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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



H5

FILE: [REDACTED] Office: ST. ALBANS, VERMONT

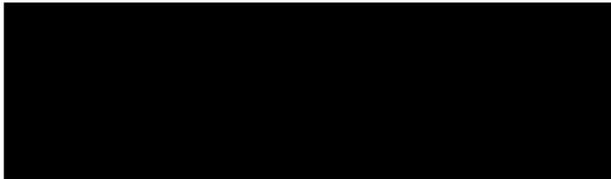
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IN RE: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, St. Albans, Vermont. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China who attempted to gain admission to the United States with an altered passport on October 28, 1994 at Chicago, Illinois. She 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 the use of such passport in 1994. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130), and her husband, a United States citizen, is her petitioner. 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.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in an "extreme hardship" to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated September 8, 2008.

On appeal, the applicant's attorney provided a brief in support of the applicant's appeal. In the brief, the applicant's attorney asserted that the qualifying spouse has lived in the United States his entire life, has no family ties to China and would be negatively impacted financially if he were to relocate to China. Moreover, the applicant's attorney contends that, if the qualifying spouse were to relocate, he would have fewer freedoms, and would be restricted from having more than one child, and would have a difficult time assimilating, as his knowledge of Chinese is minimal. Moreover, the appeal brief indicates that the applicant's spouse would suffer emotionally and psychologically should he remain in the United States without the applicant.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), an appeal brief, the brief submitted with the Form I-601, an affidavit and a letter from the qualifying spouse, an affidavit from the applicant, country condition materials for China, a one-page psychiatric report and an Application to Register Permanent Residence or Adjust Status (Form I-485), as well as the accompanying materials submitted in conjunction with the application including financial documentation. 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:

- (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.

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. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-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 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 the Phillipines, 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 the present case, the record reflects that the applicant admitted her use of an altered passport on October 28, 1994 to enter the United States at Chicago O’Hare Airport in Illinois.

Counsel for the applicant contends that the applicant, who was seventeen years and eight months old at the time she sought admission to the United States, was a child and that it was a “legal impossibility” for her “to harbor the *mens rea* required for the commission of a fraud or an act of misrepresentation.” The AAO is unaware of any case law to support such assertion, and the applicant’s attorney failed to proffer any case law to substantiate his statement. Likewise, the applicant’s attorney submitted an affidavit from the applicant explaining the circumstances of her attempted entry and asserting that she did not knowingly or willfully commit fraud or misrepresentation. When an applicant is seeking waiver of inadmissibility, the burden of proof is always on the applicant to establish by a preponderance of the evidence that she is not inadmissible. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. INA § 291; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). In the applicant’s affidavit, she states that she had “no idea what the passport was or that [her] producing this document would be considered fraud.” However, other than the assertions made by the applicant and counsel, no evidence was provided to support the claims that she did not knowingly or willfully commit fraud or misrepresentation.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). The AAO further notes that in addition to the Cambodian passport presented by the applicant, the record contains a Form I-94 Departure Record and Customs Declaration filled out with the name and date of birth and other identifying information in the passport, undermining the applicant's claim that she was unaware the passport was fraudulent and did not intend to misrepresent her identity. The applicant was therefore unable to meet her burden of proof to show she was not inadmissible, and therefore is inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant's qualifying relative is her husband, and as aforementioned, her Form I-130 has already been approved. The documentation provided that specifically relates to the qualifying spouse's hardship includes an affidavit and a letter from the qualifying spouse, an affidavit from the applicant, country condition materials for China, a one-page psychiatric report and the materials accompanying the Form I-485 including financial documents. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant's attorney provided a brief in support of the applicant's appeal detailing the hardships that the qualifying spouse would encounter if he were to relocate to China. The applicant's attorney asserted that the qualifying spouse has lived in the United States his entire life, has limited knowledge of the Chinese language, has close family ties to the United States and would be negatively impacted financially if he were to relocate to China. The applicant's attorney also contends that if the qualifying spouse were to relocate, he would face difficult country conditions, including possible loss of freedoms associated with having children. Moreover, the appeal brief indicates that the applicant's spouse would suffer emotionally and psychologically if he were to remain in the United States without the applicant.

Although the qualifying spouse's separation from the applicant may cause him potential emotional and financial hardships if he were to remain in the United States without the applicant, there is very little evidence in the record to demonstrate the hardships that he may encounter. With regard to the qualifying spouse's potential emotional and psychological hardships, should his wife return to China without him, the applicant's husband indicated in his affidavit that his "emotional suffering has manifested itself physically." In addition, the record contains a one-page psychiatric report indicating that the applicant is suffering from great fear, severe anxiety, panic attacks, shortness of breath, sweating and palpitation, resulting from the fear of his wife returning to China. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any treatment plan for the conditions noted in the evaluation, to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on a single meeting with the applicant's spouse, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of exceptional hardship. Moreover, while the AAO empathizes with the qualifying spouse's potentially encountering emotional issues upon the return of the applicant, he was likely previously aware that his wife could be removed since she had been ordered removed

almost ten years prior to the date of their marriage. As such, the qualifying spouse had reason to expect at the time they were married that the applicant may not be able to live with him in the United States. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 567. Moreover, the psychiatric report and other evidence on the record are insufficient to establish that the psychological hardships of the qualifying spouse are unusual or beyond what would be expected as a result of inadmissibility or removal. As such, the applicant failed to demonstrate that her husband will suffer extreme hardship should he remain in the United States without her.

However, the applicant has demonstrated that her qualifying spouse would suffer an extreme hardship in the event that he relocated to China. The qualifying spouse indicated that he has lived in the United States for his entire life, has close family ties in the United States and speaks very little Chinese. The applicant's spouse also indicates that as a United States citizen, it is unsafe for him to live in China. The record contains country conditions information to support his assertions regarding his safety concerns if he were to reside in China. The applicant's attorney provided documentation discussing the general problems with the applicant's home country, its economic issues, and the possibility that the applicant and her spouse would be subjected to coercive family planning policies if they want to have more than one child. The record also confirms that the applicant's spouse may suffer financially there due to his inability to find employment if he relocated. The AAO concludes that, were the applicant unable to reside in the United States due to her inadmissibility, the potential cumulative hardships the qualifying spouse would suffer rise to the level of extreme hardship if he returned to China accompanying his wife.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.