



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-N-D-G-

DATE: OCT. 22, 2015

APPEAL OF NEW YORK DISTRICT OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of the Philippines, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The District Director of the New York District Office denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a visa and subsequent admission into the United States by fraud or willful misrepresentation of a material fact. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her U.S. citizen spouse. She filed a Form I-601 pursuant to section 212(i) of the Act in order to remain in the United States.

In a decision dated April 2, 2014, the Director determined that the Applicant had not established that extreme hardship would be imposed on a qualifying relative. The Form I-601 was denied accordingly.

On appeal, the Applicant indicates that her nonimmigrant visa application response that she was never married was not material to her visa eligibility because she did not consider herself to be married and did not intend to join her U.S. citizen spouse in the United States. She states that she is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act. In the event that she is found to be inadmissible, the Applicant asserts that the cumulative evidence in the record demonstrates that her spouse would experience extreme emotional hardship if she is denied admission into the country. In support, the Applicant has submitted a brief. The entire record was reviewed and considered in arriving at a decision on the appeal.

The Applicant also cites to non-precedent AAO decisions to support the assertion that her spouse will suffer extreme hardship if she is denied admission into the country. We note that while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. We note further that each application filing is a separate proceeding with a separate record. 8 C.F.R. § 103.2. In making a

determination of statutory eligibility, we are limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

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

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.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation, and states:

(1) The Attorney General [now the 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 record reflects that in September 2008, the Applicant stated on a U.S. nonimmigrant visitor visa application that she was single. In addition, the Applicant indicated on the nonimmigrant visa application that she had no immediate family members, such as a spouse or parent, in the United States. The Applicant asserts that her statements do not render her inadmissible under section 212(a)(6)(C)(i) of the Act because she did not consider herself to be married and she did not intend to join her spouse in the United States as he was deployed at the time.

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.

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To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

- a. an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The U.S. Department of State Foreign Affairs Manual further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

DOS Foreign Affairs Manual, § 41.31 N. 3.4.

In the present matter, the record reflects that the Applicant married her spouse on [REDACTED] 2004. The record reflects that, at the time of their marriage, the Applicant's spouse was a U.S. lawful permanent resident who lived in the United States. The record reflects further that the Applicant's spouse did not move back to the Philippines after their marriage and that he became a naturalized U.S. citizen in [REDACTED] Georgia on June 29, 2006.

By misrepresenting that she was single on her September 2008 nonimmigrant visa application when she was in fact married to a U.S. citizen, the Applicant cut off a consular line of inquiry that would have revealed significant ties to the United States. Such knowledge could well have led to further questions regarding the Applicant's ties to her native country and her intentions in the United States and could have affected the consular officer's decision to approve the Applicant's nonimmigrant visa application. The record therefore supports the Director's determination that the Applicant procured a nonimmigrant visa and admission through fraud or willful misrepresentation of a material fact. Accordingly, 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 record establishes that the Applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant can be considered only insofar as it results in hardship to a qualifying relative. 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-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 of Immigration

Appeals (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 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 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., 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 v. I.N.S.*, 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

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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 the present case, the Applicant's qualifying relative is her U.S. citizen spouse. The Applicant asserts that her spouse will experience extreme hardship if she is denied admission into the United States and he remains here without her. She submits a psychological evaluation and statements from herself and her spouse to support her assertions.

The Applicant states that she and her spouse became close in October 2004, when he returned to the Philippines from the United States in order to attend his father's funeral. The Applicant indicates that when he visited the Philippines again in [REDACTED] 2004, they married. She indicates further that her spouse subsequently returned to his work in the U.S. Army and that they next saw each other in May 2005, when they spent two weeks together. The Applicant indicates that she and her spouse did not get along when they were together because he suffered stress related to combat experiences in the army. She states that, after May 2005, she and her spouse stayed in touch for a while, but then had no further contact until several years later. She maintains that they love each other very much despite not living together. The Applicant indicates further that her spouse feels responsible for the failure of their marriage and that he would suffer extreme hardship and serious trauma if he were unable to obtain permanent residency on her behalf.

The Applicant's spouse affirms the statements made by the Applicant in his own affidavit. He adds that he is currently in the U.S. Armed Forces and maintains that his post-traumatic stress disorder contributed to the deterioration of his marriage, and he asserts that although he and the Applicant are no longer together, he would experience sadness and suffering if his wife were unable to become a permanent resident of the United States.

In support, a psychological evaluation has been submitted. The evaluation reflects that the Applicant's spouse was interviewed by a licensed psychologist on May 15, 2013. The psychologist notes that stress related to trauma that the Applicant's spouse suffered during combat negatively affected his relationship with the Applicant. The psychologist further notes that the two reside apart but have a strong connection. He also notes the Applicant's spouse's sense of devotion to the Applicant and his desire to maintain some type of a connection with the Applicant. The psychologist contends that although the Applicant and her spouse live apart from one another, the Applicant's spouse cares about her, he feels guilt and responsibility for the applicant's welfare, and he wants her to have the opportunity to have a life in the United States. The psychologist concludes that the Applicant's spouse's military experiences led to a chronic post-traumatic stress disorder, which caused him distress and affected his interpersonal functioning, and that long-term separation from the Applicant would exacerbate his distress as well as his emotional suffering.

Although the psychologist states that the Applicant's spouse has post-traumatic stress disorder, the record lacks evidence to demonstrate how his symptoms have affected his daily functioning,. Further, the evaluation does not specify the hardships the Applicant's spouse will experience if his spouse were unable to reside in the United States. While we acknowledge the Applicant's spouse's

contention that he will experience emotional hardship were he to remain in the United States while his wife relocates abroad, the record does not establish the severity of this hardship or the effects on his daily life.

The record reflects that the Applicant and her spouse have never lived together and that they have seen each other only a few times since their marriage in 2004. The evidence does not demonstrate that the Applicant's spouse intends to live together with the Applicant in the future. The evidence also does not demonstrate that the Applicant's spouse is financially or otherwise dependent upon the Applicant. In addition, the evidence does not establish that the Applicant's spouse would experience emotional hardship that rises above the common results of removal or inadmissibility if the Applicant is denied admission into the country and he remains in the United States. Considered in the aggregate, the Applicant has not demonstrated that the cumulative effect of the hardships that her spouse would experience if he remains in the United States, rises to the level of extreme hardship.

The evidence in the record is also insufficient to establish that the Applicant's spouse would experience extreme hardship if he relocated to the Philippines with the Applicant. The evidence indicates that the Applicant's spouse does not intend to move with the Applicant to the Philippines; moreover, the Applicant and her spouse do not discuss any hardship that her spouse would experience if he relocated to the Philippines. The record lacks other evidence demonstrating how the Applicant's spouse would experience hardship if he relocated to the Philippines. The record is therefore insufficient to establish that the Applicant's spouse would experience hardship that rises beyond the common results of removal or inadmissibility if the Applicant is denied admission into the United States and her spouse relocates to the Philippines with her.

Upon review of the totality of the evidence, the Applicant has not established extreme hardship to a qualifying relative, as required under section 212(i) of the Act. Having found the Applicant ineligible for relief, we find no purpose would be served in discussing 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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-N-D-G-*, ID# 12922 (AAO Oct. 22, 2015)