



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **NOV 06 2013**

Office: SAN FRANCISCO, CA

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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:  
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Francisco, California, and 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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than one year. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

In a decision, dated March 21, 2013, the field office director found that the applicant failed to show that her spouse would suffer extreme hardship as a result of her inadmissibility. In support of her waiver application the applicant submitted: an affidavit, an affidavit from her spouse, an affidavit from friends, and medical documentation. Specifically, the field office director found that the documentation in the record failed to fully address how the applicant's spouse's medical conditions and the applicant's ability to financially support her spouse would cause him extreme hardship upon relocation to the Philippines. The field office director noted that no documentation regarding country conditions was submitted in support of the application. In regards to separation, the field office director found that the record failed to show that the applicant's spouse would not be able to obtain the care and support the applicant provides for him from another source. The waiver application was denied accordingly.

On appeal, counsel states that the applicant's spouse cannot relocate to the Philippines because his medical conditions do not allow him to travel by plane, he will not have access to proper health care, he is 80 years old, and he was born and raised in the United States. Counsel also states that the applicant would have no support or ability to find employment in the Philippines. Finally, counsel asserts that the applicant emotionally, physically, and financially supports her spouse while in the United States. Counsel submits a brief, photographs, and financial documentation to additionally support the record of hardship.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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 reflects that the applicant entered the United States on June 23, 2008, as a B2 visitor, with an authorized period of stay until December 21, 2008. The applicant departed the United States on October 28, 2009. On March 11, 2010, she then reentered the United States using her visitor's visa and was granted an authorized period of stay until September 10, 2010. On April 23, 2012, the applicant filed an application for adjustment of status. The applicant has not departed the United States. Inadmissibility under section 212(a)(9)(B)(i)(I) of the Act, which is triggered upon departure, remains in force until the applicant has been absent from the United States for three years. In the present matter, the applicant remained outside of the country for less than three years. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(I) of the Act. Counsel does not contest the applicant's inadmissibility. The applicant's qualifying relative is her U.S. citizen spouse.

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-González*, 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. *Salcido-Salcido v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 of hardship includes: counsel’s brief, an affidavit from the applicant, an affidavit from the applicant’s spouse, an affidavit from friends of the applicant, medical documentation, photographs, and financial documentation.

We find that the record establishes that the applicant’s spouse will suffer extreme hardship as a result of relocation, but does not show that the applicant would suffer extreme hardship as a result of separation. The applicant’s spouse is over 80 years old; he was born and raised in the United States and has no cultural ties to the Philippines; he has a sister living in very close proximity to him; and he suffers from emphysema, chronic respiratory failure, hypoxemia, and hypertension. Although the applicant has not submitted documentation to support claimed country conditions in the Philippines, we do note that the physician for the applicant’s spouse indicates that he cannot travel by plane, and the U.S. State Department reports that while adequate healthcare is available in urban areas of the Philippines, care for serious conditions generally can only be obtained at significant cost. U.S. Department of State, Bureau of Consular Affairs, *Philippines – Country Specific Information*

(October 31, 2013).<sup>1</sup> We find that due to the applicant's spouse's advanced age, familial and cultural ties to the United States, and his various medical conditions, including conditions which require him to be on oxygen, it would be an extreme hardship for him to relocate to the Philippines.

However, based on the current record, we cannot find that the applicant's spouse will suffer extreme hardship as a result of separation. The financial documentation in the record indicates that the applicant earns a net income of about \$1,000 per month as a home care provider and that the applicant's spouse had pension distributions of approximately \$6,500 in 2012. The couple's 2012 federal income tax return shows that they earned an income of approximately \$27,000 during that tax year. We recognize that the applicant earns a large portion of the couple's reported yearly income, but the record does not give a full picture of the applicant's spouse's financial situation. The record does not show that the applicant's spouse would not be able to support himself on his income and/or retirement benefits and that he would not be able to afford the care he would need in the applicant's absence. Furthermore, the applicant and her husband were married in March 2012 and the record fails to indicate that if they were separated, her husband would then suffer extreme emotional hardship. We note that the applicant's spouse and his sister live in the same apartment complex and the record does not show that she would be unable or unwilling to help her brother in the event he is separated from the applicant. Thus, we find that the current record does not show that the applicant's spouse will suffer extreme hardship as a result of the applicant's 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(s) in this case.

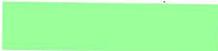
In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse 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 the applicant 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 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.

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<sup>1</sup> [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_999.html#medical](http://travel.state.gov/travel/cis_pa_tw/cis/cis_999.html#medical).

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*NON-PRECEDENT DECISION*

**ORDER:** The appeal is dismissed.