



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

[Redacted]

DATE: **FEB 02 2015** OFFICE: LOS ANGELES

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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, 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 Immigrant Petition for Alien Worker (Form I-140). 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 U.S. citizen parents, spouse, and children in the United States.

The Field Office Director determined that the applicant had not established extreme hardship to her qualifying relatives if she were removed from the United States and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated June 4, 2014.

On appeal, the applicant asserts U.S. Citizenship and Immigration Services (USCIS) applied the improper standard when analyzing factors of extreme hardship to her qualifying relatives; it applied the higher standard required for relief from removal. The applicant also asserts USCIS did not thoroughly examine all relevant facts and evidence of hardship to her qualifying relatives in the aggregate, and USCIS failed to properly exercise its discretion upon balancing the equities against the adverse factors in her case. *See Form I-290B, Notice of Appeal or Motion*, dated July 1, 2014; *see also Brief in Support of the Appeal*, dated July 24, 2014.

The record includes, but is not limited to: a brief and correspondence; a statement by the applicant and affidavits by her parents; documents concerning identity and relationships; academic, employment, financial, and medical documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

We conduct appellate review on a *de novo* basis. *See 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 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.*

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, that is, having a natural tendency 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 record reflects U.S. immigration officials admitted the applicant to the United States as a nonimmigrant visitor on May 12, 2002. The record also reflects the applicant’s authorization to remain in the United States has expired, and she remains in the United States. The record further reflects that on June 17, 2002, the applicant applied for an employment authorization document (EAD) as a foreign student seeking off-campus employment due to severe economic hardship. She was issued an EAD approximately one month later. The record indicates the applicant did not have the proper status to be issued the EAD and never filed an application or petition that conferred an eligible status to be issued such an EAD. Accordingly, USCIS revoked its approval of her EAD on August 20, 2003. 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 by asserting that she was an unwilling victim of a fraud scheme.

In a facsimile statement transmitted on December 2, 2009, the applicant discusses the process that she undertook to obtain the EAD. She indicates that two individuals told her and her husband to each pay \$3,500 for paperwork for sponsorship of their immigration matters, but she did not know that they were requesting a benefit related to a foreign student visa until she received the EAD in the mail. She also indicates that before receiving the EAD, they received a request for additional paperwork in support of the EAD application; they then called the individuals who had assisted them and were told not to worry about anything and they “will just call the people.” The applicant states she received her EAD one month later, and on January 7, 2003, an official from the Department of Justice came to her house and her office to obtain an affidavit concerning “what the story really is.” She also states that, on January 8, 2003, the official went to her home to ask her family members their “version of the story.”

In their affidavits dated April 1, 2014, the applicant’s father and mother indicate that a distant relative introduced the applicant to another individual shortly after her arrival in the United States, and this individual “told her that he could get her an offer of employment from a local church that was in need of her services for a clerical position.” They also indicate the applicant was asked to provide personal information, sign forms, and pay for the services rendered. They state the applicant was victimized as she trusted her family member because he earlier had obtained an employment card through his employer with the help of this individual, and she did not have reason to doubt him. The applicant’s parents further indicate the applicant met once a special agent from the Department of Justice, who she attempted to contact years later but has been unable to locate.

The evidence demonstrates the applicant signed Form I-765, Application for Employment Authorization, and in so doing, certified under penalty of perjury that the application and the evidence submitted with it are true and correct. Moreover, the applicant has not submitted evidence demonstrating her legal incapacity or inability to understand the documents she signed, or independent corroborative evidence establishing that she was a victim of the crime she and her family describe and was willing to assist in an investigation. 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 an EAD 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). See *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 Field Office 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, her spouse, and 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 parents are qualifying relatives 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.

Although the applicant asserts that the Field Office Director “exceeded the requirement of showing extreme hardship” in reviewing her section 212(i) waiver application, we find this argument unpersuasive. *Matter of Cervantes-Gonzalez* is used in cases involving waivers of inadmissibility as guidance for what constitutes extreme hardship and this cross application of standards is supported by the Board of Immigration Appeals (BIA). 22 I & N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the BIA, assessing a section 212(i) waiver of inadmissibility case, wrote:

Although it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion . . . [S]ee . . . *Hassan v. INS*, 927 F.2d 465, 467 (9<sup>th</sup> Cir. 1991) (noting that suspension cases interpreting extreme hardship are useful for interpreting extreme hardship in section 212(h) cases). These factors related to the level of extreme hardship which an alien’s ‘qualifying relative,’ . . . would experience upon deportation of the respondent.

And, *In Re Monreal-Aguinaga*, 23 I&N Dec. 56 (BIA 2001), a section 240A(b) of the Act, 8 C.F.R. § 240.20, cancellation of removal case, the BIA states:

We do find it appropriate and useful to look to the factors that we have considered in the past in assessing ‘extreme hardship’ for purposes of adjudicating suspension of deportation applications, as set forth in our decision in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). That is, many of the factors that should be considered in assessing ‘exceptional and extremely unusual hardship’ are essentially the same as those that have been considered for many years in assessing ‘extreme hardship,’ but they must be weighted according to the higher standard required for cancellation of removal. However, insofar as some of the factors set forth in *Matter of Anderson* may relate only to the applicant for relief, they cannot be considered under the cancellation statute, where only hardship to qualifying relatives, and not to the applicant, may be considered. Factors relating to the applicant himself or herself can only be considered insofar as they may affect the hardship to a qualifying relative.

Further, *In Re Kao-Lin*, 23 I & N Dec. 45 (BIA 2001), a suspension of deportation case, the BIA referred to the factors listed in *Matter of Anderson*, in making a determination of extreme hardship, stating in a footnote:

The standard for ‘extreme hardship’ that we apply in the present case is the same as that applied in cases dealing with petitions for immigrant status under section 204(a)(1) of the Act, 8 U.S.C. § 1154(a)(1) . . . as well as in cases involving waivers of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

Based on the foregoing, the record does not reflect that USCIS applied an improper standard in analyzing the factors of extreme hardship in the applicant’s case.

Addressing the hardship they would experience if the applicant were not with them in the United States, the applicant’s father indicates: he and his wife, the applicant’s mother, reside with the applicant, their son-in-law, and grandchildren, and by doing so, they have “greatly benefitted” from the applicant’s experience as a certified nursing assistant, as she monitors their medical needs and diet, takes them to their medical appointments, and drives them to various places to enjoy themselves; his medical conditions include atrial fibrillation, for which he was fitted with a pacemaker, and he experienced a stroke in 2013; his treating physician has recently informed him that his kidneys are not functioning well, and accordingly, has advised him to undergo blood tests to monitor his condition; he earns an hourly wage of \$9; he should not work because of his medical conditions, but he and his wife depend on the health insurance his employer provides, and the money he earns enables him to pay some of their bills. To corroborate her father’s testimony concerning his medical conditions, the applicant submits copies of several years’ worth of medical records, lab results, reports, and letters from his treating physicians, the most recent of which is dated April 14, 2014; the physician who signed the April 2014 letter indicates the applicant’s father currently suffers from anticoagulation, mild hypogonadism, and poorly controlled atrial fibrillation, and he is exhibiting symptoms of a pre-diabetic state and sleep apnea. The physician also indicates the applicant’s father’s medication dosage and diet need to be monitored. The physician further indicates the applicant’s father’s medical history includes the insertion of a pacemaker in 2013 upon suffering a small stroke; mild hypertriglyceridemia, mild micro albuminuria, and indications of early diabetes in 2010; and significant gastroesophageal reflux disease (GERD) in 2005.

The applicant’s mother indicates: the applicant and the applicant’s spouse take care of her medically, personally, and physically, and they help her and her spouse to pay their bills; she and her spouse would be lost without the applicant; her husband works fulltime and she “tries not to bother him,” so the applicant is her emergency contact; she calls upon the applicant whenever there is an emergency; and when her asthma becomes severe, the applicant takes her to the emergency room and listens to the physician’s instructions to remind her of the medications she needs to take. The applicant’s mother also indicates she used to work as a hotel housekeeper, but on July 11, 2013, she became very sick and passed out, so the applicant asked her to resign from her work because of her medical conditions. To corroborate her mother’s testimony concerning her medical conditions, the applicant submits several years’ worth of copies of medical records lab results, reports, and letters from her treating physicians, the most recent of which is dated April 14, 2014; the physician who signed the April 2014 letter indicates the applicant’s mother has multiple medical problems, including hypertension, poorly controlled asthma and GERD, and she is exhibiting symptoms of menopause, mild pulmonary restriction, and osteoporosis. The physician also indicates the applicant’s mother’s medical history includes an enlarged fatty liver, gallbladder associated pancreatitis, a hysterectomy, and intermittent hypercalcemia, and he indicates her medical care is fragmented because she has five different

physicians. He states stress is an aggravating factor in controlling her asthma, and her conditions limit her ability to assist herself and her husband with their respective conditions.

To demonstrate the financial difficulties they would experience in the applicant's absence, the applicant's parents indicate: in 2002 they filed for bankruptcy and, without continued support from the applicant and their son-in-law, they would be unable to pay for their mortgage and most of their bills; it would be difficult for the applicant and their son-in-law, who respectively work as a medical records clerk and a shipment specialist, to find work in the Philippines and support them from there, because the applicant and her spouse do not have ties to social or employment networks, and the Philippines has a high unemployment rate and age discrimination; and they are unable to depend on the applicant's two brothers, as one is irresponsible and the other is married with a newborn daughter and works fulltime. To corroborate her parents' statements, the applicant submits employment letters, earning statements, and tax documents.

The record establishes the applicant's parents have been treated for chronic health conditions. However, the record does not contain evidence of their mortgage, bankruptcy, or current financial obligations or of the applicant's father's income and inability to support himself or his spouse in the applicant's absence. The record does not contain any evidence of employment or labor conditions in the Philippines, demonstrating the applicant's inability to support her parents. Moreover, the record does not include evidence of the applicant's spouse's income and any financial support he and the applicant provide to her parents. 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)). Further, the most recent financial document submitted in the record is an employment letter dated December 7, 2009, indicating the applicant earns a weekly income of \$478.40. Without further information, we are not in a position to reach a different conclusion concerning the severity of any hardships that may be related to the applicant's parents' circumstances.

Therefore, though the record is sufficient to establish the applicant's parents may experience a degree of hardship in the applicant's absence, the evidence, considered in the aggregate, does not establish the applicant's parents would suffer extreme hardship as a result of separation from the applicant.

We note the Field Office Director's decision and the applicant do not address the hardship the applicant's parents would experience if they were to relocate to the Philippines to be with her because of her inadmissibility. However, the applicant's parents indicate that they are especially worried about the applicant's children relocating, as: the United States is the only place they have known since their arrival in May 2002; and they would face a life of poverty, unemployment, high levels of pollution, and loneliness as they would be separated from family members and friends. As noted previously, the applicant's children are not qualifying relatives under section 212(i) of the Act, and the record does not sufficiently show how hardship to them would affect the applicant's qualifying relatives, her U.S. citizen parents.

Moreover, the record reflects the applicant's parents are natives of the Philippines, and accordingly, should have minimal difficulties acclimating to the Filipino culture. The record further lacks information concerning social, political, medical or economic conditions in the Philippines that would

impact the applicant's parents' ability to return there. And, as mentioned previously, the record does not include evidence of labor or employment conditions in the Philippines to show whether the applicant would be able to financially support her parents there.

We thus conclude that were the applicant's parents 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 they would suffer extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's qualifying relatives, 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 parents as required under section 212(i) of the Act. Although the applicant indicates in her appeal that she has resided for more than 12 years in the United States, where she maintains strong personal, professional, and social ties, she has not established extreme hardship to qualifying family members. Therefore no purpose would be served in determining 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.