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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals (AAO)  
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Washington, DC 20529-2090



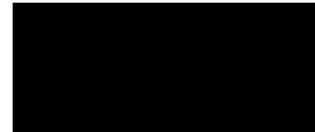
U.S. Citizenship  
and Immigration  
Services



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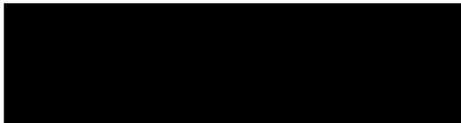
**JUN 27 2011**

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 Field Office Director, Newark, New Jersey. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 36-year-old 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 obtain an immigration benefit through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen 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, in order to reside in the United States with her United States citizen spouse and children.

The Field Office Director found 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. *Decision of the Field Office Director*, dated April 7, 2008.

On appeal, counsel asserts that the applicant did not commit any fraud and that the director “failed to meaningfully consider the evidence of record regarding hardship to the applicant’s husband and to properly apply the correct standards in evaluating hardship.” *See Form I-290B*, dated May 1, 2008, and the accompanying brief in support of the appeal.

The record includes, but is not limited to, affidavits from the applicant and her spouse, counsel’s brief in support of the appeal, dated May 1, 2008, a copy of a psychological evaluation of the applicant’s spouse and children by [REDACTED], Licensed Psychologist, dated March 14, 2006, supportive letters and statements from friends, a copy of a letter from [REDACTED], [REDACTED] New Jersey, as well as copies of other school records relating to the applicant’s children, copies of U.S. Individual Income Tax Returns for the applicant and her spouse, a copy of a lease agreement dated November 21, 1994, copies of various bills and copies of financial documents. The entire record was reviewed and considered in rendering this 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 [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 December 26, 1994, the applicant attempted to procure entry into the United States by presenting a Chinese Passport in another person's name and a fraudulent temporary Form I-551, lawful permanent resident stamp.<sup>1</sup> The applicant was found to be inadmissible for fraud, was issued a Form I-122, Notice To Applicant For Admission Deferred for Hearing before Immigration Judge, a Sworn Statement was taken, and she was paroled into the United States pending an exclusion hearing. On June 9, 1995, the applicant's United States citizen spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on March 18, 1996. The record reflects that the applicant filed multiple Applications to Register Permanent Residence or Adjust Status (Form I-485). The record shows that the applicant failed to disclose on the Form I-485 applications that she had been paroled into the United States for an exclusion hearing and that she was ordered excluded. On May 25, 2005, the applicant filed a Form I-601 waiver application. On April 7, 2008, the Field Office Director denied the Form I-601, finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and had failed to demonstrate extreme hardship to a qualifying relative.

The record shows that on at least two separate occasions, the applicant attempted to obtain a U.S. immigration benefit through fraud or the willful misrepresentation of a material fact; to wit, her use of a fraudulent passport upon arrival on December 26, 1994; and her failure to reveal a prior exclusion on her adjustment applications.

On appeal, counsel asserts that the applicant did not commit any fraud and should not have been required to file a Form I-601 waiver application. No evidence has been presented by counsel in support of his assertions. Contrary to counsel's assertions, the record reflects that on December 26, 1994, the applicant completed a sworn statement under penalty of perjury in which she admitted that she purchased a fraudulent passport in China with the intent to use it to procure entry into the United States.<sup>2</sup> The applicant responded to the following questions:

- Q: Did you try to apply for a U.S. visa, if not explain why.  
A: No. I do not know.  
Q: I show you this passport, PRC No. [REDACTED]<sup>3</sup> Did you present this document to U.S. Immigration Officer?  
A: Yes.

<sup>1</sup> A check of USCIS records reveals that the A# on the Form I-551 stamp belongs to another individual, not the name in the passport.

<sup>2</sup> See Record of Sworn Statement by [REDACTED], executed at NYC-JFK, on December 26, 1994.

<sup>3</sup> The original passport in the name [REDACTED] was confiscated from the applicant and is contained in the record.

- Q: Did you present it to the officer in order to gain admission to the United States?
- A: Yes.
- Q: Was this document legally issued to you?
- A: No.
- Q: When, where and how did you obtain this document?
- A: I got it some time in November 1994 in Fujian, China. I paid \$28,000 U.S. dollars.

*See Record of Sworn Statement by [REDACTED], on December 26, 1994.*

On appeal, counsel argues that the applicant should not be penalized for not revealing her exclusion hearing because she did not know what she was signing and that she relied and trusted the individuals who helped her complete the applications. Counsel further argues that the applicant relied on these individuals to her detriment because these individuals did not know much about the immigration laws and/or were deceiving the applicant. While it may be true that the applicant relied on some individuals to assist her in completing her Form I-485 applications, it is evident from the records that the applicant signed these forms under penalty of perjury affirming that the applications were true and correct. Therefore, while others may have completed the forms, the applicant was responsible for the contents and cannot now disavow what she had sworn to previously. Thus, the AAO agrees with the Field Office Director that the applicant is inadmissible under section 212(a)(6)(C)(i) 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 or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is 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.

In this case, the record reflects that the applicant's spouse, [REDACTED], is a 38-year-old native of China and citizen of the United States. The applicant and her spouse were married in New York City, on April 4, 1995 and they have two children, [REDACTED], 12 years old, and [REDACTED], 9 years old. The applicant's spouse states that he will suffer extreme emotional and financial hardship as a result of family separation and the denial of the applicant's waiver request.

Regarding the emotional and financial hardship of separation, the applicant's spouse states that he needs the applicant to take care of the children and help him with their restaurant business. The

applicant's spouse states that he works a 12-hour shift at the restaurant and does not have the time to care for their children's basic needs, that the applicant is the one who takes care of their day-to-day needs, including school work, after school activities and food. The applicant's spouse also states that he has limited knowledge of the English language, so the applicant is responsible for all aspects of their business except for cooking, and that he will not be able to manage the restaurant and take care of their children without the applicant's help. *See Affidavit of* [REDACTED], dated April 30, 2008. The applicant's spouse further states that he had asked his parents for help, but that they could not do much because of their health conditions and that he does not have the finances to hire the number of people needed to take over the services the applicant provides at the restaurant. *Id.* Additionally, the applicant's spouse states that it will be difficult for him to find a good live-in caregiver for his children who can speak both English and Chinese, and that even if he can find such a candidate, he cannot afford to hire the person. *Id.*

The record contains copies of U.S. Individual Income Tax Returns for the applicant and her spouse through 2007, and copies of various bills, some addressed to the restaurant. The record also contains a copy of an initial psychological evaluation report by [REDACTED] regarding the applicant's spouse and her children. [REDACTED] stated that the applicant's spouse appeared anxious and depressed during the interview, and that he believes that he and his children will not survive without the applicant. [REDACTED] diagnosed the applicant's spouse with Major Depressive Disorder, Severe, and recommended the following treatment plans: weekly supportive psychotherapy to help him reduce anxiety, reduce depression, and manage stresses; evaluation for any suicidal ideation and suicidal plan during weekly psychotherapy, and to call the treating physician or 911 for help if he became more suicidal; the applicant to attend more to her spouse's emotional needs and to spend more time with him; and medication referral if the applicant's spouse does not improve significantly with psychological interventions. *See Initial Psychological Evaluation by* [REDACTED], *Licensed Psychologist, Brooklyn, New York*, dated March 14, 2006.

The AAO acknowledges that separation from the applicant may cause some challenges for the applicant's spouse, however, it does not find the evidence in the record sufficient to demonstrate that the challenges he encounters meet the extreme hardship standard. The AAO notes that while the input of any mental health professional is respected and valuable, the submitted assessment by [REDACTED] is based on one interview with the applicant's spouse on March 14, 2006. In that the conclusions reached in the submitted assessment are based solely on this single interview, the AAO does not find the report to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the report speculative and diminishing its value to a determination of extreme hardship. Also, there is no evidence in the record to show that the applicant's spouse implemented any of the treatment plans recommended by [REDACTED]. As to the claim of financial hardship, the record contains individual income tax returns filed by the applicant and her spouse, and copies of bank statements. While the applicant and her spouse provided tax documents as evidence of the family's income, they did not submit detailed information on the family's expenses so the AAO cannot determine their financial situation and how it would be affected if the applicant were to return to China. The applicant's spouse claims he could not afford to hire help at his restaurant and a care giver to replace the jobs done by the applicant, but these claims are not supported by the record. Without such information, the AAO cannot conclude that family separation

would cause extreme financial hardship to the applicant's spouse. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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)). Finally, hardships faced by the applicant's children as a result of family separation are not considered in the extreme hardship analysis, except to the extent that these hardships impact on the applicant's spouse. In this case, the applicant has failed to provide evidence to show that the hardship to her children will severely impact her husband and render his hardship extreme. Accordingly, the AAO finds that the applicant has failed to demonstrate that the challenges her spouse will face as a result of her inadmissibility are unusual or beyond the common results of removal or inadmissibility and rise to the level of extreme hardship.

The AAO notes that no claim was made that the applicant's spouse would suffer hardship if he relocated to China to live with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's spouse would suffer extreme hardship if he moved to China.

In sum, although the applicant's spouse claims hardships based on family separation, the record does not support a finding that the difficulties he faces, 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

The AAO notes that the file contains two unadjudicated Motions to Reopen, one for the I-601 application and one for the I-485 application, which are not addressed here as the AAO does not have jurisdiction pursuant to 8 C.F.R. 103.5(a)(ii).

**ORDER:** The appeal is dismissed.