

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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



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



H6

DATE: **AUG 20 2012** OFFICE: **SAN FRANCISCO** FILE:

IN RE:

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

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 Rhew, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Francisco, California. The application 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 one year or more and seeking readmission within 10 years of departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen spouse. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse.

In a decision dated September 30, 2010, the Field Office Director concluded that the applicant did not meet her burden of proof to illustrate that her U.S. citizen spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant, states that the cumulative hardship to the qualifying relative is extreme. Counsel also stated on Form I-290B that a brief and/or additional evidence would be submitted to the AAO within 30 days; however, the record does not contain additional evidence submitted after the Form I-290B.

In support of the waiver application, the record includes, but is not limited to a statement from the applicant's spouse, biographical information for the applicant and her spouse, documentation regarding the applicant and her spouse's prior marriages, employment information for the applicant's spouse, letters of support concerning the applicant's spouse, financial records for the applicant's spouse, documentation of medical coverage, country conditions information concerning the Philippines, tax returns for the applicant's spouse, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more. Section 212(a)(9) of the Act provides:

(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.

...

(v) Waiver.-The Attorney General 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 to the satisfaction of the Attorney General 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record illustrates that the applicant was admitted to the United States on a K1 visa on June 20, 2002 with authorization to remain until September 19, 2002. The applicant married the petitioner on her fiancée visa and remained in the United States for a period of time, but she did not apply to adjust her status. As a result, the applicant accrued unlawful presence from the expiration of her period of authorized admission on September 20, 2002 until her departure on March 27, 2004. Counsel for the applicant states that the applicant may have been admitted for duration of status on June 20, 2002, but there is no support for that statement in the record. It is the applicant's burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. Additionally, counsel states that because the applicant married the petitioner on her K1 visa, she was not required to adjust her status, and, as a result, she did not begin to accrue unlawful presence. The AAO notes that while the applicant is not required to apply for adjustment of status, doing so would have stayed the accrual of unlawful presence in her case during the pendency of that application. The AAO notes that the proper filing of an affirmative application for adjustment of status has been designated as an authorized period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. See Memorandum by Lori Scialabba, Assoc. Director, Refugee, Asylum and International Operations Directorate and Pearl Chang, Acting Chief, Office of Policy and Strategy, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act*; (May 6, 2009). In this case, because the applicant did not seek to adjust or change her status, she accrued unlawful presence from September 20, 2002 until March 27, 2004, a period of one year or more. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within 10 years of her last departure. The AAO notes that the applicant was readmitted to the United States on September 23, 2009 as a B2 visitor for pleasure, and entered into her second marriage with a U.S. citizen on December 21, 2009, as such she did not remain outside of the United States for 10 years.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, as the spouse of a U.S. citizen. In order to qualify for this waiver, however, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. Hardship to the applicant or her stepchildren is not considered 212(a)(9)(B)(v) waiver proceedings unless it is shown to cause hardship to a

qualifying relative, in this case the applicant's spouse. 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 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 deportation, 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, 885 (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.

This matter arises in the San Francisco District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

On appeal, counsel for the applicant states that the applicant’s U.S. citizen spouse will suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. Counsel states that the applicant’s spouse will suffer from emotional and financial hardship as a result of separation from the applicant. In regards to the financial hardship that the applicant’s spouse will experience as a result of separation from the applicant, counsel states that separation would result in “a family fraught in maintaining double households, one in Philippines and one in the U.S.” Counsel also states that the applicant would not be able to earn enough income to “pay or share in the usual expenses for her husband...” The record does not reflect that the applicant currently works or shares in the expenses for her husband. The record reflects that the applicant’s spouse “is a long standing employee of Standard Trust Deed/Residential Services Validated Publications (RSVP) in the capacity of System/Network Architect.” In a letter dated July 16, 2010, the controller for the company states that she does not anticipate any disruption to the applicant’s spouse’s employment in the foreseeable future. Additionally, a letter from the president of the company, dated February 18, 2010, states that the applicant’s spouse earns a base annual salary of \$120,510.00. There is no indication in the record that the applicant’s spouse requires the applicant’s assistance in paying or sharing in his expenses. Counsel for the applicant states that in the Philippines “the usual home maintenance expenses, food, clothing, insurance, and mobility” may “run to a monthly conservative cost of about \$1,000.” There is no indication in the record that the applicant’s spouse would suffer financial hardship as a result of that expense should he support the applicant if she were residing in the Philippines. The applicant’s spouse states that he would have to rent an

apartment, instead of continuing to reside at his current place of residence; but there is no other indication of the financial hardship that the applicant's spouse would suffer as a result of supporting his spouse in the Philippines. Counsel for the applicant also states that the applicant's spouse would suffer emotional hardship if he were separated from the applicant. She states that he needs the applicant "to make his life, at the very least, tolerable." And, that "only his wife's presence in the U.S. gives him his peace of mind." The AAO notes that the applicant and his spouse were married on December 21, 2009. There is no indication in the record of the applicant's spouse's emotional health prior to their marriage or the applicant's impact on her spouse's emotional health. The applicant's spouse has two teenage daughters from his previous marriage, to whom he says that he is very close. He also states that he has close personal relationships with "colleagues, neighbors, and coworkers." The record indicates that the applicant's spouse has a support system in the United States that predates his relationship with his spouse. The AAO recognizes the importance of family ties; however, the applicant's spouse continues to have strong family ties in the United States, most notably his children from his prior marriage. The AAO recognizes the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

In regards to the hardship that the applicant's spouse would suffer if he were to relocate to the Philippines, the record reflects that the applicant's U.S. citizen spouse is a native of the Philippines but has resided in the United States for 20 years. The record indicates that the applicant's spouse has long-time, stable employment in the United States and most notably, has legal, custodial, and financial responsibilities pertaining to his two minor children from his previous marriage. Because the applicant's spouse's prior spouse has primary physical custody of his children, it is not reasonable to believe that the applicant's spouse could relocate with the children to the Philippines. The record also indicates that the applicant's spouse lives in the same community as his children and maintains a very close relationship with them. As noted above, considerable, if not predominant, weight must be given to the hardship that will result from the separation of family members. *See Salcido-Salcido, supra; see also Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979) (the court explicitly stressed the importance to be given the factor of separation of parent and child). The applicant's spouse also has submitted evidence of his property ownership, business expenses, and other outstanding debt in the United States. Although financial hardship in and of itself would not amount to extreme hardship, the evidence considered in the aggregate, particularly the disruption to the applicant's spouse's obligations to his minor children upon relocation, establishes that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of

inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v), of the Act, be above and beyond the normal, expected hardship involved in such cases.

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 his qualifying relative as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.