

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

**PUBLIC COPY**

H5



FILE: [Redacted]

Office: GUANGZHOU

Date: **SEP 22 2010**

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:

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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**ACTION COMPLETED**  
**APPROVED FOR FILING**  
Initials: JT Date: 6/22/11  
FCO/Unit COW

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Guangzhou, China, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The record establishes that the applicant, a native and citizen of China, presented fraudulent documentation on more than one occasion in 2004 when attempting to procure an immigrant visa. She was thus found 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 having attempted to procure an immigration benefit, specifically, an immigrant visa, by fraud or willful misrepresentation. The applicant is applying for 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 U.S. citizen parents.

The officer in charge concluded that extreme hardship to a qualifying relative had not been established and denied the Application of Waiver Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated February 11, 2008.

In support of the appeal, the applicant's father submitted the Form I-290B, Notice of Appeal (Form I-290B) and supporting documentation. In addition, supplemental evidence in support of the appeal was received by the AAO in January, February, June, August and September 2010. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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...

With respect to the officer in charge's finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act because she previously attempted to procure an immigrant visa by presenting fraudulent documents to a consular officer at the U.S. Embassy, Guangzhou, China, counsel contends that the applicant did not intend to defraud the government and that the applicant was

unaware that the representative her father had hired to assist with the immigrant visa application compiled fraudulent documentation on her behalf. As stated by counsel:

[redacted] [the applicant] is the beneficiary of an I-130 immigrant petition filed by her U.S. citizen father [redacted]. Because [redacted] knowledge of immigration laws in the United States was limited, he hired a representative.... As part of the application, [redacted] needed a joint sponsor to file an affidavit of support on behalf of his daughter, [redacted]. His representative, whom [redacted] believed to be a bona fide attorney, asked [redacted] to pay a woman in order to get an affidavit of support from her. Thinking that this was a requirement and relying fully on the advice of his representative, [redacted] paid the money he was requested in exchange for the affidavit of support. At no time did [redacted] know that the documents provided by this woman were fraudulent. Nor did he ever intentionally pay anyone in exchange for fraudulent documents....

The documents then were provided to [redacted] daughter, the beneficiary. She presented these documents during her interview at the US consulate, without knowledge that they were fraudulent. She had full faith on her father's ability to provide the complete package of necessary documents, since she believed he had hired a lawyer. She had no reason to doubt the authenticity of any of the documents provided to her by her father....

*Letter from Margaret W. Wong, Esq. dated September 3, 2010.*

The Department of State Foreign Affairs Manual states, in pertinent part, that in order to find an alien ineligible under section 212(a)(6)(C)(i) of the Act, it must be determined that:

- (1) There has been a misrepresentation made by the applicant;
- (2) The misrepresentation was willfully made; and
- (3) The fact misrepresented is material; or
- (4) The alien uses fraud to procure a visa or other documentation to receive a benefit....

*DOS Foreign Affairs Manual, § 40.63 N2.* Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

Notations from the U.S. Consulate in Guangzhou, China indicate that after submitting the Form I-864, Affidavit of Support, and supporting documentation that contained false information, the applicant was directly warned that further submission of fraudulent documents would lead to an inadmissibility finding. Despite the warning, the applicant continued to provide fraudulent

---

<sup>1</sup> The record establishes that the applicant's U.S. citizen father is [redacted]. Counsel mistakenly referenced the applicant's mother. This error is deemed harmless.

documentation in subsequent submissions. Due to these actions, the U.S. Consulate concluded that the applicant's actions constituted the willful presentation of information known to be fraudulent for the purpose of obtaining an immigration visa. The AAO concurs with this finding.<sup>2</sup>

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, it has not been established, by a preponderance of the evidence, that the applicant did not attempt to obtain an immigration benefit by fraud or misrepresentation. The applicant, almost 30 years old at the time, had the duty and the responsibility to review the forms and the compiled documentation (and obtain translations if anything was not clear to her) prior to submission. She was warned that the initial documentation submitted by her was fraudulent and chose to not heed the warnings. As such, the AAO concurs with the officer in charge that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen parents are the only qualifying relatives 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-Morales*, 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

---

<sup>2</sup> The AAO further notes that the applicant was represented by an attorney who was a member of the New York Bar Association and based in Guangzhou. See Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, dated March 22, 2004. The attorney's status was not questioned by the U.S. Department of State Consulate in Guangzhou. The applicant's assertion that she and her father were unaware of immigration laws and were taken advantage of by an individual in New York is undermined by the Form G-28 and indications that the attorney had regular contact with the consulate during the visa process.

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.

Counsel contends that the applicant's U.S. citizen parents will suffer emotional, psychological and physical hardship were the applicant to remain abroad while they reside in the United States. To begin, counsel asserts that the applicant's parents are suffering emotional and psychological hardship due to long-term separation from their daughter. In addition, counsel references that the applicant's parents suffer from numerous medical conditions that impede their mobility and due to said conditions, they need their daughter to assist them in their day to day care.

In support, counsel has submitted extensive medical documentation pertaining to the applicant's mother, confirming that she suffers from chronic shoulder pain, osteoarthritis, insomnia, arthritis of her left knee, lumbar spines and right shoulder, degenerative disc disease and bursitis, and is unable to ambulate freely. *Letter from* [REDACTED], dated December 19, 2009 and *Letter from* [REDACTED] dated May 11, 2010. In addition, evidence of multiple medications prescribed to the applicant's mother to help treat her medical conditions has been submitted. Finally, a psychological evaluation has been submitted from [REDACTED] establishing that the applicant's mother suffers from depression and anxiety. [REDACTED] recommends that the applicant's mother have supportive psychotherapy and that she try antidepressant and anti-anxiety medication should her condition worsen. [REDACTED] notes that the applicant's mother is unable to travel to China regularly due to her health conditions and without her daughter's presence, her condition will deteriorate. *Psychological Evaluation of* [REDACTED] Ph.D., Licensed Psychologist, dated December 14, 2009.

As for the applicant's father, counsel documents that he suffers from hyperthyroidism, right retinal detachment, heart palpitations and osteoarthritis and due to his poor health, he is unable to work and needs his immediate family to take care of him. *Letter from* [REDACTED], dated December 11, 2009. In addition, evidence of multiple medications prescribed to the applicant's father to help treat his medical conditions has been submitted. Finally, a psychological evaluation has been submitted from [REDACTED] establishing that the applicant's father suffers from adjustment disorder, insomnia and memory loss. [REDACTED] recommends that the applicant's father have supportive psychotherapy and receive further evaluation for his memory loss. [REDACTED] notes that the applicant is her parent's chosen caregiver during their remaining years and given their mental and physical conditions, they need their daughter's care and support as soon as possible. *Psychological Evaluation of* [REDACTED] dated December 14, 2009.

The record establishes that the applicant's parents, currently in their 60's, suffer from numerous medical and mental health conditions that require constant monitoring and treatment. The record further establishes that due to their medical conditions, the applicant's mother is not able to ambulate freely and the applicant's father is unable to work. Were the applicant unable to reside in the United States, the applicant's U.S. citizen parents would have to continue caring for themselves emotionally, psychologically and physically without the complete support of the applicant, the only child still remaining in China. The AAO thus concludes that the applicant's U.S. citizen parents would suffer extreme hardship were the applicant to continue to reside abroad while they remain in the United States. The applicant's parents need their child's support on a day to day basis.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, counsel contends that were the applicant's parent to relocate abroad to reside with the applicant, they would be forced to leave their three other children and such a separation would cause them emotional hardship. In addition, counsel asserts that medical care in China is not up to par with the Western world and care for the mentally disabled is stigmatized. Further, counsel notes that the applicant's parent's treating doctors are in New York and a relocation abroad would cause them hardship as they would no longer be treated by professionals familiar with their conditions and treatment plans. *Addendum to Already Submitted I-601 Appeal*, dated January 29, 2010. Finally, the applicant's father, a farmer while living in China, references the inability to obtain gainful employment in China due to the conversion of farmland to high return uses, thereby causing a lower standard of living and financial hardship for the applicant's parents. *See Form I-290B*, dated February 26, 2008.

Documentation has been provided establishing the extensive medical or mental health issues relating to the applicant's parents. In addition, the record establishes the applicant's parents' long-term ties to the United States, as they became permanent residents of the United States more than 13 years ago, and their three other children reside in the United States. Moreover, the AAO notes the following regarding medical care in China, in pertinent part:

The standards of medical care in China are not equivalent to those in the United States. If you plan on travelling outside of major Chinese cities, you should consider making special preparations.

Travelers have reported difficulty passing through customs inspection upon arrival with prescription medications. If you regularly take over-the-counter or prescription medication, bring your own supply in the original container, if possible, including each drug's generic name, and carry the doctor's prescription with you. Many commonly used U.S. drugs and medications are not available in China and some that bear names that are the same as or similar to the names of prescription medications from the United States do not contain the same ingredients.

In emergencies, Chinese ambulances are often slow to arrive, and most do not have sophisticated medical equipment or trained responders. Travelers usually end up taking taxis or other immediately available vehicles to the nearest major hospital rather than waiting for ambulances to arrive. Most hospitals demand cash payment or a deposit in advance for admission, procedures, or emergencies, although hospitals in major cities may accept credit cards. Blue Cross Blue Shield's worldwide network providers - overseas network hospitals' list provides links to Chinese hospitals that accept U.S. medical insurance, including the following: Beijing United Family Hospital, Beijing Friendship Hospital, International Medical

Center in Beijing, Peking Union Medical Center, and Shanghai United Family Hospital.

Beijing, Shanghai, Guangzhou, and a few other large cities have medical facilities with some international staff. Many hospitals in major Chinese cities have so-called VIP wards (*gaogan bingfang*). Most VIP wards provide medical services to foreigners and have some English-speaking staff. However, even in the VIP/foreigner wards of major hospitals, you may have difficulty due to cultural, language, and regulatory differences. Physicians and hospitals sometimes refuse to give U.S. patients complete copies of their Chinese hospital medical records, including laboratory test results, scans, and x-rays.

In most rural areas, only rudimentary medical facilities are available, often with poorly trained medical personnel who have little medical equipment and medications. Rural clinics are often reluctant to accept responsibility for treating foreigners, even in emergency situations.

*Country Specific Information-China, U.S. Department of State, dated August 11, 2010.*

Based on the documentation provided by counsel with respect to the applicant's parents' numerous medical conditions, the unpredictability of the symptoms associated with their medical conditions, the short and long-term ramifications for those afflicted and the need for those suffering from the above-referenced conditions to be monitored and treated by professionals familiar with the conditions and their treatment, the substandard medical care in China, as noted by the U.S. Department of State, the problematic unemployment rate in China<sup>3</sup> and the applicant's parents' long-term ties to the United States, the AAO finds that the applicant's parents would experience extreme hardship were they to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen parents would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen parents would suffer extreme hardship were they 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

---

<sup>3</sup> *Background Note-China, U.S. Department of State, dated August 5, 2010.*

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-Moralez*, 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 U.S. citizen parents would face if the applicant were to continue to reside in China, regardless of whether they accompanied the applicant or remained in the United States, the applicant's apparent lack of a criminal record, and the passage of more than six years since the applicant's fraud or willful misrepresentation when attempting to procure an immigrant visa. The unfavorable factor in this matter is the applicant's fraud or willful misrepresentation, as discussed in detail above.

The immigration violation committed by the applicant was 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 factor. 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.