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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

DATE: **APR 27 2015** OFFICE: CHICAGO

File: [Redacted]

IN RE: [Redacted]

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:

[Redacted]

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, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured an immigration benefit through willful misrepresentation or fraud. The applicant is the beneficiary of an approved Form I-130, Immigrant Petition for Alien Relative (Form I-130). The applicant, through counsel, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside with her family in the United States.

The director determined that the applicant had not established extreme hardship to her qualifying relative if she were removed from the United States and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, the applicant, through counsel, asserts that she is not inadmissible because she did not make a material misrepresentation concerning her intent when she applied for her non-immigrant visa. Alternatively, she asserts that she has established that denial of her waiver application would cause extreme hardship to her qualifying spouse.

The record includes, but is not limited to: two briefs; statements by the applicant's pastor, friends and relatives; documents concerning identity and relationships; employment, financial, and medical documents; a psychological evaluation; information about the Philippines and dengue fever; and a DVD. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO reviews each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 212(a)(6) of the Act provides, in relevant part:

(C) Misrepresentation.-

(i) In general.- 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.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in relevant part:

- (1) The Attorney General [now 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.

The record reflects that on June 23, 2005, the applicant applied for a non-immigrant visitor's visa at the U.S. embassy in [redacted] the Philippines. She indicated on her application that she was single<sup>1</sup> and the purpose of her visit was to be an "official participant" with the "[redacted]" She attached to her application invitations to perform in [redacted] Missouri, and [redacted] California. The invitation to perform at the [redacted] conference was signed by the general conference's meeting planner. The latter invitation was signed by Pastor [redacted]. In her visa application, the applicant indicated she would be traveling with [redacted] president of the [redacted]. U.S. immigration officials admitted the applicant to the United States as a non-immigrant visitor on July 3, 2005. The director determined that the applicant did not perform at either function and that her non-immigrant visa application was fraudulent, made with the intent to remain in the United States and without the intention of fulfilling the terms of the nonimmigrant visa. Based on the foregoing, the applicant was determined to be inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant contests this finding of inadmissibility. She asserts that she did perform at the church conference, and she intended to return to the Philippines but later changed her mind. She presents evidence to show that she complied with the terms of her non-immigrant visa by performing at the [redacted] conference.

The evidence demonstrates the applicant signed Form DS-156, Non-Immigrant Visa Application, and in so doing, certified that the application was true and correct. The applicant indicated on that application that she intended to perform as a member of a group at a conference and a church event. The evidence she provides to show she complied with her visa's terms is insufficient to establish that she actually performed at either event. The evidence she submits consists of a letter from a conference attendee, one page from an undated field report available from the Internet, titled "[redacted]" and a DVD. The report, while mentioning the [redacted] conference, is silent on the issue of performances, including the applicant's purported appearance, at the conference. The letter's author asserts that the applicant and her group performed at the conference, without explaining his connection to the applicant. The DVD, while reflecting singing performances and other social events, warrants little or no evidentiary weight because it cannot be authenticated. Although counsel's brief refers to pertinent sections of the DVD by minute marks, nothing in the DVD offers indicators reflecting when and where the recordings were made.

The Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The "representations must be believed and acted upon by the party deceived to the advantage of the deceiver." *Id.*

<sup>1</sup> The applicant provided a copy of a divorce decree in support of the Form I-130 filed on her behalf. The divorce decree indicates that she was married in the Philippines in [redacted] and divorced in the United States in [redacted].

The intent to deceive, however, is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The relevant standard for a willful misrepresentation is knowledge of falsity. *Forbes v. INS*, 48 F.3d 439, 442 (9<sup>th</sup> Cir. 1995).

A misrepresentation is generally material only if the alien received a benefit for which she 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 or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting or tending to affect the official decision in order to be considered material. *Kungys*, 485 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).

The director noted that all nine of the group members overstayed their visas and remained in the United States. The director noted that [REDACTED] informed the Service that [REDACTED] did not attend the conference or contact him regarding a performance by the applicant's group. Service investigation records show that a member of the applicant's group stated that none of the members attended the [REDACTED] conference and that the author of the conference invitation and planner said that the group was not scheduled to perform and did not perform at the conference. We therefore find that the applicant's actions were willful as opposed to accidental, inadvertent, or in an honest belief that the facts were otherwise, resulting in the issuance of a visa for which she would not otherwise have been eligible.

Foreign nationals must establish admissibility "clearly and beyond doubt." *See* sections 235(b)(2)(A) and 240(c)(2)(A) of the Act. The same is true for admissibility in the context of an application for adjustment of status. *See Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008); *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008); *see also Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). Based on the foregoing, we agree with the director's conclusion that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and she requires a waiver under section 212(i) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and her children is not relevant under the statute and is considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is her only qualifying relative in this case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 BIA 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 BIA 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 BIA 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 Id.* at 568; *In re Pilch*, 21 I&N Dec. at 632-33; *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. at 246-47; *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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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.

The applicant's spouse asserts in his affidavit that if he relocates with the applicant to the Philippines, he would suffer extreme hardship. He certifies that all statements in counsel's brief are correct and adopts those statements by reference. Counsel asserts that the applicant entered the United States as a toddler and attended schools from elementary school through college in the United States. The record indicates that the applicant's spouse became a naturalized citizen at the age of 10 and he is now 37 years old. He has many relatives, including parents, residing in the United States. He has developed community ties here. Considering the evidence of his length of residence in the United States, and his ties to family and his community, we find the applicant has established that relocation would cause emotional hardship to her spouse. This hardship will be considered cumulatively with evidence addressing the other types of hardship the applicant's spouse may experience upon relocation to the Philippines.

Concerning the financial hardship he would experience upon relocation, the applicant's spouse asserts that there are limited job opportunities for him in the Philippines, particularly since he does not speak any Philippine language or dialect. In a Form I-864, Affidavit of Support, dated 2008, the applicant's spouse indicated that he was employed as an office clerk at [REDACTED] with an annual income of \$31,200. He attached income tax returns showing he had an adjusted gross income of approximately \$20,000 in 2005; \$11,600 in 2006; and \$6,700 in 2007.<sup>2</sup> According to his 2007 tax return, he began a business and earned a net profit of \$7,121. According to a brief filed with the applicant's Form I-601 application, the applicant's spouse has owned his own business since 2010 and simultaneously works for [REDACTED]. Counsel further asserts that if the applicant's spouse were to relocate with the applicant, he would lose his business as a financial advisor. 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 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant has not established that her husband would suffer financial hardship as the result of relocating to the Philippines. The record does not contain evidence of employment or labor conditions in the Philippines, demonstrating the applicant's spouse's job opportunities there. The applicant also submits no evidence concerning her spouse's business and whether it may function globally. 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 applicant has not established that her spouse would suffer financial hardship if he relocated to the Philippines.

The applicant's spouse expresses concern about contracting dengue fever in the Philippines, stating he contracted it once while visiting there. In support of this claim, the applicant provides country information regarding dengue fever in general and its prevalence in the Philippines. The report states that "[m]ost people with dengue recover without any ongoing problems." The applicant's spouse also says that the quality of health care in the Philippines is not as high as it is in the United States. While the

<sup>2</sup> The applicant filed the instant Form I-601 in 2014, but submits 2005-2007 financial evidence.

two countries may not have the same quality of health care, the record does not reflect that the applicant's spouse has a significant health condition that could not be adequately treated in the Philippines. The applicant has not established that her spouse would suffer health-related hardships if he relocated.

The applicant also submits a psychological evaluation that states that the applicant's spouse is concerned not only for himself but also for the applicant and their child, as he anticipates that upon relocation they would live in an overcrowded home in an impoverished and dangerous area of the Philippines. He further states that their child would have fewer educational opportunities in the Philippines and they would not have access to quality health care in the Philippines. Finally, he is afraid that the applicant would suffer serious anxiety.

We note that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse. Similarly, hardship the applicant would experience will not be separately considered.

We thus conclude that were the applicant's spouse to relocate to the Philippines to be with the applicant due to her inadmissibility, considering the evidence submitted in the aggregate, the record is insufficient to establish that he would suffer extreme hardship. We have considered the applicant's evidence of financial and emotional hardship. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The next issue to be addressed is whether the applicant established that her qualifying spouse would suffer extreme hardship if they were separated. The applicant asserts that if she leaves their 3-year old child with her qualifying spouse, her spouse would need to find childcare during his workday, which constitutes an economic hardship. If the applicant takes their child with her to the Philippines instead, she asserts her spouse would suffer emotionally from separation from both the applicant and their child. The applicant's spouse also expresses concern for the applicant and their child, indicating he would be distressed by thinking about their hardships in the Philippines if he were separated from them.

To support claims of emotional hardship, the applicant submits a psychological evaluation, which states that the applicant's spouse would be devastated by their separation and might fall back on drinking as a coping mechanism. The applicant submits letters of friends and relatives that state that the applicant's spouse would be heartbroken if separated from the applicant. Counsel asserts that separation would

“likely unthrive his life and erase the steps he has taken to improve his life.” As noted above, the assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534

The applicant asserts that if their child remains with her spouse, he would suffer the financial hardship of paying for childcare. The applicant does not provide corroborating evidence to support this assertion. The record lacks evidence of other financial hardship the applicant’s spouse may experience if he were to remain in the United States without her.

To support her claim that her qualifying spouse would suffer emotional hardship related to separation, the applicant submits a psychological evaluation that states that she and their child would be forced to live in a dangerous area in impoverished conditions with her family in the Philippines and would lose access to quality healthcare and education. The record includes an excerpt from the Department of State’s travel warning for the Philippines, which states that adequate medical care is available in major cities in the Philippines but that even the best hospitals may not meet standards of care in the United States.

The evaluation states that the applicant reported that she has a history of anxiety attacks and that deportation may lead to another anxiety episode. The applicant, however, is not a qualifying relative. To the extent that her distress would cause her qualifying relative distress, it will be considered.

Although the record is sufficient to establish the applicant’s spouse may experience a degree of hardship in the applicant’s absence, the evidence, considered in the aggregate, does not establish the applicant’s spouse would suffer extreme hardship as a result of separation from the applicant. The applicant submits no corroborating evidence to support claims of financial or medical hardship that, considered cumulatively with his emotional hardship, may be considered extreme.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant’s qualifying relative, considered cumulatively, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find the applicant has not established extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s spouse caused by the applicant’s inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.