

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



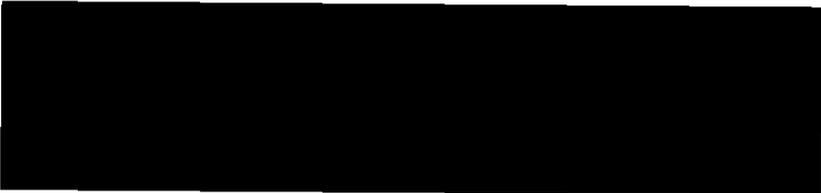
#6

DATE: NOV 03 2012 office: MANILA, PHILIPPINES File:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 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, 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. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 admission within 10 years of his last departure. He is married to a United States citizen, and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 5, 2010.

On appeal, counsel for the applicant asserts that the Field Office Director's decision failed to properly weigh the evidence in the record and was erroneous as a matter of law. *Form I-290B*, received on June 2, 2010.

The record includes, but is not limited to, counsel's brief; a statement from the applicant and his spouse; employment letters and pay stubs for the applicant's spouse; copies of mortgage statements for a property owned by the applicant's spouse and her brother; a psychiatric assessment of the applicant's spouse by [REDACTED] dated December 21, 2009; a progress statement concerning the applicant's spouse by [REDACTED] dated May 14, 2010; country conditions and background materials on the Philippines, including reports on poverty, unemployment and a Travel Warning by the U.S. Dept. of State; copies of credit card bills, car payments and utilities invoices in the applicant's spouse's name; and copies of documents related to the applicant's prior removal proceeding. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

(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.

....

The record indicates that the applicant entered the United States in D-2 crewman status, with authorization to remain until January 10, 2003. The applicant remained in the United States beyond his authorized period of stay until he voluntarily departed on July 16, 2008. Therefore, the applicant was unlawfully present from January 11, 2003, until July 16, 2008, a period over one year, and is now seeking admission within 10 years of his last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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] 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.

A waiver of inadmissibility under section 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-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 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.

On appeal, counsel for the applicant asserts that the applicant’s spouse will experience extreme hardship both upon separation and relocation. *Brief in Support of Appeal*, received June 29, 2010. Counsel asserts that the applicant’s spouse has assimilated to the United States, has immediate family and community ties in the United States and no significant ties to the Philippines. He asserts the applicant’s spouse would be unable to find gainful employment in the Philippines, would experience hardship due to the social, economic and political climate there and would not be able to pay off her debts or maintain her property in the United States. Counsel further asserts that the applicant’s spouse would lose her health insurance benefits and fall into the category of those living beneath the poverty line in the Philippines.

The applicant's spouse has submitted a statement asserting she has strong family and community ties to the United States, that she would be unable to find gainful employment and would fall into the category of unemployed and living below the poverty line if she relocated. *Statement of the Applicant's Spouse*, dated January 28, 2010. She explains that she recently purchased a house with her brother, and has accrued other debts while residing in the United States which she would be unable to pay if she relocated to the Philippines. She asserts that, without being a registered nurse, she would be unable to compete for a job in the Philippines because it is saturated with health care workers.

The applicant has documented the country conditions of the Philippines with copies of articles and reports discussing poverty, unemployment, crime and the political events. The record also contains copies of the U.S. State Department's Background Note on the Philippines, and a Travel Warning from February 24, 2010, urging caution for American citizens traveling on the Southern islands of the Mindanao and the Sulu Archipelago.

While these submissions establish that the Philippines has a lower quality of life than the United States, and that the country has national issues such as unemployment, poverty and terrorism, the applicant has not established how these circumstances would directly affect his spouse. The applicant has not indicated that his wife would have to reside in areas threatened by terrorist activities, or in an area experiencing high unemployment. The applicant's spouse claims she has lost contact with her neighbors and relatives in the Philippines, yet the applicant has not shown that his spouse would be without community or family support in the Philippines. As noted by the applicant's spouse in her letter, she has uncles, aunts and cousins who reside in the Philippines, indicating that she still has some family ties to the Philippines. Based on these observations the AAO does not find that the applicant's spouse will experience any uncommon acculturation impacts upon relocation to the Philippines. Nonetheless, the AAO will give some consideration to the applicant's spouse's community ties when aggregating the impacts on her due to relocation.

The record contains evidence of the applicant's spouse's financial assets and credit card debt, as well as evidence that she has been stably employed in the United States as a health care worker. There is no evidence specifically supporting that she receives health care benefits from her employment.

The hardship factors impacting the applicant's spouse upon relocation include the family and community ties the applicant's spouse has in the United States, to some extent the economic and social conditions in the Philippines and the financial impact of losing her U.S. employment and any associated benefits and loss of U.S. assets. While the record does not support extreme hardship based on any one factor, when these hardship factors are considered in the aggregate, the AAO finds them to rise above the common impacts of relocation to the degree of extreme hardship.

With regard to hardship upon separation, counsel for the applicant asserts the applicant's spouse will experience emotional and financial hardship if she remains in the United States without the applicant. *Brief in Support of Appeal*, received June 10, 2010. Counsel explains that the applicant's spouse has been diagnosed with Major Depression and prescribed medication.

The record contains a psychiatric evaluation of the applicant's spouse by [REDACTED] [REDACTED] examines the applicant's spouse's emotional symptoms and diagnoses her with Major Depressive Disorder. A subsequent progress note by [REDACTED] lists prescriptions for anti-depressant medication. Based on this evidence the AAO can conclude that the applicant's spouse will experience some emotional hardship due to separation.

The applicant's spouse asserts in a letter dated January 28, 2010, that she will not be able to maintain her financial obligations without the assistance of the applicant, and lists her expenses as a mortgage for a residential property, a car loan payment, financial support for the applicant in the Philippines and utilities and insurance expenses.

The record contains copies of a car loan payment, household utilities, insurance documents and phone bills. The mortgage statement submitted into the record is addressed to the applicant's spouse and her brother. In her statement, the applicant's spouse asserted that she had purchased the house with her brother. The record does not establish that the applicant's spouse has in fact made payments on the house owned with her brother, and the AAO is unable to determine whether her brother is making payments or is capable of making payments on the property.

Although the applicant's spouse has asserted that she would not be able to maintain her financial obligations without the applicant, the AAO notes that the applicant had no prior history of supporting her financially, making it unclear what impact his absence will have and the prospect of any employment speculative. When these facts are taken into consideration, the record does not indicate that the applicant's spouse will experience uncommon financial hardship.

The AAO does not find that the hardship factors related to separation, even when examined in the aggregate, rise above the common impacts of separation to a degree of extreme hardship. The AAO acknowledges that the applicant's spouse will experience emotional hardship if she remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

Although the record indicates the applicant's spouse would experience extreme hardship upon relocation, 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 relocation *and* the scenario of separation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad

with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, 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)(v) of the Act, the burden of proving eligibility rests 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.