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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

H5

FILE: Office: LAS VEGAS, NV Date: APR 04 2011

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 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 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 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, Las Vegas, Nevada, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Philippines 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). He is the wife of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

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 December 17, 2009.

On appeal, counsel for the applicant asserts the Field Office Director erred in determining that the applicant was inadmissible under section 212(a)(6)(C) because he did not make any misrepresentation of a material fact, and that the Field Office Director abused his discretion in determining that the applicant's spouse would not experience extreme hardship if the applicant were removed. *Form I-290B*, received January 15, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant entered the United States as a temporary nonimmigrant visitor on November 15, 2005, and then married his current spouse on January 1, 2006, and remained in the United States. The Field Office Director concluded the applicant was inadmissible under section 212(a)(6)(C) of the Act due to a finding that he misrepresented his intent for entering the United States.

On appeal counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) because he did not willfully misrepresent any material fact, and cites to 9 FAM 40.63 N4.2.

Although the AAO is not bound by the Foreign Affairs Manual, reference to its provisions is informative in responding to counsel's assertions.

9 FAM 40.63 N4.2 states:

> In determining whether a misrepresentation has been made, it is necessary to distinguish between misrepresentation of information and information that was

> merely concealed by the alien's silence. Silence or the failure to volunteer information does not in itself constitute a misrepresentation for the purposes of INA 212(a)(6)(C)(i).

The Department of State has developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ...Marrying and takes [sic] up permanent residence." 9 FAM 40.63 N4.7-1(3).

In this case the record establishes that the applicant entered the United States on November 15, 2005, as a visitor for pleasure. The applicant then married his current spouse on January 1, 2006, 47 days later.

If conduct occurs within 30 days of entry to the United States a presumption of misrepresentation arises. 9 FAM 40.63 N4.7-2. If conduct occurs within 60 days of entry a presumption of misrepresentation does not arise, but may be established based on facts leading to a reasonable belief the applicant misrepresented his or her intent. 9 FAM 40.63 N4.7-3.

In this case the record establishes that the applicant was engaged to his current spouse as of July 2005. *Statement of the Applicant*, dated September 12, 2009. This fact gives rise to a reasonable belief that the applicant misrepresented his intent upon entry to the United States on November 15, 2005. Further, the applicant has admitted that he did not inform the inspection agent of his intent to marry his spouse because he feared he would be denied entry. *Testimony of the Applicant*, July 17, 2009; *Statement of the Applicant*, dated September 12, 2009.

Counsel has also asserted that the applicant's omission was not material. *Brief in Support of Appeal*, received January 15, 2009. A misrepresentation is material if either: (1) The alien is excludable on the true facts; or (2) The misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility and that might well have resulted in a proper determination that he be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961).

In this case the applicant failed to reveal that he was engaged to a Lawful Permanent Resident of the United States and that he was going to be married in the United States on January 1, 2006. These facts directly contradict his assertion to the inspection officer that he was merely entering the United States as a visitor. Had the inspecting officer known that the applicant was engaged to a lawful permanent resident, he could have pursued the material line of inquiry regarding whether the applicant intended to marry and remain in the U.S. – an intent not permitted in temporary B nonimmigrant status. As such, his failure to reveal his engagement and marital plans constitutes a material misrepresentation, as it shut off a line of inquiry that was relevant to his eligibility for B nonimmigrant status.

These facts establish that the applicant misrepresented his intent when entering the United States and that the facts he omitted were material to his purpose for entering the United States. The Field

Office Director's determination that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act will be upheld.

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

> (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 or his children 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-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The record contains, but is not limited to, the following evidence: counsel's brief; a statement from the applicant; a statement from the applicant's spouse; statements from friends and family members of the applicant; copies of pay stubs for the applicant's spouse; country conditions materials on the Philippines; an initial diagnostic evaluation of the applicant's spouse by David Hopper, Ph.D., August 5, 2009; copies of tax documentation for the applicant's spouse; a copy of a foreclosure notice for a residential property owned by the applicant and her spouse; copies of utility bills for the applicant's spouse; copies of educational documents related to the applicant; and photographs of the applicant and her spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

The AAO will first examine hardship upon relocation. On appeal counsel asserts that the applicant's spouse has resided in the United States for a significant period of time and has no family ties in the Philippines. *Brief in Support of Appeal*, February 2, 2010. He further states that the applicant's spouse would not be able to find a job in the Philippines, would not be able to afford medical insurance and would not have access to medical care in the Philippines for her medical conditions.

The applicant's spouse has submitted a statement asserting that she does not want to relocate to the Philippines, that she has two sisters who reside in the United States and has no investments or property in the Philippines. She states she had breast surgury in 2004 and that she is not confident her medical needs would be met in the Philippines. She states that she would lose her health coverage in the United States if she relocated and that she would be unable to find employment due to the economic conditions in the Philippines. She further asserts that she would lose her salary and assets in the United States if she relocated to the Philippines.

The record contains a copy of the U.S. State Department's country condition report on the Philippines, published by the Bureau of Democracy, Human Rights and Labor, 2007. Country conditions materials on the general conditions in a country will not generally establish hardship to an applicant's qualifying relative unless it can be established that the conditions would specifically impact them. In this case, there is no specific evidence that the applicant's spouse would be unable to find employment, unable to find access to medical care or have any medical conditions treated in the Philippines. The AAO notes that, despite counsel's assertion, the applicant's spouse has brothers who currently reside in the Philippines. *Statement of* [redacted] dated August 5, 2009. The applicant has lived in the United States since 2001, and is a native of the Philippines. The record does not contain any evidence that the applicant's spouse had breast surgury in 2004, or that she has any medical condition which impacts her ability to function on a daily basis.

While the record does contain documents indicating the applicant's spouse's house is under threat of foreclosure, and documents indicating she is gainfully employed in the United States, these impacts have not been shown to rise above the common impacts associated with relocation abroad with an inadmissible family member.

Even when the impacts asserted are examined in the aggregate, there is insufficient evidence to establish that they rise above the common impacts associated with relocation with an inadmissible family member, or that they rise to a level of extreme hardship.

With regard to hardship upon separation, counsel asserts on appeal that the applicant's spouse suffers from a serious medical condition that requires constant monitoring. *Brief in Support of Appeal*, February 2, 2010. He states the applicant's spouse will experience extreme emotional hardship if the applicant is removed and refers to a psychological examination by Dr. David Hopper.

He further asserts that the applicant's spouse is dependent on the applicant financially and that she would experience significant financial hardship if he were removed.

The applicant's spouse has submitted a letter asserting she is depressed and anxious about the applicant's inadmissibility. *Statement of the Applicant's Spouse*, received September 17, 2009. She asserts she is dependent on his income and would be unable to meet her financial obligations if he were removed. She explains that she had breast surgury in 2004 and depends on the applicant to provide physical therapy for her chronic back pain.

As noted above, there is no documentation corroborating counsel's assertion that the applicant's spouse had breast surgury in 2004, or that she currently suffers from any physical or medical condition such as chronic back pain that requires constant monitoring. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Even assuming counsel's assertions as true, there is nothing in the record that indicates she would be unable to receive medical care for her conditions should she remain in the United States without the applicant.

The record contains a psychological examination of the applicant's spouse by [redacted] Dr. Hopper discusses the applicant's spouse's self-reported symptoms and concludes that she is suffering from Major Depressive Disorder and generalized Anxiety. The AAO will give due consideration to the report from [redacted] in an overall determination of extreme hardship to the applicant's spouse.

The record contains copies of pay stubs, tax documentation, utility bills and a foreclosure notice as evidence of financial hardship. The record does not contain any evidence that the applicant has contributed significantly to the income of their household. The record does not explain why members of the applicant's spouse's family would be unable to assist her to mitigate any financial impact of the applicant's removal. There is no documentation that the applicant has been or will be employed. Even in a light most favorable to the applicant, accepting the applicant's spouse's assertions as true, these impacts are not considered uncommon, and the loss on the sale of a home due to the inadmissibility of a family member is not considered an extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985). While there is some evidence of financial impact on the applicant's spouse, it is not clear from the record that it is related to the applicant's inadmissibility, or that any such impact would rise above the common impacts associated with the removal of a family member.

Even when these hardship factors are considered in the aggregate there is insufficient evidence to establish that they rise above the common impacts experienced by the relatives of inadmissible aliens who remain in the United States. 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). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme

hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.