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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



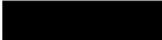
U.S. Citizenship
and Immigration
Services

H5



DATE: NOV 01 2011

Office: NEW YORK, NY
(GARDEN CITY)

FILE: 

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).

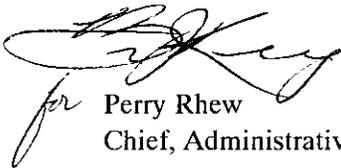
ON BEHALF OF APPLICANT:



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.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The waiver application will be approved. The appeal will be sustained.

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 having sought to procure a benefit under the Act by willfully misrepresenting a material fact. The applicant is the spouse of 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, 8 U.S.C. § 1182(i), in order to reside in the United States.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated January 12, 2009.

On appeal, counsel asserts that a significant new hardship has arisen for the applicant's spouse. Counsel submits a brief and additional evidence. *See Form I-290B and attachments.*

The record includes, but is not limited to, statements from the applicant, his spouse and her parents describing the hardship claimed; medical documentation relating to the applicant's spouse and her parents; a psychological evaluation of the applicant's spouse; statements from the applicant's and his spouse's employers; income tax transcripts and household bills; reference letters; and counsel's briefs and attachments. The entire record was reviewed and considered in arriving at a decision on 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).

The record reflects that the applicant applied for admission at the Los Angeles International Airport, California, on May 10, 2000 without a valid entry document. On April 6, 2001, the applicant filed an asylum application. On August 23, 2001, an Immigration Judge denied the applicant's asylum application. The applicant's appeal was dismissed by the Board of Immigration Appeals on December 11, 2002.

During his adjustment interview on August 1, 2008, the applicant testified that he had submitted a fraudulent asylum application and numerous fraudulent documents in support of his asylum application.

The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act for having sought an immigration benefit by misrepresenting material facts. The applicant does not contest this finding.

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

(i) (1) The Attorney General [now the Secretary of Homeland Security] may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative.* The applicant's spouse 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).

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.

On appeal, the applicant’s spouse claims that she and her family will fall apart if the applicant is removed from the United States. In affidavits dated December 23, 2008 and February 9, 2009, the applicant’s spouse states that her mother has been diagnosed with a brain tumor; that her mother is in excruciating pain and that her condition is worsening. She asserts that her mother cannot care for herself and requires physical and emotional support from her and the applicant; and that both her parents depend on her and the applicant for financial support. The applicant’s spouse contends that she cannot care for everyone by herself and that she has a demanding work schedule. She states that she relies on the applicant to care for her mother, make her medical appointments and ensure that she obtains and takes her medication. The applicant’s spouse also states that she needs the applicant’s emotional support and that he is the only person keeping her sane and calm during the hard times she is experiencing. She also indicates that she worries about having to care for and raise her child by herself without the applicant. The applicant’s spouse further asserts that she and the applicant provide financial support to her parents as they are too old and sick to earn enough for medicine or surgery.

The applicant’s mother-in-law, in a February 9, 2009 affidavit, states that since being diagnosed with a brain tumor she has been “severely depressed.” She asserts that she suffers from headaches which, at times are excruciating and that she has lost her appetite and is unable to sleep. The applicant’s mother-in-law notes that her daughter and the applicant have been taking care of her and have been monitoring her condition to ensure it does not worsen. In an August 20, 2009 affidavit, the applicant’s father-in-

law states that he is unable to work to support his wife and family because he suffers from knee joint swelling, has developed lower back pain, and has been feeling numbness and weakness in his lower back and that the applicant helps him with physical therapy and home exercises.

In support of his spouse's claim that she is suffering from depression, the applicant submits an August 5, 2008 psychological evaluation, prepared by licensed psychiatrist, [REDACTED] [REDACTED] concludes that the applicant's spouse suffers from a Major Depressive disorder and states that "the possibility of losing her husband is directly responsible for her current depression and anxiety." He also states that the applicant's spouse has a history of major depression and finds that "[her] mental condition will further deteriorate beyond any doubt if her husband has to go back to China."

The record also includes documentation that the applicant's spouse's parents suffer with various medical problems. An October 3, 2008 medical letter from [REDACTED] of the [REDACTED] [REDACTED] states that an MRI of the applicant's mother-in-law's brain reveals a "likely left parietal meningioma" that he discussed its surgical removal with the applicant's spouse and her mother, and that he recommends surgical resection if the lesion increases in size or demonstrates signal abnormality in the brain. In addition, [REDACTED] letter indicates that the applicant's mother-in-law suffers with hypertension and increased cholesterol and that she takes medication for high blood pressure and high cholesterol. An August 2, 2008 medical letter from [REDACTED] indicates that the applicant's mother-in-law has been diagnosed with hypertension, gastritis, lower back pain and knee pain.

To establish the medical problems of the applicant's father-in-law, the record contains a June 23, 2008 medical evaluation from [REDACTED] [REDACTED] indicates that the applicant's father-in-law suffers with lower back syndrome and, perhaps, lumbar radiculopathy. In an August 4, 2008 evaluation report, [REDACTED] recommends continued physical therapy, acupuncture, home exercise, and prescribes Mobic.

In addition, various support letters in the record include statements from friends and [REDACTED] [REDACTED] attesting that the applicant took care of his mother-in-law when she was hospitalized. Documentation in the record also indicates that the applicant's father-in-law is unable to work as a result of the pain he was experiencing. Included in the record is a June 23, 2008 evaluation from [REDACTED] [REDACTED] stating that the applicant's father-in-law is unable to work because of pain which is aggravated by forward bending, lifting, and prolonged standing and negotiating stairs.

The record includes a transcript of a 2007 income tax return for the applicant and his spouse, checking account statements for the period May 17, 2006 to June 18, 2008, and statements for the periods ending May 13, 2008 and June 12, 2008; a medical bill for \$2,400.00, dated March 19, 2007; and telephone bills for services from May to June 2006, and from June to July 2006. However, the record contains no documentation of the applicant's and her spouse's incomes or their expenses, including their recurring monthly obligations. Neither does it establish the finances of the applicant's spouse's parents.

Without the applicant here, the applicant's spouse would have to bear a significant increase in responsibilities in the applicant's absence, a single parent working and caring for a four year old child and supporting physically two parents, now 55 and 60 years of age, who have health problems that appear to limit their ability to function independently. We also take particular note of the debilitating

effects of the applicant's spouse's mother's brain tumor and the consequent impact on the applicant's spouse. When these hardships are considered with the normal hardships created by separation, the record establishes hardship to the applicant's U.S. citizen spouse beyond what would normally result from separation.

Regarding hardship upon relocation, in the Motion to Reopen he filed with the District Director on January 2, 2009, counsel states that the applicant and his spouse are the primary caregivers for her parents and asserts that if the waiver application is denied the applicant's spouse would be faced with the choice of leaving her mother who may be dying or losing the applicant. Counsel contends that there can be no better example of extreme hardship than forcing the applicant's spouse to make this choice. Counsel also asserts that if the applicant returns to China he would be punished for having a child without permission and would likely be sterilized under China's one-child policy to prevent him from having any more children. Counsel asserts that this would be a terrible loss for the applicant's spouse as she would be prevented from having additional children. The applicant's spouse states in her December 23, 2008 affidavit that her family will have no future in China because her husband will not find good employment. She also contends that life in China will be very hard and difficult.

We note the emotional impact of any family separation. We also note the additional hardship involved in the present case where the spouse would be leaving behind parents who have significant medical problems that limit their ability to function independently, taking special note of the fact that the applicant's spouse's mother has a brain tumor, and who depend on her and the applicant for assistance.

When the emotional hardship that would be experienced by the applicant's spouse upon relocation is considered in the aggregate with the hardships normally created by relocation to another country, the AAO finds that the applicant has established that his U.S. citizen spouse will experience hardship beyond what would normally be expected as a result of his inadmissibility.

Therefore, the record establishes that the applicant is statutorily eligible for a waiver of inadmissibility under section 212(i) of the Act.

The grant or denial of a waiver does not, however, turn only on the issue of extreme hardship. It also hinges on the discretion of the Attorney General (now Secretary of Homeland Security) and pursuant to such terms, conditions and procedures as prescribed by regulation. Accordingly, the AAO now turns to a consideration of the applicant's eligibility for a favorable exercise of discretion.

The mitigating factors in this matter are the applicant's United States citizen spouse and child, the extreme hardship to his spouse if the waiver application is not approved, the absence of a criminal record, the medical problems of his spouse's parents, and his character and his love and support of his family, including his ailing mother-in-law, as stated in the various letters of support submitted for the record. The unfavorable factors in this matter are the applicant's misrepresentation in seeking an immigration benefit for which he seeks a waiver, his failure to comply with an order of removal, his period of unlawful residence and his unauthorized employment in the United States.

While the applicant's immigration violations were serious and the AAO does not condone them, we find that the mitigating factors in the present case outweigh the unfavorable factors. Therefore, a favorable exercise of the Attorney General's (Secretary's) discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The application is approved.