the holding in *Matter of O-J-O*, that relevant factors though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. As noted above, we consider the totality of the

circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel contends that the applicant's spouse suffers from chronic obstructive pulmonary disease (COPD), which manifests itself in chronic bronchitis and includes symptoms of chronic cough, increased mucus, shortness of breath, wheezing, and a tight feeling in the chest. Medical documentation confirms that the applicant's spouse suffers from COPD. In a statement previously submitted, the applicant states that she assists her spouse on a daily basis. The applicant's spouse states that the applicant makes sure that he maintains a healthy lifestyle and gives him his required medication. Counsel states that the applicant's spouse needs home support to relieve his conditions. Counsel's brief refers to an exhibit, yet no evidence in the record shows that the applicant's spouse requires support at home to treat his COPD condition. Although the assertions of the applicant and her spouse are relevant and have been taken into consideration, 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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *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).

Counsel contends that the applicant's spouse completely depends on the applicant for financial support. As noted in our previous decision, 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. On motion, the applicant submits no additional documentation regarding her spouse's financial situation. The evidence in the record is insufficient to conclude that her spouse is unable to meet his financial obligations in the applicant's absence.

With respect to the property assets of the applicant's spouse, the address of record for the applicant and her spouse is in Northridge, California. Documentation in the record indicates that the applicant and her spouse have a mortgage for property in [REDACTED] California. In addition, the record indicates that the applicant's spouse has property at [REDACTED] California, near one of his daughters. Counsel asserts that we incorrectly assumed that the applicant's spouse would be able to maintain his [REDACTED] property without the applicant's financial support. In our prior decision, however, we noted the absence of information concerning his property assets. The record still lacks information regarding the property interests of the applicant's spouse.

We previously determined 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. On motion, the applicant provides no new evidence to establish that her spouse would experience extreme hardship if the waiver application is denied and has not established that our conclusion was legally insufficient.

Concerning hardships that the applicant's spouse would experience were he to relocate to the Philippines to be with the applicant, counsel contends that the applicant's spouse may not be able to receive treatment for his medical conditions in the Philippines; however, counsel provides no documentation to support her contention that proper medical care would not be available there. Counsel also contends that the applicant's spouse would be left without any medical insurance coverage, but provides no evidence to support this contention.

Counsel states that the applicant has four children residing in the United States and that her immediate family resides in the Los Angeles area. As stated above, under 212(i) of the Act, children are not deemed to be qualifying relatives, and a child's hardship will only be considered as it affects hardship to a qualifying relative. There is no evidence in the record to indicate that the applicant's children are suffering hardships that affect the applicant's qualifying relative. The record also indicates that the applicant has a son residing in the Philippines.

Counsel states that the applicant received her medical training in the United States and has not worked in the Philippines for approximately 12 years; therefore the applicant has no employment connections in the Philippines. As noted in the previous decision, the record lacks specific information regarding the employment opportunities available to individuals with the applicant's qualifications.

On motion, counsel also contends that we erred when addressing the applicant's assertion that it would be dangerous for her spouse to relocate to the Philippines by citing to evidence not included in the record, namely, a U.S. Department of State Travel Warning. In her appeal of the decision to deny the Form I-601, the applicant asserted that it would be dangerous for her spouse to relocate to the Philippines, and we cited the travel warning to address the applicant's assertion. While the applicant had not submitted the travel warning, we took administrative notice of its contents. *See Matter of R-R*, 20 I&N 547, 551 (BIA 1992) ("It is well established that administrative agencies and the courts may take judicial (or administrative) notice of commonly known facts")(citations omitted). Moreover, the applicant's spouse's declaration, dated April 23, 2009, refers to "an existing travel warning for traveling to the Philippines," presumably referring to the Department of State travel warning.

On motion, the applicant submits a copy of the U.S. Department of State 2012 Human Rights Report for the Philippines. While the report refers to terrorist activities by communist and separatist insurgencies, it addresses these activities in the context of internal displacement in central Mindanao and the Sulu Archipelago. *See* Bureau of Democracy, Human Rights and Labor, U.S. Department of

State, *2012 Human Rights Report: Philippines* (April 19, 2013). The record does not establish where the applicant and her spouse would relocate, and counsel does not assert that other portions of the human-rights report would apply to her spouse if he were to live in the Philippines.

Counsel also asserts that the applicant would be unable to provide for her spouse financially in the Philippines. We previously found that the applicant did not show that she and her spouse would be unable to find employment in their respective fields of experience. On motion the applicant provides no new evidence to support the contention that she would be unable to support her spouse in the Philippines.

The evidence of potential hardship, considered in the aggregate, does not show that applicant's spouse would suffer hardship beyond the common results of removal if he were to relocate to the Philippines to reside with her. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, we cannot conclude that he would experience extreme hardship if the waiver application is denied and he relocates to the Philippines.

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 we are 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 motion is granted, and the prior decision to dismiss the appeal is affirmed.