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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  
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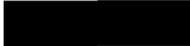


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Date: JUL 13 2011

Office: PHILADELPHIA

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IN RE: 

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.

Thank you,

for Perry Rhew

Chief, Administrative Appeals Office

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

The applicant is a native and citizen of China who 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 willfully misrepresenting a material fact to procure admission into the United States. The applicant is applying for a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse and stepson.

The field office director determined that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant's spouse will suffer extreme hardship if the applicant is denied admission to the United States.

In support of the waiver application, the record includes, but is not limited to, statements from the applicant and his spouse, medical documentation, financial documentation, photographs, and the biographical page of the applicant's spouse's U.S. passport. 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 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.

The director found the applicant inadmissible under section 212(a)(6)(C) of the Act for having presented a photo-substituted passport containing a B1/B2 visa for admission to the United States on August 3, 1992. The record supports this finding, and the AAO concurs that this misrepresentation

was material. The applicant has not disputed his inadmissibility on appeal. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is relevant to section 212(i) waiver proceedings only to the extent it results in hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., *Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In an undated letter filed with the appeal, the applicant's spouse asserts that she suffers from back pain, and the applicant helps with the housework. She states that she does not have health insurance to pay for back surgery. She states that she has hepatitis B, and has been instructed by her doctor to relax and not become too tired. She states that her right hand was burned when she was young and she now has poor circulation in her hand. She asserts that the applicant helps her and her son when they are sick. She notes that after receiving the denial letter, she has become emotionally unstable and cannot control her temper. She contends that if her husband is compelled to leave the United States, she will not be able to afford day care for her child. She states that she will not be available for her child because she will have to work. She states that she will have to apply for public assistance from the government. She notes that she will not have the time and money to travel back and forth to China to visit the applicant if they are separated. She asserts that if she relocates to China, her child will have to go with her, and his academics will be negatively impacted.

In an affidavit dated March 2, 2009 the applicant's spouse asserts that her son has chronic upper airway obstruction and he may have sleep apnea. She states that he is under constant supervision by a pediatric specialist. She states that her son's condition would be exacerbated in China because of the poor air quality and pollution in the country. She contends that she would be unable to get treatment for hepatitis B in China, and her condition would become worse. She states that she has been suffering from extreme back pain for which she has had to seek medical treatment. She states that her husband has been helpful with taking care of her son and assisting her with household duties. The applicant submitted an affidavit dated March 2, 2009, which reiterates the hardships articulated in his spouse's letter.

Upon review of the record, the AAO finds that the applicant's spouse would suffer extreme hardship if she is separated from the applicant.

The affidavit of support (Form I-864) the applicant's spouse filed on behalf of the applicant reflects that in 2008 the applicant's spouse earned \$16,080.00 and the applicant earned \$23,400.00, giving them a total household income of \$39,480.00. The record reflects that the applicant spouse's has a child from a

previous marriage, an eight-year-old son, [REDACTED]. While the applicant has not presented his household expenses, the AAO notes that if the applicant relied on her income alone in 2008 she would be earning less than the federal poverty line as put forth by the Department of Health and Human Services. We will therefore give weight to the claims of financial hardship the applicant's spouse would suffer from the loss of the applicant's income if she is separated from him.

A letter from a physician with the [REDACTED] in New York states that the applicant's spouse has chronic hepatitis B, and has taken medication to treat the condition. In addition, a letter from [REDACTED] states that the applicant's spouse is under the physician's care for lumbar radiculopathy. The applicant submitted a note from his spouse's physical therapist reiterating this diagnosis. The applicant also submitted evidence that his spouse has been prescribed various medications to treat her condition. The AAO finds that the submitted evidence supports the applicant's spouse's claims that she is suffering from severe back pain. The AAO will give weight the claims of hardship she would suffer if she is separated from the applicant and no longer able to rely on his physical support.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if she is separated from the applicant as a result of his inadmissibility. In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and that "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted). The AAO finds that the applicant's separation from his spouse will constitute emotional suffering, and is sympathetic to their situation. The AAO will give significant weight to this hardship in an aggregate assessment of extreme hardship.

All presented elements of hardship to the applicant's spouse, should she remain in the United States, have been considered in aggregate. Based on the foregoing evidence of financial, medical and emotional hardships, the applicant has established that his spouse would suffer extreme hardship if she is separated from him.

Furthermore, the record shows that the applicant's spouse would suffer extreme hardship if she relocates to China to maintain family unity.

The applicant's spouse asserts that her son has chronic upper airway obstruction and he may have sleep apnea. She states that he is under constant supervision by a pediatric specialist. She states that her son's condition would be exacerbated in China because of the poor air quality and pollution in the country. She contends that she would be unable to get treatment for hepatitis B in China, and her condition would become worse. The applicant presented a letter from Washington Pediatrics in Philadelphia dated February 18, 2009 stating that his stepson, [REDACTED], was diagnosed with chronic upper airway obstruction and possible sleep apnea. The letter notes that the applicant's stepson was seen in the office on March 15, 2008, March 20, 2008, May 3, 2008, June 2, 2008, July 14, 2008, July 18, 2008, August 25, 2008, September 30, 2008, November 22, 2008, December 2, 2008 and December 15, 2008. Further, documentation in the record reflects that the applicant's spouse is receiving medical care and

physical therapy to treat her back pain. A letter from her acupuncturist reflects that the problem is chronic, and she has suffered from back pain for six years. The AAO notes that while the applicant has not shown that his spouse and son would be unable to receive medical treatments for their health conditions in China, relocation to China would disrupt the continuity of medical care they are currently receiving. The AAO will therefore give weight to the medical hardships they would suffer upon relocation to China.

The applicant's spouse asserts that if she relocates to China, her child will have to go with her, and his academics will be negatively impacted. Court decisions have found extreme hardship in cases where the language capabilities of the children were not sufficient for them to have an adequate transition to daily life in the applicant's country of origin. For example, *Matter of Kao and Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in Taiwan. The girl had lived her entire life in the United States and was completely integrated into an American life style, The BIA found that uprooting her at this stage in her education and her social development to survive in a Chinese-only environment would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5<sup>th</sup> Cir. 1983), the circuit court stated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown. In *Prapavat v. INS*, 638 F. 2<sup>nd</sup> 87, 89 (9<sup>th</sup> Cir. 1980) the Ninth Circuit found the BIA abused its discretion in concluding that extreme hardship had not been shown to the aliens' five-year-old citizen daughter, who was attending school, and would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her. The applicant has not explained the language capabilities of his stepson. However, we will give weight to the hardship the applicant's spouse will suffer from having to relocate her eight-year-old U.S. citizen son to a new culture and academic environment in China.

All presented elements of hardship to the applicant's spouse, should she relocate to China, have been considered in aggregate. The AAO finds that the common hardships associated with relocation in combination with the foregoing medical, academic and cultural hardships the applicant's spouse will encounter while adjusting herself and her son to residence in China are extreme and rise to the level of extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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). 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 adverse factors in the present case are the applicant's misrepresentation and any periods of unlawful presence and unauthorized employment. The favorable factors in the present case are the

extreme hardship to the applicant's U.S. citizen spouse and stepson and the fact that he does not appear to have any criminal convictions.

The AAO finds that the applicant's immigration violations are serious in nature and cannot be condoned. Nevertheless, the AAO finds that 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.