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

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

MATTER OF F-M-

DATE: OCT. 23, 2015

APPEAL OF LOS ANGELES CALIFORNIA FIELD 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 Director of the Los Angeles, California Field 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 an immigration benefit by fraud. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his U.S. citizen daughter. He filed a Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) under section 212(i) of the Act, in order to reside in the United States with his U.S. citizen spouse.

In a decision dated October 6, 2014, the Director denied the Applicant's Form I-601 based on the determination that the Applicant did not establish that extreme hardship would be imposed on his spouse if she remained in the United States, or if she relocated with the Applicant to the Philippines.

On appeal, the Applicant asserts that he reasonably believed that his employment authorization document (EAD) was legally issued by the immigration service. He asserts that there is an insufficient basis for the Director's finding that he should have been aware of the unauthorized nature of his EAD, and he contends that he is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act. In the event that he is found to be inadmissible, the Applicant asserts that the evidence in the record demonstrates that his U.S. citizen spouse will experience extreme hardship if he is denied admission and she remains in the United States or relocates with him to the Philippines. In support of these assertions, the record includes, but is not limited to, statements from the Applicant's spouse and daughter, psychological assessment and financial evidence, country conditions information, and documentation establishing relationships and identity. The entire record was reviewed and considered in arriving at a decision on the appeal.

The Director's October 6, 2014, decision reflects that the Director also found that the Applicant failed to depart the United States after an immigration judge granted him voluntary departure on February 19, 2003, under the name, [REDACTED] The Applicant contests this finding on

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appeal, and the Director's finding is not supported by the evidence in the record. The record reflects that the Applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on May 23, 2011, and that the application was initially denied on July 1, 2011 on the basis that the Applicant failed to depart the United States after an immigration judge granted him voluntary departure on February 19, 2003. The Applicant filed a motion to reopen the matter on August 2, 2011, and upon review, U.S. Citizenship and Immigration Services (USCIS) reopened the Form I-485 on August 29, 2011, after determining that the Applicant was not the individual that was granted voluntary departure.¹ The finding that the Applicant failed to depart the United States after being granted voluntary departure is therefore not supported by the record.²

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, in pertinent part:

(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 the Applicant entered the United States as a B1 visitor on September 2, 2000, with permission to remain until October 1, 2000. On October 22, 2000, the Applicant obtained an EAD card.

The Applicant states in an affidavit dated July 25, 2011 that after arriving in [REDACTED] he "immediately contacted" a friend based in [REDACTED] who told him he could introduce the Applicant to a friend "who knows someone who can give me a work authorization issued by the immigration office." The Applicant states further that on September 4, 2000, he had a meeting with two women who told him they could find an employer to sign a petition for him and that the women charged him

¹ The reopened Form I-485 is the basis for the Applicant's current Form I-601 application.

² The Director's October 6, 2011, decision reflects that the Applicant was also found to be inadmissible pursuant to section 212(a)(6)(G) of the Act, 8 U.S.C. § 1182(a)(6)(G). This appears to be an error, as section 212(a)(6)(G) of the Act relates to individuals who violate a term or condition of their admission with a student visa. There is no explanation for the finding in the Director's decision, and the record does not otherwise reflect that the Applicant entered with a student visa or that he is inadmissible under section 212(a)(6)(G) of the Act.

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\$5000. The Applicant states that the women introduced him to a person who they said knew an immigration officer, and they gave his money to that person for processing of his work authorization. The Applicant states further that he went to the [REDACTED] immigration office several times to obtain his work authorization but was not able to get it, and he states that he returned to the office on October 22, 2000, waited there with three Filipino women until their names were called, and was issued an EAD card.

The Applicant asserts on appeal that, although he now knows that his EAD card was obtained improperly, the people who helped him obtain the document assured him that his work authorization was lawfully issued. The events surrounding the Applicant's acquisition of the EAD card reflect, however, that he should reasonably have known that the document was not obtained lawfully. The Applicant's immigration status when he arrived in the United States was that of a visitor with authorization to remain in the country for 30 days. The Applicant's arrangements for obtaining work authorization were made immediately upon his arrival in the United States and were all made through private individuals. The Applicant did not file a petition or application with the immigration service, and he never met the employer that he claims sponsored his employment petition. Upon review, the Applicant has failed to overcome the Director's finding that he procured an immigration benefit through fraud.

The record also reflects that the Applicant misrepresented a material fact when he entered the United States with a B1 nonimmigrant visitor visa. The Applicant indicates in his affidavit that after he arrived in the United States, he immediately contacted a friend about getting work authorization. The affidavit states that within two days of his arrival, the Applicant's friend introduced the Applicant to two women who told him they could find an employer to sign a petition for him for work authorization purposes. The Board of Immigration Appeals (BIA) had held that a misrepresentation is material if it "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." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1960; Att'y Gen. 1961). In procuring admission with a nonimmigrant visitor visa, the Applicant misrepresented his true intent, which was to remain in the United States and obtain employment. The Applicant thereby shut off a line of inquiry that was relevant to his eligibility for admission as a B1 nonimmigrant. Accordingly, the Applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission through willful misrepresentation of a material fact and requires a waiver of inadmissibility.

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-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 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*, 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

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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 his U.S. citizen spouse will experience extreme hardship if he is denied admission into the United States and she remains here without him. He submits statements from his spouse and daughter to support these assertions. He also submits a psychological evaluation and financial evidence.

We note that the record reflects that the Applicant was previously married in the Philippines. Although the Applicant states that he obtained a divorce from his first wife on [REDACTED] 2007, the record does not contain evidence of the divorce. It is therefore not clear whether the Applicant's current marriage to a U.S. citizen is valid, and thus whether, even if he established extreme hardship to his current spouse, she a qualifying relative for a section 212(i) waiver of inadmissibility.

The record contains references to hardship that the Applicant's 29-year-old daughter would experience if the waiver application were denied. Under section 212(i) of the Act, the Applicant's daughter is not a qualifying relative for the waiver, and hardship to her will not be separately considered, except as it may affect the qualifying relative.

The Applicant's U.S. citizen spouse states that she has had sleepless nights thinking about the Applicant's immigration situation. She states further that she would suffer emotional distress if she were separated from the Applicant due to "loss of companionship and other psychological hardships." She also states that she would experience financial hardship as a result of having to maintain two separate households. She states that the Applicant's daughter and grandchild would also experience hardship if they were separated from the Applicant; however, she does not state how their hardship would affect her.

The record contains letters from the Applicant's daughter discussing hardship that she and her family would experience if the Applicant were denied admission into the country, but she does not explain how this hardship would affect the Applicant's spouse. Financial evidence contained in the record pertains to the Applicant's daughter and also does not demonstrate how the Applicant's daughter's financial hardship would cause hardship to the Applicant's spouse.

In addition, the record contains an August 24, 2014, letter from a registered marriage and family therapist intern, supervised by a licensed marriage and family therapist. The letter reflects that the Applicant and his family began receiving family counseling services on July 13, 2014; that they attended six weeks of short-term counseling services; and that based on clinical observations during that time, "the family presented mental, emotional and psychosomatic signs that warrant a clinical diagnosis for adjustment disorder with mixed anxiety and depressed mood" due to the Applicant's immigration status problems. The letter reflects further that the Applicant's wife and daughter are struggling with anxiety and depressed mood with symptoms including excessive worry, nervousness,

headache, nausea, and difficulty sleeping due to issues that the family will face if the Applicant is denied permanent resident status.

While we acknowledge that the Applicant's spouse would experience emotional hardship upon separation from the Applicant, the evidence on the record does not establish the severity of this hardship or the effects on her daily life. The Applicant has not established that his spouse would experience emotional hardship that rises above the common results of removal or inadmissibility if he is denied admission into the country and his spouse remains in the United States.

Country conditions information contained in the record reflects that there is a high unemployment rate in the Philippines. The evidence does not, however, demonstrate that the Applicant would be unable to find work in the Philippines, that the Applicant's spouse would need to support the Applicant in the Philippines, or that the Applicant's spouse would otherwise experience extreme financial hardship if she remained in the United States.

Upon review, the evidence in the record is insufficient to establish that the Applicant's spouse suffers from emotional conditions that would cause her to experience extreme hardship if she remained in the United States, separated from the Applicant. The record also does not demonstrate that the Applicant's spouse is financially dependent upon the Applicant or that she would experience extreme financial or other hardship if she remained in the United States. Considering the evidence in the aggregate, the record does not establish that the Applicant's spouse would experience hardship above the common results of removal or inadmissibility if the Applicant is denied admission and she remains in the United States.

The evidence in the record is also insufficient to establish that the Applicant's spouse would experience extreme hardship if she relocated to the Philippines with the Applicant. The record reflects that the Applicant's spouse is a native of the Philippines and is therefore familiar with the language and culture of the country. The Applicant's spouse does not address any hardship that she would experience if she relocated to the Philippines. Letters from the Applicant's daughter also do not claim that the Applicant's spouse would experience hardship if she relocated with the Applicant to the Philippines. Moreover, the record contains no other evidence that addresses hardship to the Applicant's spouse upon relocation. Accordingly, the record does not demonstrate that the Applicant's spouse would experience hardships in the Philippines that would rise above the common results of removal or inadmissibility to the level of extreme hardship.

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. The Applicant has therefore 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.

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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 F-M-*, ID# 10628 (AAO Oct. 23, 2015)