



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 30 2015**

FILE:

APPLICATION RECEIPT:

IN RE: Applicant:

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 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago Field Office, denied the application. 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated September 30, 2014.

On appeal the applicant contends that USCIS erred by failing to fully evaluate all the evidence of hardship to her spouse. With the appeal the applicant submits a statement, a psychological assessment of the applicant's spouse, medical documentation for the applicant's spouse, and financial documentation. The record contains statements from the applicant and her spouse; medication documentation for the applicant's spouse; financial documentation; letters of support from applicant's employer, coworkers, and friends; and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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:

- (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:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 entered the United States as a B-2 visitor in May 2007 with her then-spouse, subsequently divorced, and married her current spouse in August 2009. The field office director determined that on her I-485 adjustment application, submitted on December 3, 2009, the applicant indicated that she had never been arrested, cited, charged, or indicted for violating any law; that at an interview on April 6, 2010, she confirmed that information on the form was correct; and that at an interview on April 1, 2014, the applicant stated that she had never been cited, indicted, or charged with committing a crime or offense. The field office director determined that as the applicant had been implicated in criminal activity in the Philippines which she failed to disclose, she was inadmissible for attempting to gain admission by misrepresentation. On appeal, and in a previous statement dated June 16, 2014, the applicant states that she initially thought that questions about arrests referred only to the United States and that she had never been arrested anywhere. The applicant states that when asked about accusations in the Philippines she understood the questions to be only about convictions. The applicant states that she and her former spouse took part in an investment plan from 2004 to 2006 and that she was a victim who lost her life savings. She states that other investors thought she was involved in the scheme and that she then received threats, so she left the country on May 1, 2007. She states that she learned through a Philippine newspaper in 2008 of a case filed against her and hopes to have it dismissed through an attorney in the Philippines.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . 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 a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

The issue becomes whether the applicant's actions constitute a willful misrepresentation of a material fact that would render her inadmissible under section 212(a)(6)(C)(i) of the Act. Here we find the applicant's contention that she misunderstood questions to be unpersuasive. She states that she became aware of charges against her from news accounts in 2008, however her adjustment application was submitted in 2009 and her interviews were in 2010 and 2014. Part 3 of Form I-485 contains the question: "1. Have you ever, in or outside the United States: b. Been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violation any law or ordinance, excluding traffic violations?" The record of sworn statement at the applicant's April 2014 interview shows that the interviewing officer clarified that questions applied to events inside and outside the United

States, and included whether the applicant had ever been cited, indicted, or charged with committing a crime or offense. The record shows that during her adjustment interview and in subsequent statements, the applicant noted that she has an attorney representing her in court in the Philippines, indicating that she was aware of criminal proceedings against her at the time of her adjustment application and interviews. By failing to disclose criminal proceedings against her, the applicant attempted to shut off a line of inquiry relevant to her eligibility. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). We concur with the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) 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. 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 asserts that her spouse is at an advanced age with medical problems, including depression, for which he takes medication. She states that her spouse is dependent on her to manage the household as he is developing dementia and suffers from anxiety, depression, and insomnia, and that she gives him medication and provides a good diet. She states that together they are involved in the Filipino community and their family church.

The applicant’s spouse states that he and the applicant have a lot in common, that they spend time with the community and friends, and that they attend senior citizen club events and church activities. He states that he suffers from hypertension, depression, and arthritis and is under the care of a doctor who prescribed anti-depressant medication and pills to sleep. He states that without the applicant he would be alone with no one to care for him, so his depression and insomnia would worsen.

An October 2014 psychological assessment of the applicant’s spouse states that he depends on the applicant and will be devastated without her. It refers to the spouse as overwhelmed, anxious, and exceedingly worried, and states that stress causes neck, shoulder, and back pain, muscle spasms, erratic appetite, and inconsistent sleep. The report states that the spouse describes his father as abusive and reports that after his father left the family, he took care of his mother and younger siblings. It states that the spouse’s first wife became depressed and the marriage suffered, and that after his failed first marriage he does not want to lose the applicant or his children. It states that the

applicant and her spouse share chores, go to church, and visit his children and grandchildren on weekends. According to the evaluation the spouse reports being forgetful and states that his mind does not function properly and the applicant makes him feel special and no longer alone. It states that if they separated he would feel like his world is falling apart, and that he cannot sleep thinking of street crime in the Philippines and worrying about danger to applicant.

Statements by the applicant and her spouse and the report provided do not establish that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible. We recognize that the applicant's U.S. citizen spouse will endure some emotional hardship as a result of long-term separation from the applicant. However, his situation if he remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

Medical documents dated October 20, 2014, indicate that the applicant's spouse was diagnosed with memory loss and hemorrhage of the rectum and anus for which he was referred to gastroenterology. Other submitted medical records describe additional medical examinations and laboratory results and indicate that the applicant's spouse has been prescribed an anti-depressant. However, the record contains no letter or statement from a treating physician about the seriousness or a prognosis for any medical condition that the applicant's spouse has or how any treatment would require the applicant's physical presence in the United States.

The applicant and her spouse assert that the spouse depends on the applicant's income to supplement his income to pay debt and mortgages. The spouse states that without the applicant he would have to pay someone to do what she does for the household, and he would have to help support her in the Philippines, but cannot support another household with his current wages.

Financial documentation submitted to the record includes bank statements, a quit claim deed, auto loan and insurance documentation, and a utility bill. From these documents it appears the applicant's spouse earns more than double the applicant's income, but no additional documentation has been submitted establishing the spouse's current expenses, assets, and liabilities, including mortgage payment, or his overall financial situation to establish that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship. There is insufficient evidence to establish that the applicant's spouse would be unable to meet his financial obligations or that he would experience a financial hardship which rises above what is common. Further, it has not been established that the applicant would be unable to support herself in the Philippines, thereby ameliorating the hardships referenced by the applicant's spouse with respect to having to maintain two households.

We find that the record fails to establish that the applicant's spouse would suffer extreme hardship as a consequence of being separated from the applicant. 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 also find the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Philippines, his native country. The psychological evaluation states that the applicant needs to be near doctors to treat and monitor his conditions of shortness of breath, rapid heartbeat, and high cholesterol. The applicant and her spouse assert that the spouse would lose medical insurance, that he could not afford medication, and that he would not receive the same quality of medical care as in the United States. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's spouse suffers from such a condition and the applicant has not submitted evidence that her spouse would be unable to obtain adequate health care in the Philippines.

In their affidavits the applicant and her spouse state that in the Philippines the spouse would be unable to work as a postal worker and that he fears crime there as people with U.S. connections are kidnapped for ransom or robbed. However, the applicant has not submitted any country condition evidence and fails to address where she would live if she returned to the Philippines, and therefore fails to establish that economic and safety concerns would rise to the level of extreme hardship for her spouse. We note that the U.S. Department of State has issued travel warnings for the Philippines, specifically the Sulu Archipelago and regions of the island of Mindanao. *See Travel Warning-U.S. Department of State*, dated May 20, 2015. A warning dated October 28, 2014, notes that crime is a concern in the Philippines and that kidnap-for-ransom gangs have targeted foreigners, including Filipino-Americans, with such gangs especially active in the Sulu Archipelago of the southern Philippines. It is not clear where the applicant would reside in the Philippines, but from documentation in the record the applicant appears to be a native of [REDACTED] and the applicant's spouse from [REDACTED], not the areas noted in travel warnings.

The applicant and her spouse state that the spouse would lose his family home and that the spouse's children, stepchildren, extended family, and network are in the United States. Although we acknowledge the spouse would face hardship leaving his family if he were to relocate to the Philippines, evidence in the record does not establish that this hardship would rise to the level of extreme.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Although we are not insensitive to the spouse's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law.

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.

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NON-PRECEDENT DECISION

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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.