



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JUN 22 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,

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Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark 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 his lawful permanent resident spouse.

The field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director* dated September 27, 2014.

On appeal the applicant contends that USCIS erred by not considering all the factors of hardship in the aggregate and that his situation is similar to others where waivers were approved. With the appeal the applicant submits a statement, financial documentation related to the applicant's mortgage and medical treatment for his spouse, and copies of previous AAO decisions on unrelated cases. The record contains statements from the applicant, his spouse, and his son; medical documentation for the applicant's spouse; a letter of support from the applicant's pastor; country information for the Philippines; studies on the impact of separation on families due to immigration enforcement; 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme

hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The record reflects that on July 18, 1988, the applicant attempted to enter the United States using an altered passport in the name of another person. The applicant was subsequently deported to the Philippines on August 12, 1988, but re-entered the United States without inspection along the border with Canada in October 1988.¹ The applicant has not contested the field office director's finding that he is inadmissible for misrepresentation.

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).

¹ The decision of the field office director states that the applicant entered the United States in October 2008, but that appears to be an error. Other evidence in the record indicates the correct date is October 1988.

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.

In statements dated July 8, 2011, the applicant and his spouse note that they have been married since 1984 and that separation would mean loss of consortium and betrayal of their pledge to be one. In his statement dated July 8, 2011, the applicant’s son states that they are a close knit family, pursuant to Filipino values, and that his mother would suffer if separated from his father. On appeal the applicant reiterates that separation from him would be emotionally difficult for his spouse.

The statements by the applicant, his spouse, and their son provide no detail concerning any emotional hardship the applicant’s spouse would face due to separation from the applicant and the record contains no supporting evidence concerning the emotional hardship they state she would experience, the severity of such hardship, the effects it would have on her daily life, or how such emotional hardship is outside the ordinary consequences of removal. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

In the son’s statement he asserts that his mother has medical conditions and needs his father for support and to watch over her. A letter from the spouse’s physician, dated May 7, 2012, states that the spouse was being treated for a neck, upper back, and shoulder condition, and a letter from the same physician dated July 8, 2011, notes that the spouse was being treated for lower back pain and

was recommended to receive physical therapy three times a week. Medical documentation shows that the applicant's spouse had an MRI procedure of her lumbar spine on June 4, 2010. Medical billing documents show that the applicant's spouse had medical visits in 2006, 2007, 2009, 2011, 2012, and 2013, including unspecified surgery on May 27, 2009, and August 15, 2011. However, the record does not include an explanation from the treating physician of the seriousness of the spouse's current condition, a prognosis, or how any treatment requires the applicant's physical presence in the United States.

On appeal the applicant asserts that he contributes more than 50 percent of the household income and makes the mortgage payments for their primary residence. In statements dated July 8, 2011, the applicant and his spouse assert that the spouse's salary alone would not suffice to pay the mortgage and other debts and cover household expenses. The applicant asserts that if he were in the Philippines he could not contribute financially even if he found gainful employment because the average income is so low. In a previous waiver application the applicant asserted that if he returns to the Philippines while his spouse remains in the United States she would likely provide for two households.

Financial documents submitted to the record include a property deed dated April 13, 1998, mortgage information, income tax documentation, property tax bills from 2004 and 2012, homeowners insurance renewal from 2012, auto insurance billing from 2011, a bank statement from February – March 2012, and health insurance benefits statements that show the applicant is covered by his employer and that his policy includes his spouse. Tax information submitted to the record indicates that in 2011 the spouse's annual wages were about \$53,000 and the couple's total annual income was \$124,000. Information for 2009 shows that the spouse contributed about \$50,000 of the couple's \$108,000 total income.

Although documentation shows the applicant contributes slightly more than half of the household income, other than a mortgage statement, two property tax bills, a homeowners insurance renewal, and an auto insurance quote, no documentation has been submitted establishing the spouse's current expenses, assets, and liabilities or her overall financial situation. The record contains insufficient evidence to establish that the applicant's spouse would be unable to meet her financial obligations or that she would experience financial hardship which rises above what is common without the applicant's physical presence in the United States. It has also not been established that the applicant would be unable to support himself while in the Philippines, thereby ameliorating the hardships referenced with respect to the spouse having to maintain two households.

We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. We recognize that the applicant's spouse will endure some hardship as a result of separation from the applicant. However, her situation, if she 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.

We also find the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate to the Philippines, her native country, to reside with the applicant.

On appeal the applicant states that the entire family of his spouse are residents of the United States and that by relocating the spouse would also leave her community and church. In support of the waiver application the applicant asserted that healthcare is a problem in the Philippines, stating that according to country conditions reports, there was one doctor per 1,000 residents as compared to three per 1,000 in the United States. He noted that his spouse and son get health benefits through his employer, that his spouse's chronic lower back pain requires medical attention, and that health care is not provided in the Philippines by the government or private employers.

According to the U.S. Department of State, adequate medical care is available in major cities in the Philippines, but even the best hospitals may not meet the standards of medical care, sanitation, and facilities provided by hospitals and doctors in the United States. *U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Philippines*, dated October 28, 2014. 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 or that she would be unable to obtain care in the Philippines.

The applicant asserts that he and his spouse would be unable to find employment in the Philippines. In their 2011 statements the applicant and his spouse assert that if the spouse returns to the Philippines she would have difficulty finding a viable job at her age, to the detriment of her lifestyle. The applicant submits country information showing that salaries are low in the Philippines, that in 2010 about 32 percent of the population was below the poverty line, and that there is a wide gap between the richest and poorest groups. Although the applicant submitted country information showing levels of poverty in the Philippines, there is no indication that the applicant and his spouse do not have transferable skills they could deploy in the Philippines. Documentation on the record does not provide information about the spouse's current employment duties and responsibilities and does not establish that the applicant and his spouse would be unable to obtain gainful employment to maintain the spouse's standard of living if she relocated to the Philippines.

The applicant and his spouse further assert that the spouse would face safety hazards in the Philippines and point out that U.S. residents have been kidnapped for ransom. The applicant has submitted 2010 news reports of possible terrorist activities in the Philippines. The U.S. Department of State has issued travel warnings for the Philippines, notably in the [REDACTED] and certain regions of the island of [REDACTED]. See *Travel Warning-U.S. Department of State*, dated May 20, 2015. A warning issued on October 28, 2014, noted 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 [REDACTED] of the southern Philippines.

These reports describe general country conditions concerning crime, primarily in 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 an area just north of [REDACTED], not the areas specifically noted for possible terrorist activity or kidnapping of foreigners. The submitted

country conditions information fails to establish that the applicant's spouse would be at risk if she were to relocate to reside with the applicant.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); see also *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

Although we are not insensitive to the spouse's situation, the record does not establish that the hardship she 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.

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.