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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H6

Date: **AUG 16 2012**

Office: MANILA, PHILIPPINES

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rnew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Manila, Philippines. 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking admission within ten years of her last departure from the United States. She was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her 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 was denied accordingly. *See Decision of the Field Office Director*, dated April 16, 2010.

On appeal, the applicant's attorney asserts that the Field Office Director erred by inadequately considering evidence in assessing extreme hardship in the aggregate and by finding the applicant's spouse is not experiencing extreme hardship.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); briefs written on behalf of the applicant; relationship and identification documents for the applicant, qualifying spouse and his parents; financial documentation; a declaration from the qualifying spouse; country conditions materials; a psychological evaluation of the qualifying spouse; photographs; an approved Petition for Alien Relative (Form I-130) and an Application for Immigrant Visa and Alien Registration (Form DS-230). The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

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

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:

- (1) The [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.

A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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 or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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. *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.

The record indicates that the applicant presented a multiple-entry visa on November 8, 2004 at Los Angeles International Airport, in a passport containing a fraudulent back-dated stamp in order to conceal her overstay in the United States. As a result, on the same day, she received an expedited removal order and was removed to the Philippines. The applicant had accrued over one year of unlawful presence between April 2002 and July 2003. Therefore, as a result of the applicant's

unlawful presence and misrepresentations, she is inadmissible to the United States under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act. The applicant has not disputed her inadmissibility.

The applicant must first establish that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant resides in the Philippines due to her inadmissibility. The applicant's attorney states that the qualifying spouse is suffering from psychological, emotional and financial hardships as a result of his separation from the applicant. With regard to his emotional and psychological hardships, the record contains a declaration from the qualifying spouse and a psychological evaluation. The qualifying spouse states that he is suffering from "emotional instability," a lack of focus, and a fear of not being able to live in the United States with the applicant. Further, the qualifying spouse indicates that he worries about the applicant's safety in the Philippines due to her Chinese ethnicity. The psychological evaluation indicates that the applicant's spouse is experiencing anxiety due to his separation from the applicant, and that his symptoms of anxiety would diminish if the applicant lived with him. According to the psychologist, the qualifying spouse reported that he was not exhibiting any "indicators of depression such as insomnia, changes in weight, appetite and energy level." The psychologist states that the applicant's spouse is at risk for symptoms that can become disabling, without specifying the symptoms that the applicant's spouse could experience. While it appears that the applicant's spouse is emotionally and psychologically struggling with his separation from the applicant, the record does not contain supporting documentation or details regarding the nature of the difficulties that he is facing and how such difficulties go beyond the ordinary consequences of relocation.

With regard to his financial hardship, the qualifying spouse indicates that his separation from the applicant has caused him financial hardship because he supports two households. He lives with his elderly parents, who are employed. The record contains financial documentation regarding the qualifying spouse's income, such as tax returns, wage and tax statements and pay stubs. However, the record does not contain documentation corroborating statements that the applicant financially supports the applicant in the Philippines or showing how he contributes to his household in the United States. 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)). Moreover, although the record includes financial documentation demonstrating the applicant's income, it lacks evidence documenting his expenses and financial responsibilities in the United States that would demonstrate that he is experiencing financial hardships. While we sympathize with the qualifying spouse's circumstances, the applicant failed to provide sufficient detail and documentation to demonstrate he is experiencing extreme hardship as a result of his separation from the applicant.

The applicant also failed to establish that her qualifying spouse, a native of the Philippines, would experience hardship upon relocation to the Philippines. The applicant's attorney indicates that the qualifying spouse's entire immediate family live in the United States. However, the record is silent regarding whether the qualifying spouse has other family in the Philippines. Further, the applicant's attorney asserts that the applicant has "negative job prospects" in the Philippines due to his limited education, a highly educated workforce and high unemployment in the Philippines. However, the applicant has not demonstrated that her spouse would be unable to find work if he relocates to the

Philippines, whether or not it is similar to his employment in the United States. Further, the applicant's attorney states that the applicant's spouse would suffer potential danger to his safety and health if he relocated to the Philippines. In particular, the applicant's spouse fears for his safety and the applicant's safety due to her Chinese ancestry. The record contains an article regarding the kidnappings of Chinese-Filipinos. However, the record does not include any evidence corroborating the applicant's spouse's statements that the applicant is of Chinese ethnicity. Assuming she is, however, the record lacks current reports and details that would permit finding that the applicant's marital connection to her spouse or the risks she faces would create hardship for him. With regard to health concerns, the applicant's attorney also indicates that a Department of State consular travel warning addresses the risks of U.S. citizens traveling to the Philippines. While the most current U.S. Department of State travel warning indicates that terrorism and security are still a concern in the Philippines, the warning does not describe safety concerns in the area where the applicant and qualifying spouse would reside, presumably Santa Cruz, Laguna. Lastly, the applicant's attorney contends that the applicant's spouse would face health concerns in the Philippines because of flooding and due to his loss of medical insurance. However, the record does not describe the impact of flooding on the applicant and lacks documentation regarding the health conditions related to flooding where the applicant and qualifying spouse intend to live in the Philippines. Moreover, although the applicant provided the qualifying spouse's pay stubs, which list deductions for different state programs, the record is unclear as to whether the qualifying spouse currently has medical coverage in the United States.

While it appears that the qualifying spouse has lived in the United States fifteen years and has family ties to the United States, considering the evidence in the aggregate, the applicant has not met her burden of demonstrating that her qualifying spouse will suffer extreme hardship in the event that he relocates to the Philippines.

In this case, 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 AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying spouse as required under sections 212(a)(9)(B) and 212(i) of the Act. 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 proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.