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



U.S. Citizenship
and Immigration
Services

DATE: **MAY 20 2014** OFFICE: LOS ANGELES

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 waiver application was denied by the Field Office Director, Los Angeles, California and the matter is before the AAO on appeal. The appeal will be dismissed.

The applicant, a native and citizen of the Philippines, was found inadmissible 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 a visa, other documentation, or admission into the United States or other benefit of the Act through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with his U.S. citizen spouse.

In a decision dated August 7, 2013, the Field Office Director concluded that the applicant did not demonstrate that his spouse would suffer extreme hardship and the Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal, counsel for the applicant states that the Field Office Director relied on incorrect facts in her decision to deny the applicant's waiver application. Counsel also states that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, as he was unaware of the fraudulent nature of the ADIT stamp in his passport.

In support of the waiver application, the record includes, but is not limited to: a brief from counsel; documentation of the applicant's spouse's naturalization; declarations from the applicant and his spouse; medical records for the applicant's spouse; country-conditions information about the Philippines; biographical information for the applicant, his spouse, and their daughter; a psychological evaluation of the applicant's spouse; and documentation of the applicant's immigration history. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(6)(C) of the Act, which 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.

A misrepresentation is generally material only if by making it the alien received a benefit for which he would not otherwise have been eligible. See *Kungys v. United States*, 485 U.S. 759 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* 495 U.S. at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, 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 which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

“It is not necessary that an ‘intent to deceive’ be established by proof, or that the officer believes and acts upon the false representation,” but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)).

The term "willful" should be interpreted as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. 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 misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161(BIA 1956).

The AAO is 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).

The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act as a result of the fraudulent ADIT stamp in his Philippine passport, which he submitted with his application for adjustment of status on June 26, 2007.

On appeal, the applicant states that he was unaware the stamp was fraudulent, because his sister-in-law was responsible for stamp being present in his passport. Additionally, the applicant states that he did not enter the United States at O'Hare International Airport in Chicago as a conditional permanent resident, as stamps in the passport indicate, using that passport; instead, he entered the United States as a crewman on March 30, 1998, at Los Angeles International Airport using a different passport.¹ The applicant states that evidence of his crewman's visa was destroyed in a house fire. The applicant submits documentation showing that his father's residence was affected by a fire on November 20, 2004. In his declaration dated September 26, 2013, the applicant states that he was to come to the United States on a seaman's visa and his sister-in-law would obtain a “green card” for him using his old passport for \$10,000. He adds that his father gave his sister-in-law his old passport, not the one he used to enter the United States. The applicant states that he used the “green card” stamp, referring to the ADIT stamp, to obtain a Social Security card and employment. Moreover, he claims that he paid his sister-in law for the “green card.”

¹ This date of entry differs from the November 28, 1998, date of entry the applicant indicates on his Form AR-11, Alien's Change of Address Card, filed in June 2013.

The applicant, however, has not presented any evidence demonstrating why he believed the fraudulent ADIT stamp obtained by his sister-in-law in his old passport was valid, when he knew he was not in fact admitted as a conditional resident and processed for permanent residence on March 30, 1998. He simply states that he was instructed not to question his sister-in-law. Additionally, he has not shown that he lacked capacity to exercise judgment and thus was unable to review the documentation that he used to obtain a Social Security card and employment and that he submitted with his application for permanent resident status in the United States. The applicant was 25 years old when he purportedly entered the United States as a crewmember and obtained the fake ADIT stamp in his passport. He was 34 years old when he signed his application for permanent residence in 2007. The AAO finds that to the extent that the applicant claims that his misrepresentation was not willful, this contention lacks sufficient support to disturb the finding of inadmissibility. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure lawful permanent residence and other benefits under the Act through fraud or willful misrepresentation.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section, in pertinent part, states that:

- (1) The Attorney General [now the Secretary 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 a U.S. lawful permanent resident or U.S. citizen spouse or parent of the applicant. The applicant submitted evidence about the hardship to his U.S. citizen spouse, but did not submit evidence concerning his U.S. citizen mother. Hardship to the applicant or his U.S. citizen daughter will not be separately considered, except as it may affect the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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).

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 at 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.

Regarding the hardship of separation, counsel states that the applicant's spouse will suffer emotional and financial hardship if the applicant is not permitted to remain in the United States. The applicant's spouse in her affidavit states that she has struggled with depression and anxiety throughout her life and has engaged in self-harming behaviors as a result of emotional hardship

that she has experienced. She states that this information is not in the psychological report previously submitted with the waiver application, as she has kept this history of self-harm a secret. She further states that earlier in her relationship with the applicant, when she believed he might leave her and again upon hearing that her husband's waiver application had been denied in August 2013, she became depressed and wanted to harm herself. She also states that she has been having panic attacks almost every day. The record contains documentation that the applicant's spouse sought psychiatric assistance on August 29, 2013, that she obtained a prescription for BuPROPion XL, and that she was instructed to obtain counseling. The applicant's spouse states that the lack of availability of services at a mental-health clinic initially prevented her from obtaining counseling, but she made an appointment with a psychiatrist through her health insurance company and attended counseling on September 19, 2013. An "After Visit Summary" from [REDACTED] indicates that the applicant's spouse sought help for generalized anxiety disorder and adjustment disorder with mixed anxiety and depressed mood. The summary indicates that she was scheduled for another appointment on October 2, 2013. It is not clear from the summary whether the applicant received additional prescriptions or if any diagnosis was made. The applicant's spouse's assertions regarding her history of depression and anxiety and her statements that she has experienced thoughts of self-harm are serious and will be taken into consideration along with the other evidence submitted of hardship that she would suffer as a result of separation from the applicant.

The applicant's spouse states that her anxiety and depression concerning the applicant's inadmissibility has affected her performance at work. Counsel also states that the applicant's spouse is in danger of losing her job as a result of her emotional and psychological problems. No documentation has been submitted to support these claims. Although the applicant's spouse's assertions 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 further states that applicant's spouse would worry about the applicant in the Philippines due to the high crime rates and the presence of several terrorist groups in that country. The applicant's spouse states that she worries about leaving her daughter "motherless and fatherless" if she were to harm herself and the applicant were no longer present in the United States. The record contains reports about the Philippines from the U.S. Department of State, Philstar.com, the Senate of the Philippines, Human Rights Watch, and Wikipedia indicating the general state of crime and human-rights concerns. It is not clear why counsel and the applicant's spouse believe that the applicant would be affected by crime or human-rights abuses in the Philippines. The applicant's spouse states that her mother and sister reside in the Philippines, but no information was provided

as to their exact location or whether they have suffered any harm or difficulties related to country conditions. The applicant's spouse states that she previously was a victim of crime in the Philippines, when her belongings were snatched from her while she rode a bus. She also states that her brother was almost kidnapped; however, no other details were provided regarding that alleged incident.

Regarding financial hardship, the record does not contain documentation to corroborate assertions about the applicant and his spouse's current financial situation. The record also does not make clear to what extent the applicant's spouse relies on the applicant's income in the United States. The applicant's spouse states that she and the applicant are struggling financially and she states that the applicant's job experience and education as a nursing assistant aide would not allow him to contribute financially from abroad. To support her statement, the applicant submits news articles from Abs-Cbnnews.com, Philstar.com, Business.inquirer.net, and a 2002 working paper from the International Monetary Fund concerning the Philippines' economy and unemployment rates. Additionally, the record contains a news article from the BBC Asia dated July 4, 2012, regarding unemployment in the nursing sector in the Philippines. No documentation in the record, however, reflects the applicant's current financial contribution to the household, the applicant's spouse's income and expenses, or the applicant's expected income and expenses in the Philippines. Without this important information it is not possible to determine the degree of financial hardship that the applicant's spouse would experience as a result of separation from the applicant. As stated above, 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. at 165.

Counsel states that the applicant's spouse's emotional hardship, when considered with her economic and financial hardship, clearly is extreme. Due to the lack of documentation, however, regarding the claims of financial hardship, the record does not establish that the hardships the applicant's spouse faces, considered in the aggregate, rise to the level of extreme.

The applicant's spouse states that she would not relocate to the Philippines, and counsel for the applicant does not submit evidence to indicate the hardship that she would suffer in that scenario. The burden of proof is on the applicant in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. And, 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. at 165. As a result, the record does not establish that the hardships that the applicant's spouse would face upon relocation abroad with applicant would rise to the level of extreme as contemplated by statute and case law.

The applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, but the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not

intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has failed to establish extreme hardship to his 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 determining whether he merits a 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.