



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **AUG 18 2015**

FILE #: [Redacted]

APPLICATION RECEIPT #: [Redacted]

IN RE: Applicant: [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]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Santa Ana, California, denied the application for a waiver of inadmissibility. The matter 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 INA, or the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure an immigration benefit by fraud or material misrepresentation. The applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act.

In his decision, The Field Office Director indicated that the applicant requires a waiver of inadmissibility pursuant to section 212(h) of the Act.¹ However, the Field Office Director concluded that the applicant did not establish that his qualifying spouse would experience extreme hardship, and therefore he was ineligible for a waiver. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director*, dated August 13, 2014.

On appeal, the applicant provides additional medical documentation regarding his spouse, as well as financial documentation for the applicant and his spouse, in support of his waiver application.

The record contains: the documents listed above; letters written on behalf of the applicant; relationship and identification documents for the applicant and his spouse; a psychological evaluation; medical and financial documentation; documentation of removal proceedings; and photographs. The record also contains documentation supporting the applicant's previous adjustment applications. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (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 chapter is inadmissible.

The record indicates the applicant has had three Petitions for Alien Relative (Form I-130) filed on his behalf. On June 7, 2007, the second petition filed on his behalf was denied for fraud. More specifically, the Field Office Director, Santa Ana, California, concluded that the marriage certificate submitted to support the Form I-130 was "fraudulent and was utilized in an attempt to deceive" the government and to "circumvent the laws" in order to obtain immigration benefits. *See Decision of the Field Office Director*, dated June 7, 2007. On the same day, the Field Office

¹ We note that as the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, he requires a waiver under section 212(i) of the Act, not section 212(h) of the Act, as indicated by the Field Office Director. However, we also note that the waiver requirements for both sections are the same.

Director also denied the applicant's adjustment of status application indicating that, in addition to the false marriage certificate, the applicant also failed to disclose his previous two marriages on the Form I-130. Inadmissibility is not contested on appeal. We therefore affirm that the applicant is inadmissible for misrepresenting material facts pursuant to section 212(a)(6)(C)(i) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility under section 212(i) of the Act is his U.S. citizen spouse.

Section 212(i) of the Act provides, in pertinent 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 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 [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 or his child 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 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).

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 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.

With respect to her hardship upon separation from the applicant, the applicant provides his spouse’s medical documentation, and documentation regarding their financial situation. The applicant previously provided a psychological evaluation of his spouse. Although the record also contains several of his spouse’s medical records, the applicant does not assert that she would experience medical hardships if she remains in the United States. However, the psychological evaluation reports that the applicant’s spouse states that she has high blood pressure that she believes is related to her stress. The evaluation indicates that she is currently taking medication, and that she also has back pain “on and off” due to degenerative arthritis. The documentation the applicant provides includes office visit reports and other medical reports regarding ailments such as back pain and vertigo. The applicant also provides a letter from his spouse’s doctor indicating that his spouse has arthritis on her upper extremities and back, and that she suffers from daily pain due to this condition. Although the medical records appear to indicate that his spouse has had

physical therapy and medications, the applicant does not describe the medical treatment or family assistance that the applicant's spouse currently requires. Without such evidence we are not in the position to reach conclusions concerning the severity of the applicant's spouse's current health conditions or the treatment she needs.

In addition, according to the psychological evaluation, the applicant's spouse would experience financial hardship upon separation. The psychological evaluation reports that the applicant earns two-thirds of their household income, and that his spouse would be unable to afford rent and other expenses, as well as sending money to her daughter in the Philippines, without the applicant's financial assistance. The psychological evaluation also indicates that she and the applicant have no savings. The record contains statements of earnings for the applicant and his spouse, as well as bank statements. While this documentation demonstrates that the applicant earns more than his spouse, there is no direct evidence to demonstrate their expenses, other than what can be gleaned through the bank statements, or to support assertions that his spouse is sending money to her daughter. As such, there is insufficient evidence in the record to show that the applicant's spouse would suffer financially without the applicant. Further, no tax documentation was provided to confirm that the applicant or his spouse have no other sources of income. The applicant also has not demonstrated that he would be unable to provide financial support from the Philippines.

The previously provided psychological evaluation states that the applicant's spouse would experience psychological hardship upon the applicant's removal. The psychologist indicates that the applicant's spouse does not have a history of depression, but that she now feels overwhelmed, tense, anxious, and depressed and that she is at risk for developing stress-related medical illness if the applicant is removed. The psychologist indicates that she is experiencing a "severe level of depression" and recommends that she seek treatment for her depression and anxiety, involving a combination of psychotherapy and medication. Although we are sympathetic to the applicant's spouse's circumstances, the record does not show that psychological hardship to the applicant's spouse and the symptoms she has experienced, according to the psychologist, are extreme, atypical, or unique compared to others separated from a spouse. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (common results of deportation are insufficient to prove extreme hardship, which is defined as hardship that is unusual or beyond that which would normally be expected upon deportation).

Therefore, based on the record before us, we are unable to find that separation from the applicant would result in extreme hardship for the applicant's spouse. While the record contains sufficient evidence to establish that the applicant's spouse would experience some psychological hardship due to separation, the evidence provided on psychological and financial hardship does not support assertions that, considered in the aggregate, it rises to the level of extreme.

Concerning the hardships the applicant's spouse would experience if she were to relocate to the Philippines with the applicant, the psychological evaluation indicates that the applicant's spouse, a native of the Philippines, does not know how she and the applicant would live in the Philippines because she there is no work for older people. The evaluation also reports that the applicant's spouse believes that she would be very depressed if she was not able to afford regular and necessary medical care. However, there is no objective evidence to indicate that the applicant or

his spouse would be unable to find employment or that they would be unable to afford medical care. Moreover, the applicant submits no documentation to corroborate assertions regarding the economic situation in the Philippines or the unavailability of suitable healthcare there. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *In re Soffici*, 22 I&N Dec. 158, 165 (Reg. Comm. 1998); see *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The psychological report also does not state that the applicant's spouse would experience psychological issues from relocation, but rather focuses on the issues associated with separation. Further, the psychological evaluation notes that both the applicant and his spouse have children who live in the Philippines, and the applicant provides no other evidence addressing the extent of his spouse's family ties to the Philippines. Likewise, the record does not address whether the applicant or his spouse have any family or community ties to the United States, aside from their respective employment.

The applicant has not supported assertions that his spouse would suffer financially or emotionally upon relocation to the Philippines, or that she would have other hardships related to relocation, including access to medical care or lack of family support. As such, the record does not contain sufficient evidence to show that the hardships the applicant's spouse would experience upon relocation, considered cumulatively, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

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. We therefore find that the applicant has not established extreme hardship to his U.S. Citizen spouse 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 the applicant 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.