

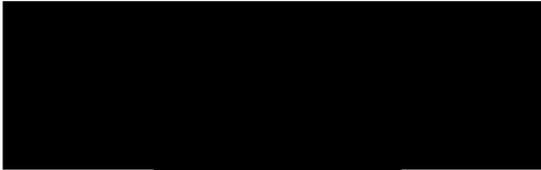
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

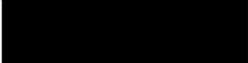


**U.S. Citizenship
and Immigration
Services**



#5

FILE:



Office: PITTSBURGH

Date:

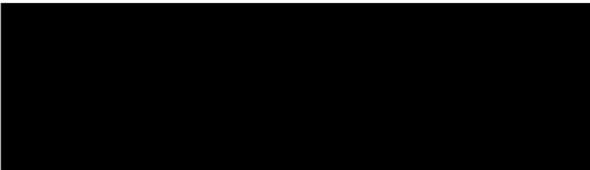
APR 02 2010

IN RE:



APPLICATION: Application for Waiver of Ground 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.

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Pittsburgh, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The matter will be returned to the field office director for continued processing.

The record reflects that the applicant, a native and citizen of China, procured entry to the United States in February 1996 by presenting fraudulent documentation to an immigration officer.¹ The applicant was thus 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 having procured entry to the United States by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, she is seeking a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her lawful permanent resident parent and U.S. citizen children, born in 1998 and 2003.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 29, 2007.

On appeal, counsel submits a brief and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

¹ As attested to by the applicant,

[I]n around 10/95 I found a person name [REDACTED] who said he could help me to apply documents to come to America. I talk to him on the phone and he said that he needed my photos and notarial birth paper and could get real documents for me. He said because all the documents are real, so I needed to pay him U.S.\$38,000.00.... He called me back in February 1996 and told me everything was set and I should go meet him in Guangzhou next day.... [W]e went to Guangzhou airport and aboard a flight to Hong Kong. That night I stayed with [REDACTED] at his friend's house in Hong Kong. I did not know at the time he was a snakehead nor did I know that he prepared fake documents for me. But when he would not allow me to hold my own passport, I grew suspicion. I did see that my photo was on the document. The next day, we flew from Hong Kong directly to New York. [REDACTED] told me to just follow him and say nothing. Once we landed in the JFK New York airport, I followed him to the checkpoint. It was 2/14/1996. We both went to the counter and [REDACTED] handed both passports to the examiner.... [W]e were let in. When we were out of the airport I asked [REDACTED] to give me my passport, he told me that it was not a passport, it was a reentry permit and would not give it to me....

(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 immigrant 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 concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible...” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant’s lawful permanent resident parent is the only qualifying relative and hardship to the applicant and/or her children cannot be considered, except as it may affect the applicant’s parent.

The applicant's lawful permanent resident mother, 70 years old at the time of the appeal submission, contends that she will suffer emotional, physical and financial hardship were she to remain in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration she states that she would suffer emotional hardship because she is completely dependent on her. She notes that she lives with the applicant and her family and they play an integral role in her day to day care and survival, including providing meals for her and ensuring that she gets the proper rest and medical care. The applicant's mother contends that although she has 3 other children, two live in China and one, who lives in the United States, cared for her when she first arrived in the U.S., but due to her numerous medical issues, could not continue caring for her. Moreover, she asserts that were her daughter to relocate to China, she fears for her, because her daughter has two children and she may be punished for violating the country's "one child" family planning policy. She notes that one of her daughters who resides in China was twice forced to abort and fined and she was eventually arrested and sterilized for wanting more children. *Affidavit of* [REDACTED] *dated July 26, 2007.*

The applicant further elaborates on the hardships her lawful permanent resident mother would face were she to remain in the United States without the applicant. She notes that her mother suffers from numerous health problems, including coronary heart disease, hypertension and abdominal pain and takes numerous medications for her medical conditions. The applicant contends that her mother is incapable of taking care of herself. The applicant takes her to the hospital, translates for her, as she does not speak English, and ensures that she takes the proper medications as she is unable to read the labels. *Letter from* [REDACTED] *dated October 18, 2006.*

In addition to the emotional and physical hardships referenced, the applicant contends that her mother is financially dependent on her and her spouse. She has not worked in the United States and therefore is ineligible for Social Security or any other benefits. She lives with the applicant; the applicant covers all of her expenses, including housing, food, clothing, and all of her other needs. She is 70, speaks no English and has never worked before. Although she receives Medicare, there are numerous additional medical expenses, including medications and doctor's visits, which are not covered. *Id.* at 3.

Extensive documentation establishing the applicant's mother's medical conditions have been provided. In addition, a letter has been provided from [REDACTED] The Salvation Army, confirming that the applicant and her spouse are the primary caregivers to the applicant's mother. *Letter from* [REDACTED] *dated October 17, 2006.* Moreover, financial documentation has been provided establishing the applicant's ability to financially care for her mother, based on her gainful employment with [REDACTED] *Letter from* [REDACTED] *dated May 18, 2006.* Finally, the AAO notes the U.S. Department of State's confirmation that China's birth planning policies are coercive, to corroborate the applicant's mother's concerns with respect to the applicant, already a parent of two children, returning to China. As noted by the U.S. Department of State,

The law prohibits the use of physical coercion to compel persons to submit to abortion or sterilization. However, intense pressure to meet birth limitation targets set by government regulations resulted in instances of local birth-planning officials using physical coercion to meet government goals. Such practices required the use of birth-control methods (particularly intrauterine devices and female sterilization, which according to government statistics accounted for more than 80 percent of birth-control methods employed) and the abortion of certain pregnancies.

In the case of families that already had two children, one parent was often pressured to undergo sterilization. The penalties sometimes left women with little practical choice but to undergo abortion or sterilization.

Country Report on Human Rights Practices-China, U.S. Department of State, dated March 11, 2010.

Based on the record, the AAO has determined that the applicant's lawful permanent resident parent would experience extreme hardship if she remained in the United States while the applicant relocated to China based on her inadmissibility. The applicant's parent, diagnosed with numerous problems, would be required to care for herself, emotionally, physically and financially, without the complete support of the applicant, all the time fearful and anxious of her daughter's well-being in China due to the country's restrictive family planning policies. The applicant's parent would face hardship beyond that normally expected of one facing the removal of a child. As such, were the applicant removed, the applicant's parent would suffer extreme hardship.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's mother explains that her husband passed away in April 2002 due to cancer. He had complained about stomach aches for years but the doctors in their village in China did not diagnose the cancer. After going to a hospital about one and a half hours from their home for treatment, he was ultimately sent home to die. Based on this experience, the applicant's mother contends that due to her numerous medical conditions, she fears she will not receive quality medical treatment in China, as she has received while in the United States during her past visits to the emergency room. She further references the fears she faces due to the fact that the applicant sneaked out of China and moreover, had two children in the United States, which is against the one child policy in China. In addition, she points out that she will suffer financial hardship in China, as the applicant and her spouse will not be able to find gainful employment due to the high unemployment rate. Finally, she notes that she was persecuted by the Communist party when she was young because her father was a landlord; they were forced to hide in a cave for about one month and when they eventually came out, they were re-educated and had to do hard labor. Her past experiences with the Communist government have created fear about returning to China. *Supra* at 1-3.

The U.S. Department of State confirms the substandard medical care in China. *Country Specific Information-China, U.S. Department of State, dated December 31, 2009.* In addition, the U.S.

Department of State confirms the problematic unemployment rate in China. *Background Note-China, U.S. Department of State*, dated October 2009. Moreover, as noted above, China's human rights record remains poor, a particularly strong concern for the applicant's mother due to the fact that her daughter has two children, her other daughter was forced to abort, fined, imprisoned and sterilized for wanting more children, and she herself suffered under the Communist regime as a young child. *Supra* at 1.

Based on the applicant's mother's traumatic experiences while in China, the need for quality medical care to treat her medical conditions and her understanding that her husband died prematurely due to substandard medical care in China, her concern for her daughter's welfare due to her violation of the "one child" policy, human rights issues and a substandard economy, the AAO finds that the applicant's lawful permanent resident parent would experience extreme hardship were she to relocate to China to reside with the applicant.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's lawful permanent resident mother and U.S. citizen children would face if the applicant were to reside in China, regardless of whether they accompanied the applicant or remained in the United States, the applicant's history of gainful employment, community ties, payment of taxes and the passage of more than fourteen years since the applicant's immigration violation which led to the field office director's finding of inadmissibility. The unfavorable factors in this matter are the applicant's fraud and/or willful misrepresentation when procuring entry to the United States, and periods of unauthorized presence and employment.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) 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. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.