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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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DATE: NOV 02 2011 Office: SAN FRANCISCO, CA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 procuring admission to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse and child are U.S. citizens. She seeks a waiver of inadmissibility in order to reside in the United States with her family.

The field office director concluded 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 Field Office Director*, dated April 20, 2009.

On appeal, counsel asserts that the field office director failed to properly evaluate or even consider the favorable factors in the case and the favorable factors outweigh the adverse ones. *Form I-290B*, received May 22, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statements and medical records. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant used a fraudulent passport to procure admission to the United States on April 4, 1996. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

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 child can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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*, 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

1&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 record reflects that the applicant's spouse is 75 years old. Counsel states that the applicant's spouse has resided in the United States for approximately 50 years; he has two children and two siblings in the United States; he has no relatives in China; he had a stroke in 2003 and a right carotid endarterectomy in 2007; he is taking 5 different medications to lower his blood pressure and cholesterol; his risk of having another stroke is high; he would lose his medical care if he moved to China; he could not afford medical care in China and would not receive public-subsidized medical care; he is a pharmacist and his professional credential is not portable to China; and he would not be able to start a new career or qualify himself as a pharmacist in China. *Brief in Support of Appeal*, dated June 18, 2009. The applicant's spouse makes similar claims as counsel. *Applicant's Spouse's Second Statement*, undated. The applicant's spouse's medical records reflect that he is taking several different medications. The record reflects that he was hospitalized in 2003 with a right cerebellar stroke and cerebellar hemorrhage; he was hospitalized in 2007 for a right carotid endarterectomy; his medical problems include hypertension and high cholesterol and they are under control with medication; and he is followed every six to eight months for his medical problems. *Letter from The [REDACTED]* dated April 18, 2008. The record reflects that he is working for [REDACTED] and he is receiving social security benefits. The applicant's spouse also states that the applicant has been a house cleaner for several years and her earning capability is very limited in China. *Applicant's Spouse's Second Statement*.

The AAO notes the applicant's spouse's age, his ties to the United States, his lengthy residence in the United States and his lack of ties to China. In addition, he has had serious medical issues, is currently taking several medications and has medical care in the United States. It does not appear likely that he or the applicant could obtain employment in China. Based on these factors, and the normal results of relocation, the AAO finds that the applicant's spouse would experience extreme hardship upon relocating to China.

Counsel states that the applicant's spouse was very depressed when he divorced his first wife in 1999; he has lived a much more healthy and happy life with the applicant; he is emotionally reliant on the applicant and would be devastated if she departed; his medical conditions would probably be aggravated and the chances of a stroke may be increased due to mental and emotional distress; and it is reasonable to raise serious psychiatric concerns due to his advanced age. *Brief in Support of Appeal*. The applicant's spouse states that he would live in pain and despair without the applicant. *Applicant's Spouse's Second Statement*. He states that he went through a rough period emotionally

when he was divorced from his first wife; she divorced him due to a bad gambling habit and he felt bad that he destroyed his family; he felt depressed from losing a lot of their savings and from being alone for the first time in 30 years; his children were mad at him; he realized he could have died in 2003 and he needed to treasure being alive and live more healthy; he was lucky enough for a second chance at happiness when he met the applicant; he dated the applicant two years before getting married; his lifestyle has become more healthy since she moved in; she keeps him on his diet and is a good cook; she encourages him to exercise; he feels he has someone dependent on him and has more reasons to be alive; the applicant has a very happy outlook and is very understanding; and he has a sense of comfort knowing that the applicant will care for him if he has another stroke. *Applicant's Spouse's Statement*, undated.

The AAO notes that although the applicant's spouse is older and has medical issues, he is working part-time as a pharmacist. The severity of his current medical issues is not clear from the record. The record does not include supporting documentary evidence of the emotional hardship that he claims or of the care that the applicant provides to him. The record does not include any other evidence of hardship if he were to remain in the United States. Going on record without supporting documentation will not 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)). The record does not include sufficient evidence of financial, medical, emotional or other types of hardship, which in their totality, establish that the applicant's spouse would experience extreme hardship upon remaining in the United States.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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. *See* 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.