

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



hty

Date: **JUL 25 2011**

Office: [REDACTED]

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and Application for Permission to Reapply for Admission after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) and the Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) were concurrently denied by the Field Office Director, Guangzhou, China and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of China, entered the United States with a valid B-2 nonimmigrant visa in June 1993, with permission to remain until December 1993. The applicant was ordered deported in absentia in July 1997. The applicant's motion to reopen deportation proceeding was denied in July 1998. *Written Decision of the Immigration Judge*, dated July 20, 1998. The applicant was deported from the United States in May 2005. *Warrant of Removal/Deportation*, dated May 2, 2005. The applicant was thus found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with her U.S. citizen spouse and children. In addition, the applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The Field Office Director determined that the applicant had failed to establish extreme hardship to a qualifying relative. The Field Office Director further noted that the applicant did not merit favorable discretion after weighing the favorable and unfavorable factors in the case. The applicant's Form I-601 and Form I-212 were concurrently denied. *Decision of the Field Office Director*, dated November 17, 2008.

In support of the appeal, the applicant's spouse submits the following *inter alia*: an affidavit, dated December 12, 2008; evidence of the applicant's spouse's father's divorces and medical conditions; an affidavit from the applicant's spouse's father, dated December 12, 2008; evidence of home ownership; financial documentation; an internet article about cleft palate and a photograph of the applicant's child; copies of Consular Report of Birth Abroad certificates for the applicant's two children; a hepatology consultation note for the applicant's spouse; evidence of the applicant's parents' lawful permanent resident status; medical documentation pertaining to the applicant's parents; and a support letter. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act provides, in pertinent part:

(A) Certain alien previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or

within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant

alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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, her children or her father-in-law can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse and lawful permanent resident 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).

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.

The applicant’s U.S. citizen spouse contends that he will suffer emotional and financial hardship were he to remain in the United States while the applicant resides abroad due to her inadmissibility. In a declaration the applicant’s spouse asserts that he is suffering from depression due to his wife’s inadmissibility and his father’s unstable medical situation. He also references that his wife is lonely and emotional in China, especially because he contends that the Chinese government is threatening her with sterilization. Finally, he explains that he needs his wife to come to the United States to help care for the children and earn money. As for the applicant’s lawful permanent resident parents, the applicant’s spouse contends that they are suffering due to long-term separation from their daughter. *Affidavit of* [REDACTED] dated December 12, 2008.

With respect to the applicant’s lawful permanent resident parents, no supporting evidence concerning the emotional hardship the applicant’s spouse asserts they are experiencing has been provided. Moreover, although documentation has been provided establishing that the applicant’s parents suffer from a number of medical conditions, the documentation provided does not establish the severity of the situation, the short and long-term treatment plan and what specific hardships they will experience if the applicant is unable to reside in the United States. It has also not been established that the applicant’s sibling, who currently resides with her parents, is unable to care for them while the applicant remains abroad. Nor has it been established that the applicant’s parents would be unable to travel to China, their native country, on a regular basis to visit the applicant. 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) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In support of a claim that the applicant's spouse is experiencing emotional hardship, the record contains a hepatology consultation note from [REDACTED] explains that the reason for consultation was questionable fatty liver and concludes that the applicant's spouse is suffering from major depression due to his wife's inadmissibility and his daughter's cleft lip problem. *Letter from [REDACTED] Associate Medical Director, [REDACTED] in Hepatology*, dated December 10, 2008. The letter contains no further detail concerning the applicant's spouse's condition or any history of treatment for the major depression diagnosed by Dr. [REDACTED]. The evidence provided does not establish that the applicant's spouse suffers from a serious medical condition or that any emotional hardship he is experiencing goes beyond the common results of removal or inadmissibility.

In addition, the applicant has not established that her U.S. citizen children are unable to reside with their father in the United States and that such arrangements would cause the applicant's spouse extreme hardship. It has also not been established that the applicant's spouse is unable to travel to China, his native country, on a regular basis to visit the applicant. Finally, no documentation has been provided establishing that the applicant may be subject to sterilization or persecution while in China. As for the applicant's spouse's assertion that he needs his wife to reside in the United States to assist with the household finances, no documentation has been provided that outlines the applicant's spouse's current financial situation, including income and expenses and assets and liabilities, to support this claim. It has also not been established that the applicant is unable to obtain gainful employment in China.

The AAO recognizes that the applicant's spouse and parents will endure hardship as a result of a long-term separation from the applicant. However, their situation if they remain in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

In regards to relocating abroad to reside with the applicant due to her inadmissibility, the applicant's spouse asserts that his in-laws can not stop their medical treatment in New York and relocating abroad would cause them hardship. *Supra* at 2. No documentation has been provided establishing that the applicant's parents, natives of China, would be unable to obtain adequate medical treatment in China.

The applicant's spouse's further contends that he cannot relocate abroad because his father is divorced and residing with him and due to his apoplexy, his father needs him to care for him. He states that were he to relocate abroad, his father would suffer, thereby causing him hardship. In addition, the applicant's spouse asserts that he would not be able to find gainful employment in China to allow him to maintain his standard of living, continue paying the mortgage on his home in the United States and financially support his father. *Supra* at 1.

With respect to the applicant's father's medical condition, the record does not contain a letter from his treating physician outlining his current medical situation, the short and long-term treatment plan, and what specific hardships he will experience were his son to relocate abroad to reside with the

applicant due to her inadmissibility. Although a number of medical reports have been provided, they do not specifically detail, in plain language, the applicant's father's current needs and limitations. As for the financial hardship referenced by the applicant's spouse were he to relocate abroad, no documentation has been provided establishing that his father is unable to support himself and maintain the home he co-owns with the applicant's spouse. Nor has any supporting documentation been provided establishing that neither the applicant nor her spouse could obtain gainful employment in China to maintain the family's standard of living and ensure continued care for their daughter's cleft lip and palate. The AAO notes that the applicant's child has been treated for her medical condition at Guangdong Children's Hospital. *Supra* at 1.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to establish that her U.S. citizen spouse or lawful permanent resident parents would suffer extreme hardship if she were not permitted to reside in the United States due to her inadmissibility. The record demonstrates that the applicant's spouse and parents face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or daughter is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

As noted above, the field office director concurrently denied the applicant's Form I-212 and Form I-601. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) and is not eligible for a waiver under section 212(a)(9)(B)(v) of the Act no purpose would be served in granting the applicant's Form I-212.

In proceedings for application for waiver of grounds of inadmissibility, 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. The applications are denied.