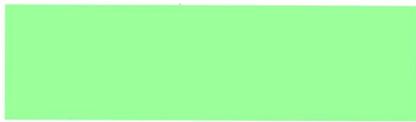


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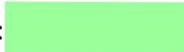


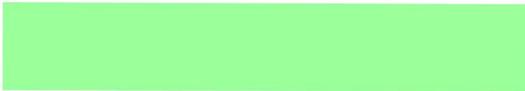
U.S. Citizenship
and Immigration
Services



DATE: JAN 27 2015

Office: SACRAMENTO

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Sacramento, California. 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 Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

The Acting Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Acting Field Office Director*, dated March 19, 2014.

On appeal, counsel asserts that the Acting Field Office Director erred in denying the Form I-601; the findings of the Acting Field Office Director are contrary to existing jurisprudence; the Acting Field Office Director failed to consider all of the hardship evidence cumulatively; and the Acting Field Office Director disregarded relevant evidence. *Form I-290B, Notice of Appeal or Motion*, filed April 18, 2014.

The record includes, but is not limited to, counsel's brief, statements from the applicant and his spouse, a psychological evaluation and medical records of the applicant's spouse, financial records, photographs, and country-conditions information about the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant presented a Philippines passport and U.S. visitor's visa with a false name, [REDACTED] when procuring admission to the United States on November 26, 1988. He is therefore inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through willful misrepresentation of a material fact. The applicant does not contest this ground of inadmissibility.

The record also reflects that the applicant was convicted of retail theft on May [REDACTED], under former 720 Illinois Statutes 5/16A-3. We will not address whether this is a crime involving moral turpitude resulting in inadmissibility under section 212(a)(2)(A)(i)(I) of the Act and necessitating a section 212(h) waiver, as fulfillment of the requirements of a section 212(i) waiver in this case would satisfy the requirements for a waiver under section 212(h) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative, in this case 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 (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Counsel provides a lengthy discussion of case law related to extreme hardship. We will adjudicate the applicant's case under relevant case law addressing the extreme hardship standard. 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.

We will first address hardship to the applicant’s qualifying relative upon relocation to the Philippines. The applicant’s spouse, a native of the Philippines, states that she has been in the United States since 1995; nearly all of her immediate relatives live in the United States; her social and professional ties are in the United States; and she works as a registered nurse. The applicant’s spouse states that she will be separated from her daughter, mother, father and brother, who are in the United States. According to her psychological evaluation, she is worried about how her daughter would suffer in the Philippines; she states that her daughter’s friends all are in the United States, she attends a private school, and she has no acquaintances in the Philippines. She also states that her lawful permanent resident parents reside with her; they rely on her support “heavily”; she provides for them financially; and they would be affected by her relocation

Addressing the medical hardship she asserts she would experience if she were to relocate to the Philippines, the applicant’s spouse states that she was diagnosed with hypertension in 2007 and is experiencing vertigo; she has been prescribed medication for these issues; and she would lose her employment-based health insurance if she left her position and left the United States. Documentary evidence in the record shows she has health insurance and was diagnosed with hypertension and vertigo in 2007. The applicant’s spouse also cites to a U.S. Department of State report stating that

although “ [a]dequate medical care is available in major cities in the Philippines, . . . even the best hospitals may not meet the standards of medical care, sanitation, and facilities provided by hospitals and doctors in the United States.”

With respect to the financial hardship she would experience if she were to relocate to the Philippines, the applicant's spouse states that the country is facing “an economic crunch” due to currency devaluation, with “mass layoffs” due to the closing and downsizing of businesses; the market and political situation are unstable due to upcoming presidential elections; the current minimum wage is \$7.18 per day; she would not be able to work due to her age; and their family of three could not survive on a monthly salary of \$222. The record includes several articles related to economic conditions in the Philippines, although some of the articles date to 2001.

In addition, the applicant's spouse states that she is afraid to live in the Philippines due to “political and social conditions” and the high crime rate. She states that an extremist group, [REDACTED] “has been targeting U.S. citizens and other foreign nationals, even in Manila.” She cites to U.S. Department of State country-specific information detailing safety issues, including terrorism and kidnapping. The record includes articles related to killings in [REDACTED] and about [REDACTED] although some of the articles are several years old. According to the November 20, 2014 U.S. Department of State Travel Warning for the Philippines, U.S. citizens are warned “of the risks of travel to the Philippines, in particular to the [REDACTED] the island of [REDACTED], and the southern [REDACTED] area.”

The psychologist who evaluated the applicant's spouse in September 2013 states that relocation to the Philippines would be “a stressor that will increase [her] level of psychiatric symptoms.” The psychologist also states that the applicant's spouse meets the criteria of adjustment disorder with symptoms of depressed and anxious mood and loss of concentration.

The record reflects that the applicant's spouse has close family ties in the United States and she may experience some emotional and psychological hardship on account of her separation from her family members upon relocation. She also likely would experience emotional hardship related to the hardship her daughter would experience in the Philippines. Concerning her claimed medical issues, the record does not reflect the severity of her condition and lacks sufficient evidence to show that she could not receive suitable treatment in the Philippines. The record, moreover, does not include documentary evidence of financial hardship to the applicant's spouse, other than normal financial hardship upon relocation. With respect to safety issues, the record does not establish where the applicant's spouse would relocate and that this area is dangerous. Based on our review of the record, we find that there is insufficient documentary evidence of emotional, financial, medical or other types of hardship that, considered in their totality, establish that the applicant's spouse would experience extreme hardship upon relocation to the Philippines.

Addressing the hardships the applicant's spouse would experience if she remained in the United States without him, the applicant's spouse states that after she learned her ex-spouse had an affair, she went into a severe state of depression; she did not have a serious relationship for fear of being hurt until she met the applicant; she has never been happier in her life; she would not be able to

survive separation from the applicant; and she does not want to be hurt again. The psychologist who evaluated the applicant's spouse states that the applicant's spouse experienced a major depressive episode after she learned of her ex-spouse's infidelity, and she faces a greater risk of having a depressive episode triggered by separation from the applicant. The applicant's spouse was diagnosed with adjustment disorder with mixed anxiety and depression.

Regarding the financial hardship she would experience if she remained in the United States without the applicant, the applicant's spouse states that her expenses would increase. She states that she earns around \$8,271 a month and the applicant receives around \$2,310 a month; they have numerous monthly expenses amounting to approximately \$5,044; she would have to support the applicant as he will not find employment in the Philippines that would permit him to support himself; and she would have new expenses caused by their separation, namely counseling, airfare and phone bills. The applicant's spouse's 2012 Form W-2 reflects her income that year was \$87,985.11. The record also includes numerous bills for the applicant's spouse indicating that she pays for their household bills in a timely manner.

The record reflects that the applicant's spouse would experience a degree of emotional and psychological hardship without the applicant, particularly given her past experiences. The record does not include sufficient documentary evidence, however, to establish that she would experience financial hardship without the applicant, because the record reflects that she earns most of the family's income. The record lacks evidence of the applicant's financial contributions to the family and does not establish that he would be unable to find employment in the Philippines, as his spouse asserts. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would experience extreme hardship upon remaining in the United States.

The documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, we find that no purpose would be served in discussing 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.