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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

[REDACTED]

H5

FILE: [REDACTED] Office: PHILADELPHIA, PA Date: SEP 10 2010

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of China 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), for entering the United States by presenting a fraudulent passport. The applicant is the son of U.S. citizens and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his parents, wife, and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated May 9, 2009.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] [REDACTED] copies of the couple's two U.S. citizen children's birth certificates; an affidavit from the applicant; an affidavit from the applicant's parents; documents from the applicant's children's school; a letter from the applicant's employer; a letter from the applicant's parents' employers; letters from the applicant's parents' physician and copies of their medical records; copies of the applicant's mental health records; tax and other financial documents; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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 Act is inadmissible.

In this case, DHS records show that on April 30, 1993, the applicant entered the United States with a Korean passport in the name of [REDACTED] indicating a date of birth of November 19, 1964. The record contains this Korean passport as well as a Customs Declaration Form, a Form I-94, and an American Airlines boarding pass, all in the name of [REDACTED]. The record further shows that upon arriving in the United States, the applicant was taken to secondary inspection where he swore that his true and complete name is [REDACTED] and that he was born in China on February 7, 1972. *Record of Sworn Statement*, dated April 30, 1993. The applicant was detained pending an exclusion hearing and on May 3, 1993, through counsel, requested parole. In support of the applicant's parole request, he submitted an affidavit from his aunt attesting that she would support and take responsibility for [REDACTED] *Affidavit of [REDACTED]* [REDACTED] dated May 3, 1993. The applicant also submitted an Affirmation of Identity, stating,

“My lawful name and true identity is [REDACTED] I have also used the name ‘[REDACTED]’ My date of birth is June 7, 1972.” *Affirmation of Identity*, undated.

The applicant contends he is not inadmissible because, “I did not present that passport to an immigration officer at the airport to obtain admission into the United States. I was apprehended by an immigration officer and the officer confiscated the passport which was in my pocket. I did not commit fraud.” *Affidavit of [REDACTED]* dated June 2, 2009. The applicant further states that “[t]he Korean passport which I had had my picture but somebody else’s name and date of birth. I didn’t know the passport was fake until I came to the United States.” *Statement by [REDACTED]* dated December 5, 2007. Moreover, the applicant further contends, “I do not know how the court papers show my name as [REDACTED] I do not know it was written like that. I am not a literate person and I do not know who spelled my name as [REDACTED]” *Affidavit of [REDACTED]*

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 (“Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . .”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the evidence in the record as noted above, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. Specifically, the AAO finds that the applicant attempted to enter the United States using a fraudulent Korean passport. Furthermore, the AAO notes that the applicant’s statement in his affidavit dated June 2, 2009, contending that he has no idea why court papers show his name as Shan Nam Cheng contradicts the Affirmation of Identity the applicant signed in which he explicitly stated that he has “also used the name ‘CHENG, Shan-Nam.’” *Affirmation of Identity, supra*.

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 parents are the only qualifying relatives in this case as the applicant's wife is not a U.S. citizen or lawful permanent resident. 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.

In this case, the applicant’s parents contend they would suffer extreme hardship if their son’s waiver application were denied. The applicant’s father states that he is sixty years old and diabetic. He states that he stopped working in November 2008 due to his diabetes. The applicant’s mother states that she is also sixty years old, and stopped working in September 2008 due to health problems. The applicant’s parents contend that their son is the sole income earner for the entire family, which consists of themselves, their son and his wife, and their son’s two children. The applicant’s father further states that he bought a house with his son and that if his son departs the United States, he will be unable to pay the mortgage. In addition, the applicant’s parents contend that their grandchildren will be unable to sustain being separated from their parents. Furthermore, they claim that their son and daughter-in-law will be subjected to sterilization if they return to China since they violated China’s one-child policy. The applicant’s parents contend they cannot return to China to live with their son because, as U.S. citizens, they can visit for a maximum of six months and would not be able to afford constant traveling between the United States and China. The applicant’s father states that since he came to the United States eleven years ago, he has visited China four times and the applicant’s mother has visited twice. They state that although their daughter continues to live in China, she has her own family and will be unable to support them. Moreover, the applicant’s parents state that if they return to China, they will not be able to afford the medical treatment they need. Additionally, the applicant’s parents state that the applicant suffers from Bipolar Disorder. They state that they are “emotionally devastated” at the

possibility of him returning to China as his condition will worsen without continued treatment. *Affidavits of* [REDACTED] dated June 2, 2009, and January 2, 2008.

The record contains letters from the applicant's parents' employers stating that they stopped working due to health problems. *Letter from* [REDACTED] dated May 8, 2009; *Letter from* [REDACTED] dated May 5, 2009. In addition, a letter from the applicant's father's physician states that the father has Type II diabetes, hypertension, hyperlipidemia, and declined renal function. The letter contends the applicant's father's diabetes has been "fairly uncontrolled" in the last few months and lists six different prescription medications he takes daily. *Letter from* [REDACTED] dated May 27, 2009. A letter from the same physician states that the applicant's mother has low back pain resulting from muscle strain, hypercholesterolemia, and mild lumbar osteopenia. The physician states that the applicant's mother takes a prescription medication daily for her high cholesterol and uses a patch for muscle spasms as needed. *Letter from* [REDACTED] dated May 27, 2009.

Documentation from the Mental Retardation Center of Pennsylvania Hospital states that the applicant has bipolar disorder with psychosis. The record indicates he was hospitalized twice for manic episodes due to his bipolar disorder, that he was "speaking nonsense, laughing inappropriately[, and that his] family also reports that he was shaking, e.g. tremors." The documents further indicate the applicant has problems with depression, loss of intellect, social withdrawal, mood instability, and that he has been on three prescription medications since 2006, the amount of which have been increased or decreased as needed. *See, e.g., Prescription Record, Mental Retardation Center of Pennsylvania Hospital, most recently dated January 23, 2008; Hall-Mercer Up-date Treatment Plan, dated January 23, 2008; Letter from* [REDACTED] dated November 28, 2007; *Initial Adult Comprehensive Biopsychosocial Evaluation, Mental Retardation Center of Pennsylvania Hospital, dated November 8, 2006.*

Upon a complete review of the record evidence, the AAO finds that the applicant has established that his parents will suffer extreme hardship if his waiver application is denied.

The record shows that the applicant's parents are both currently sixty-one years old, have several health problems, and take numerous prescription medications on a daily basis. The record further shows that both of the applicant's parents had worked, but stopped working in 2008 due to their health problems. *Letters from* [REDACTED] According to the applicant's parents, they had no income in 2009, will not be returning to work, and rely solely on their son for financial support. *Affidavits of* [REDACTED] As such, the AAO finds that the applicant's parents would suffer extreme financial hardship if the applicant's waiver application were denied. In addition, the record shows that the applicant has a history of mental illness and has been hospitalized at least twice for bipolar disorder, manic episodes, and psychosis. The record shows he has received regular mental health treatment and takes three prescription medications to treat his mental illness. Under these unique circumstances, and considering the applicant's parents live with the applicant, providing him emotional and mental support, the AAO finds that the applicant's parents would experience extreme hardship were they to remain in the United States without the applicant. This finding is based on the extreme emotional harm they will

experience due to concern about the applicant's well-being and safety in China, a concern that is beyond the common results of removal or inadmissibility.

Furthermore, it would also constitute extreme hardship for the applicant's parents to move back to China to be with their son. The applicant's parents have lived in the United States for over ten years and have been naturalized as U.S. citizens. According to documentation furnished by the applicant, as U.S. citizens, the applicant's parents have renounced their Chinese citizenship as China does not recognize dual nationality. *Nationality Law of the People's Republic of China, Articles 3 and 9* (stating that "Any Chinese national who has settled abroad and who has been naturalized as a foreign national or has acquired foreign nationality of his own free will shall automatically lose Chinese nationality."). Moreover, the record shows that the applicant's parents have several health conditions, including diabetes which has been uncontrolled, and take numerous prescription medications. The AAO takes administrative notice of the U.S. Department of State's country specific information on China, which provides that "[t]he standards of medical care in China are not equivalent to those in the United States. . . . In emergencies, Chinese ambulances are often slow to arrive, and most do not have sophisticated medical equipment or trained responders. . . . Most hospitals demand cash payment or a deposit in advance for admission, procedures, or emergencies . . ." In addition, "[m]any commonly used U.S. drugs and medications are generally not available in China. . . ." *U.S. Department of State, Country Specific Information, China*, dated August 11, 2010. Under these circumstances, and considering all of these factors cumulatively, the hardship the applicant's parents would experience if their son were refused admission is extreme, going well beyond those hardships ordinarily associated with inadmissibility. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that the applicant's parents face extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's willful misrepresentation of a material fact in order to procure an immigration benefit. The favorable and mitigating factors in the present case include: the applicant's significant family ties in the United States including his U.S. parents and two U.S. citizen children; the extreme hardship to the applicant's parents if he were refused admission; and the applicant's lack of any criminal convictions.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.