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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

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FILE:



Office: NEW YORK CITY, NEW YORK

Date:

JAN 05 2011

IN RE:

Applicant:



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 District Director, New York City, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 attempting to procure entry into the United States by fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a Lawful Permanent Resident (LPR) of the United States and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks 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 LPR husband and children.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the District Director*, dated December 14, 2007.

On appeal, the applicant through counsel asserts that the District Director erred in denying the applicant's waiver application because the applicant has submitted sufficient evidence to demonstrate that her spouse would suffer extreme hardship if her waiver request is denied. *See Form I-290B and the accompanying Brief from Counsel*, dated February 13, 2008.

The record includes, but is not limited to, a brief from counsel in support of the appeal, two affidavits from the applicant's spouse dated November 28, 2007 and February 13, 2008, an affidavit from [REDACTED] the applicant's adult son, dated November 27, 2007, and a letter from [REDACTED], dated January 9, 2008, regarding the applicant's husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) 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.
- . . . .
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [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 [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...

In the present case, the record reflects that on April 26, 1991, the applicant attempted to procure entry into the United States by using a fraudulent passport and visa belonging to another person. The applicant was placed in Removal Proceedings. She subsequently filed a Request for Asylum in the United States (Form I-589). On November 22, 1994, the Immigration Judge denied the applicant's request for asylum and ordered her removed from the United States to China. The applicant has remained in the United States. On May 29, 2007, the applicant's United States citizen son, [REDACTED] filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, and on the same date, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based on the Form I-130 petition. On November 28, 2007, the Form I-130 was approved. During the adjustment of status interview, the applicant was found inadmissible pursuant to 212(a)(6)(C)(i) of the Act. The applicant filed a Form I-601 on November 28, 2007. The record reflects that the applicant has not disputed her inadmissibility on appeal. Thus, the AAO affirms the District Director's finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. On December 14, 2007, the District Director denied the Form I-485 and the Form I-601, finding that the applicant had failed to demonstrate extreme hardship to a qualifying relative.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's Lawful Permanent Resident 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-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 the present case, the record reflects that the applicant’s spouse, [REDACTED] is a 57-year-old native of China and a Lawful Permanent Resident of the United States. Although counsel claims that the applicant and her husband entered into a traditional marriage in China on January 1, 1975, the record contains a copy of a Certificate of Marriage Registration from the City of New York, dated November 14, 2007, indicating that the applicant and her husband were married on November 14, 2007, in New York City, New York. The applicant and her husband have two adult children. The applicant’s husband asserts that denial of the applicant’s waiver request and her removal from the United States will result in extreme emotional hardship to him.

Regarding the emotional hardship of separation, the applicant’s husband asserts that he needs the applicant to take care of him, that he has some medical problems, that the applicant has become his

primary care-giver, and that he depends on the applicant to provide him with ongoing and reliable care, including “the taking of medication, visiting my doctors, help with many normal daily activities, such as shopping and cooking meals.” *See Affidavit of* [REDACTED] dated February 13, 2008. The applicant’s husband further asserts that the applicant has been in his life for over thirty years, that she provides him with love and companionship, that he has come to depend on the applicant emotionally, and that without the applicant here in the United States with him, “my survival and quality of life would be acutely jeopardized; her presence is vital to my physical and psychic well-being.” *Id.* [REDACTED] the applicant’s son, asserts that the applicant recently reunited with their father in the United States, that he and his sister are unable to care for their father and that their father is now dependent on the applicant to take care of him on a day to day basis and that removal of the applicant from the United States would result in extreme hardship to their father. *See Affidavit from* [REDACTED] dated November 27, 2007. Counsel asserts that if the applicant was removed from the United States, her husband would be left helpless and unable to even take care of his own basic needs. *See Counsel’s Brief on Appeal*, dated February 13, 2008. The record contains a letter from [REDACTED] stating that the applicant’s husband has hypertension, hypertensive heart disease and chronic dizziness pre-syncope, that he cannot take care of himself and that he needs a family member or someone to take care of him. *See Letter from* [REDACTED], dated January 9, 2008.

The AAO acknowledges that separation from the applicant could cause some hardship to the applicant’s spouse, however, it does not find that the evidence in the record is sufficient to demonstrate that the challenges encountered by the applicant’s husband, considered cumulatively, meet the extreme hardship standard. While the emotional hardship of separation is apparent from the applicant’s husband’s and her son’s affidavits, the record does not contain medical records, detailed testimony, or other evidence to show the impact of separation on the applicant’s husband or that the challenges he faces are unusual or beyond what would be expected upon family separation due to one member’s inadmissibility. The brief letter from [REDACTED] regarding the applicant’s husband, lists the medical problems the applicant’s husband has, but does not provide detailed assessment of the severity of the medical conditions, information on treatment provided or any family assistance needed. Without such details, the AAO is not in the position to reach conclusions concerning the severity of any medical condition or the treatment needed. In addition, the letter states that the applicant’s husband needs a family member or someone to take care of him, but does not demonstrate that the applicant is the primary care-giver to her husband and that removal of the applicant from the United States would result in extreme hardship to him. The record reflects the applicant has two grown children living in the United States. It has not been established that they cannot take care of their father. Therefore, the AAO finds that the applicant has failed to establish her husband would suffer extreme hardship if she is removed from the United States.

Regarding relocation, no claim was made that the applicant’s husband would suffer extreme hardship if he relocated to China with the applicant. Therefore, the AAO cannot make a determination of whether the applicant’s husband would suffer extreme hardship if he relocated to China.

In sum, although the applicant’s husband claims hardship based on family separation, the record does not support a finding that the difficulties he faces when considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one’s family

is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(i) of the Act.

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.