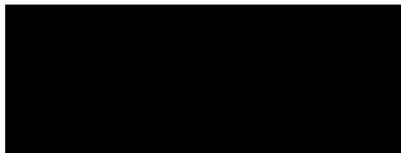


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

DATE: Office: MANILA, PHILIPPINES

FILE:

IN RE: **FEB 29 2012** Applicant:

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

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 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 Tonga who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a visa by fraud or willful misrepresentation of a material fact. The applicant's spouse, three children and two stepchildren are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, in the event that the qualifying relative remains in the United States, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated September 4, 2009.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship and the applicant merits a favorable exercise of discretion. *Form I-290B*, received October 6, 2009.

The record includes, but is not limited to, counsel's appeal and I-601 briefs, counsel's letter, the applicant's spouse's statements, the applicant's statement and medical letters. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant procured a B-1/2 visa on November 27, 2001 by misrepresenting his purpose in coming to the United States, his intended length of stay, his period of residence in Tonga prior to his visa application, his prior refused entry and the fact that he had family in the United States. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa to the United States by willful misrepresentation of material facts.

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

- (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:

- (1) 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.

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. Hardship to the applicant can be considered only insofar as it results in 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*, 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.

Counsel states that the applicant's spouse's son has cor pulmonare, chronic respiratory failure, urethral stricture, obstructive sleep apnea, achondroplasia and spinal stenosis; he lives at home; he is hospitalized frequently; and the applicant's spouse must take off work and stay with him during his hospitalizations. *Attorney Letter*, dated November 16, 2011. The record includes hospital records for the applicant's spouse's son. The physician for her son states that he is being treated for cor pulmonare, chronic respiratory failure, urethral stricture, obstructive sleep apnea, achondroplasia and spinal stenosis; he is on a variety of medications; he requires 24/7 care; he is wheel chair bound and is not able to perform most daily activities; and his sister and mother assist him at home. *Letter from [REDACTED]* dated October 29, 2009. The applicant's spouse details her numerous tasks related to caring for her son. *Applicant's Spouse's Statement*, dated October 30, 2009.

The record reflects that the applicant has been diagnosed with hypertension and diabetes; his condition is unstable; and he is being closely monitored in a physician's clinic. *Letter from [REDACTED]* dated May 4, 2010.

Counsel states that the applicant's spouse has lived in the United States since she was a little girl; she would lose her job if she relocated to Tonga; she is the guardian of a nephew; and her daughter lives with her. *Brief in Support of Appeal*, dated October 30, 2009. The applicant's spouse states that she is the sole support for her college age daughter; she has not lived in Tonga for over 30 years; she would have an inferior social life due to cultural reasons; she cannot obtain similar work in Tonga; United Airlines does not service Tonga so she would lose her seniority, benefits and salary; and her siblings and family live in the United States. *Applicant's Spouse's Statement*, dated March 13, 2009. The record includes documentary evidence of the applicant's spouse's lengthy employment with United Airlines and of her U.S. citizen family members. The record includes documentary evidence reflecting her active church membership, legal guardianship of her brother's son and home ownership.

The record reflects that the applicant's spouse has a son with very serious medical issues and she cares for him. She has resided in the United States for over 30 years; she has U.S. citizen family members in the United States; her daughter resides with her; she is the legal guardian of her nephew; she would lose long-standing employment; and she has family and community ties in the United

States. Based on these factors, and the normal results of relocation, the AAO finds that she would suffer extreme hardship upon relocating to Tonga.

The applicant's spouse states that she is best friends with the applicant; they have known each other for over 20 years; both of their spouses passed away from cancer; it is extremely difficult for her to care for her son by herself; her son needs a father's point of view; she needs emotional help; she is a single income parent who provides a home, healthcare coverage, tuition and medical needs for their children and it has been a financial struggle; she cannot continue full-time parenting without the applicant's help; and she fears it will be harder for her daughter to form a healthy father-daughter relationship the longer they are apart. *Applicant's Spouse's Statement*.

The applicant states that his spouse needs his help more than ever due to her son's medical issues; he is not able to help his spouse from [REDACTED]; he wants to support her financially; she is doing everything as a single parent; there is little chance that she can visit him; and having a job in the United States would allow his spouse to be home more with her son and allow his stepdaughter to go to school. *Applicant's Statement*, dated October 27, 2009.

Counsel states that the applicant's spouse is coping with being the sole provider for her family; she is suffering from the strain of separation; her son has become immobile and physically dependent on the applicant's spouse; she has very little support; her place of employment has been moved further from home; and she is solely responsible for supporting her family. *Brief in Support of Appeal*.

The record reflects that the applicant's spouse is experiencing some difficulty without the applicant. However, the record does not include sufficient documentary evidence of how much financial, or other assistance, the applicant could provide if he was in the United States, or of the current degree of financial and emotional hardship that the applicant's spouse may be experiencing. In addition, the record reflects that the applicant's spouse's daughter is 23 years old and it does not include sufficient documentary evidence of the financial or other support, if any, that the applicant's spouse provides for her. The AAO finds that the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse would suffer extreme hardship if she were to remain in the United States.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 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. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.