

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

ltg



JAN 22 2010

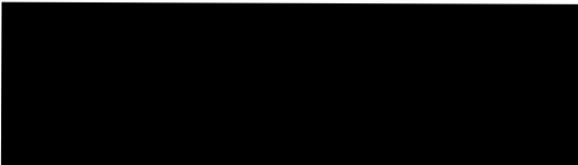
FILE: [REDACTED] Office: ADMINISTRATIVE APPEALS OFFICE

Date:

IN RE: Applicant: [REDACTED]

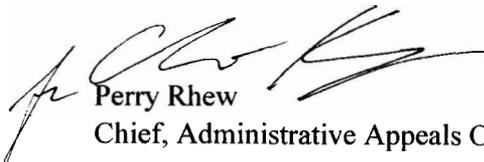
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Pittsburgh, Pennsylvania. The applicant appealed the decision to the Administrative Appeals Office (AAO), and the appeal was dismissed on January 27, 2009. The applicant subsequently filed a complaint with the United States District Court, Southern District of New York, challenging the AAO's decision. The court vacated the AAO's decision, permitted the applicant to supplement the record with new evidence, and ordered the AAO to readjudicate the appeal.¹ The AAO has reopened and readjudicated the appeal. The appeal will be sustained.

The applicant is a native and citizen of China who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen wife.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated October 5, 2006.

The applicant appealed the decision of the district director to the AAO. The AAO found that the applicant failed to show that his U.S. citizen wife would experience extreme hardship should he be compelled to depart the United States. *Decision of the Administrative Appeals Office*, dated January 27, 2009. The AAO noted that the applicant's wife was the only relative whose hardship could serve as a basis for a waiver under section 212(i)(1) of the Act. *Id.* at 3.

Following the court order, the AAO reopened these proceedings pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i) and considered all the new evidence submitted by counsel on December 4, 2009.

Counsel for the applicant now asserts that the applicant's mother and father have become lawful permanent residents of the United States, thus hardship to them may now serve as a basis for a waiver of inadmissibility under section 212(i) of the Act. *Statement from Counsel*, dated December 3, 2009. Counsel indicates that the applicant's mother has been diagnosed with breast cancer, and the applicant's father suffers from hypertension and severe arthritis. *Id.* at 1. Counsel contends that the applicant's wife, mother, and father will experience extreme hardship if the applicant is compelled to depart the United States. *Id.*

The record, as supplemented by the applicant, includes, but is not limited to the following, relevant documents: five joint federal income tax returns for the applicant and his wife over the period from 2002 through 2008; bank, securities, utilities, mortgage and other financial account statements of the applicant and his wife; a copy of the articles of incorporation for a business, signed by the applicant; a copy of a deed to real estate owned by the applicant and his wife; letters from their employers; statements from the applicant's wife, mother and sister; psychological evaluations of the applicant's wife; medical documentation that the applicant's mother was diagnosed with and treated for breast

¹ *Chen v. Napolitano*, No. 09 CV 1832 (S.D.N.Y. Nov. 9, 2009).

cancer; federal income tax records of the applicant's parents; copies of notarial certificates of birth for the applicant and his wife; copies of Form I-551 permanent resident cards for the applicant's parents, sister and mother-in-law; copies of naturalization certificates for the applicant's wife, sister and the applicant's wife's brother and sister; a bank statement for the applicant's sister; copies of a cable television bill and driver's license for the applicant's wife's sister, and; copies of a lease and driver's license for the applicant's wife's brother. All relevant evidence in the record has been considered in rendering this decision, including the new evidence provided by the applicant as well as the evidence previously submitted.

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

- (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, 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.

The record reflects that the applicant attempted to enter the United States using a fraudulent passport on February 2, 1996, thus he attempted to procure entry by fraud. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not contest his inadmissibility in these proceedings.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996).

As noted above, counsel asserts that the applicant's mother and father have become lawful permanent residents of the United States. *Statement from Counsel* at 1. Counsel indicates that the applicant's mother has been diagnosed with metastasized breast cancer, and the applicant's father suffers from hypertension and severe arthritis. *Id.* Counsel states that the applicant's parents reside with the applicant, and that the applicant helps care for them and support them. *Id.* Counsel contends that the applicant's wife continues to suffer psychological symptoms due to the fear that the applicant will be compelled to depart the United States. *Id.* Counsel states that the applicant's wife fears she cannot go back to China with the applicant, and she does not believe she can function and care for their children alone. *Id.* Counsel contends that the applicant's wife, mother, and father will experience extreme hardship if the applicant is compelled to depart the United States. *Id.* at 2.

The applicant's mother states that she is a 58-year-old lawful permanent resident of the United States. *Statement from the Applicant's Mother*, dated September 9, 2009. She indicates that she has two children in the United States, the applicant and her daughter. *Id.* at 1. She explains that she and her husband reside with the applicant, the applicant's wife, and the applicant's children. *Id.* She notes that she cannot reside with her daughter because her son-in-law's parents reside with them and she does not get along with her son-in-law's mother. *Id.* She explains that the applicant and his wife have taken care of her and her husband. *Id.*

The applicant's mother states that she was diagnosed with breast cancer in 1994, and she had a mastectomy and chemotherapy. *Id.* She provides that in 1999 she had infected lymph nodes which required chemotherapy for one month. *Id.* She states that her cancer recurred in 2002 which required more chemotherapy to bring it under control. *Id.* She provides that she spent all of their family savings including selling their home to pay for her treatments. *Id.*

The applicant's mother states that the applicant's father suffers from hypertension, high blood sugar, and severe arthritis. *Id.* She explains that when the applicant's father has an arthritis attack he cannot walk and must remain in bed for as long as three months. *Id.* She notes that she is unable to take care of the applicant's father due to her health problems, thus the applicant and the applicant's wife take care of them. *Id.*

The applicant's mother provides that she feels better in the United States than she did in China, in part due to the fresh air. *Id.* at 2. She states that the applicant previously took her to a doctor in the United States, and the doctor said she was "fine." *Id.* She posits that she is healthier in the United States because the applicant, the applicant's wife, and her grandchildren are near her. *Id.* She provides that she is emotionally stable. *Id.* She notes that the applicant's wife cooks special food for her every day. *Id.* She states that she is weak after undergoing so many chemotherapies, and that

she remains in bed frequently. *Id.* She states that she needs continued care from the applicant and his wife. *Id.*

The applicant's mother explains that she recently felt a pain in her chest, and that the applicant took her to a doctor in New York who discovered that her cancer has transferred to her lung. *Id.* She provides that the doctor recommended that she have treatment as soon as possible. *Id.* She expressed concern regarding her care should the applicant depart the United States. *Id.* She states that the applicant will be unable to take to her to doctor visits, and the applicant's wife will have to work more with less time to devote to the applicant's mother's care. *Id.* She expresses that she will miss the applicant which will impact her health. *Id.*

The applicant's mother indicates that her health may worsen in China due to a lack of adequate medical equipment. *Id.* at 3. She states that she has consulted a social worker in the United States who will attempt to arrange suitable medical insurance for her. *Id.* She notes that there is no medical insurance in China, and that in order to have treatments she previously lost everything. *Id.* She asserts that she will not be able to have treatment in China because she will not be able to pay for services. *Id.*

The record contains medical documentation that shows that the applicant's mother is suffering from metastatic breast cancer with lump metastasis, and that she presents "[n]umerous pleural masses involving the right chest consistent with metastatic disease." *Report from* [REDACTED] dated September 10, 2009; *Report from* [REDACTED] dated September 8, 2009. The record also includes a receipt issued to the applicant's mother by the Second Hospital of Fuzhou, Fujian, China on February 3, 1991 for surgery, blood transfusion, laboratory examination, medications and other medical expenses.

The applicant provided evidence to support that his mother and father reside with him, and to further show that his sister resides in a separate location.

The applicant's wife states that she limits her work to three or four half-days so she can take care of the applicant's mother and her two children. *Statement from the Applicant's Wife*, dated September 9, 2009. She explains that the applicant's mother is weaker than normal people due to her history of chemotherapy treatments, and that she must lie in bed for more than 18 hours each day. *Id.* at 1. She provides that the applicant's mother's doctor has picked a special menu, and that she prepares breakfast, lunch, and dinner for her each day by following the nutrition chart. *Id.* The applicant's wife notes that, although the applicant's father resides with them, he is unable to take care of the applicant's mother due to his own health problems including attacks of arthritis. *Id.* She states that the applicant works long hours to provide for his family, and thus he is unable to care for his parents alone. *Id.*

The applicant's wife described elements of hardship she would experience, whether she relocates to China or remains in the United States without the applicant, including economic difficulties and emotional consequences due to hardship her children would experience. *Id.* at 2-4.

Upon review, the applicant has shown that his lawful permanent resident mother will experience extreme hardship should he be compelled to depart the United States. The applicant has provided

sufficient documentation to show that his mother struggles with cancer, and that she currently requires significant assistance and care. The applicant has established that his mother resides with him, his wife, and his children, and that she receives regular assistance from the applicant and the applicant's wife, including meals, housing, transportation to doctor visits, and emotional support. It is evident that the applicant's mother would endure substantial emotional and physical hardship should she no longer reside in the applicant's household, or should she lose the assistance of the applicant and the applicant's wife.

The applicant's mother has a daughter who resides in the United States. However, she stated that she previously attempted to reside with her daughter but had conflicts with her daughter's mother-in-law who also resided in the home. The applicant has not shown that his mother is unable to return to her daughter's household, yet the AAO acknowledges that it would create emotional consequences for the applicant's mother at a time when she is struggling with serious health problems.

The applicant has not submitted any medical documentation to support that his father has health problems. Yet the AAO takes note of the applicant's mother's concern that her husband is unable to provide necessary assistance for her.

The applicant provided a tax transcript for his parents that reflects that they earned approximately \$5,000 in business income for 2008, while the applicant and his wife earned approximately \$47,000 for the same period. Thus, as the applicant's parents reside in his household, it is evident that he provides economic support for them. The applicant has shown that his mother would endure economic hardship should she lose his financial support, particularly considering she requires significant medical treatment and assistance.

The applicant's mother expressed that she would endure emotional hardship should she be separated from the applicant. The AAO acknowledges that separating the applicant from his mother at a time when she is suffering from serious health problems would create substantial emotional hardship for her.

Considering all elements of hardship to the applicant's mother in aggregate, should she remain in the United States and the applicant depart she will experience extreme hardship.

The applicant has shown that his mother will endure extreme hardship should she return to China. It is noted that the applicant's mother is a native of China and Chinese-speaker, thus she would not endure the hardship of adapting to an unfamiliar culture or language should she relocate there. However, she described hardship she experienced in China, including the fact that she had to sell their house and use their savings to fund her cancer treatment. She asserts that she will be unable to continue adequate treatment should she return.

As the applicant's mother requires cancer treatment at the present time, it is evident that she has a great need for quality medical care and a stable environment. The AAO acknowledges that the applicant's mother is receiving medical care in the United States, and that she enjoys a stable and helpful lifestyle in the applicant's home. It is evident that she would endure emotional hardship should the applicant be compelled to depart the United States and she attempt to join him in China.

Such relocation would have an impact on the continuity of her medical treatment and cause her to endure physical hardship at a time when her health is precarious.

The applicant's parents' modest income in 2008 indicates that the applicant's mother would have limited resources with which to relocate to China. Her health status calls into question her ability to engage in employment or establish a new business in China. Thus, the record shows that she would endure economic challenges should she relocate to China.

Accordingly, the applicant has shown that his mother will endure extreme hardship should she relocate to China to maintain unity with the applicant. Based on the foregoing, the applicant has shown that denial of the present waiver application "would result in extreme hardship" to a qualifying relative, as required under section 212(i)(1) of the Act.

The AAO notes that the applicant presented explanation and evidence to support that his wife and father would also experience extreme hardship should he be compelled to depart the United States. However, in order to establish eligibility for a waiver under section 212(i)(1) of the Act, the applicant need only show that one qualifying relative would suffer extreme hardship upon denial of the waiver application. As the applicant has shown that his mother would experience extreme hardship, no purpose would be served in addressing whether he has also established extreme hardship to his wife or father.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant attempted to enter the United States in 1996 with a fraudulent passport, in violation of U.S. immigration law.

The positive factors in this case include:

The applicant has family ties to the United States, including his U.S. citizen wife, two U.S. citizen children, and his lawful permanent resident parents; the applicant has not been convicted of a crime; the applicant's mother would experience extreme hardship should he depart the United States; the applicant's wife and children would experience significant hardship if the applicant departs the United States; the applicant supports his family economically; the applicant has cared for his parents with serious health problems, and; the applicant has worked and paid taxes in the United States.

The applicant's violation of U.S. immigration law cannot be condoned. However, the positive factors in this case outweigh the negative factors.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The January 27, 2009 decision of the Administrative Appeals Office is withdrawn. The appeal is sustained.