

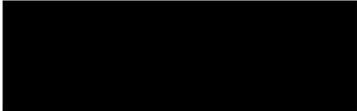
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

115



DATE: **APR 02 2012**

OFFICE: SAN FRANCISCO

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.

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 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 entered the country through use of a passport belonging to another person and, thereby, procuring admission to the United States through fraud or misrepresentation. The applicant does not contest this inadmissibility finding, but seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, May 6, 2011.

On appeal, counsel for the applicant asserts that USCIS erred by not following applicable immigration law, as well as in finding that applicant had not met his burden of showing undue hardship to a qualifying relative. *Brief from Counsel*, July 5, 2011.

In support of the appeal, the applicant submits a brief, statement, and supporting documentation, including, but not limited to: financial information; his wife's statement; statements from the qualifying relative's mother, his former wife, and coworkers; marriage, divorce, and birth certificates; financial documents and expense receipts; information about his employer; a real estate closing document; medical records; photographs; and information about China. The record also contains the applicant's Form I-485 filings, Notices to Appear, a Form I-601, and supporting documents. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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)(1) of the Act provides:

The [Secretary] may, in the discretion of the [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 [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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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.

The record shows the applicant last entered the United States in December 1990, and has not departed. He applied for permanent residency by filing an Application to Register Permanent Residence or Adjust Status (Form I-485) on May 7, 2010 based on his wife's concurrently filed Petition for Alien Relative (Form I-130). Based on admissions by the applicant, he was found inadmissible for having procured U.S. admission by fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act for having entered the United States with a fraudulent Panamanian passport.

The applicant's wife contends she will suffer emotional and financial hardship if she remains in the United States while the applicant resides abroad due to his inadmissibility. She claims to be stressed by thoughts of possible separation from the applicant, and notes fearing that her mother will lose her restaurant if the applicant is unable to continue helping manage and operate the business. [REDACTED]

[REDACTED] In the same document, the applicant's wife claims her husband is a substantial source of practical support in helping care for her mother, and declares having concerns about being able to continue working as a chef in the family restaurant business if the applicant is unavailable to assist with the physical demands of the job.

To begin, the record contains no independent evidence concerning the emotional hardship that the applicant's wife states she will experience if separated from her husband; documentation consists primarily of her own claims about feeling stress and supporting statements from the applicant himself. Other statements by relatives and co-workers at the restaurant do not address this issue. Although evidence regarding the applicant's wife's health shows she suffers from tension headaches, as well as possible tendonitis and osteoarthritis, it fails to establish a medical condition that is so severe as to result in extreme hardship. A doctor's report notes she is in good overall health and her condition as being treatable by an over-the-counter pain reliever and relaxation exercises; the record does not show she followed up with a physical therapy referral or is taking prescription medications recommended by the physician. Further, the applicant's wife states being worried she will be unable to care for her elderly mother, who lives with them, if the applicant returns to China. No psychological evidence supports these claims, and there is no medical evidence regarding the applicant's wife's mother's need for assistance or why her two other children could not provide it. Without corroboration, these statements do not satisfy the applicant's evidentiary burden of showing

hardship beyond the usual consequences of separation from loved ones. Although the applicant's wife states that traveling to China would be hard to afford and of short duration, she has not established being unable to visit her husband there to ease the pain of separation.

As for the predicted financial hardship, there is no evidence regarding the applicant's wife's claim that her husband's contribution to the restaurant is so integral to its operation that it would have to close if he left. The record reflects no particular expertise of the applicant without which the restaurant could not function. Rather, documentation shows that it is the qualifying relative, an award-winning chef responsible for developing new dishes for which the establishment is renowned, who is essential to the restaurant's success; moreover, her monthly wage of \$3,625, over twice the \$1,600 earned by the applicant, reflects this key role.¹ The record also indicates that the applicant's prior experience was in Chinese cuisine, whereas the family business owned by his mother-in-law and employing him and his wife is a Vietnamese establishment. There is no indication that the applicant's restaurant management skills could not be replaced by a new hire. We observe that the restaurant's owner allegedly resides in the same household as, and receives care from, the applicant and his wife, but have no information regarding the mother-in-law's share of household expenses that would allow us to evaluate the applicant's actual contribution. Therefore, the applicant's wife assertions that the applicant's absence will force her to sell her house, as well as likely cause the business to close, are unsupported in the record.

Nor has it been established that the 41 year-old applicant will be unable to support himself while in China, thereby imposing hardship on his wife. While the applicant has submitted country condition information about China ranging from human rights issues to medical care, his wife's contention that she would need to send him money is not backed up by evidence regarding the amount of economic support needed. We note that, although wages are lower in China, the record on this issue does not support a claim that the economic burden would rise to the level of a hardship that is extreme. The applicant has submitted insufficient evidence of the couple's overall financial situation to establish that, without his continued presence in the United States, his qualifying relative will experience financial hardship. Without such evidence, the applicant has not established that his absence would burden his wife financially to the extent of being an extreme hardship.

The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, the situation of the applicant's wife, if she remains in the United States, is typical of individuals facing separation as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. It is the applicant's burden to provide evidence connecting the particulars of his wife's situation to the hardship claimed to result from separation. Despite showing that the qualifying relative shares a home and a workplace with the applicant, the record contains insufficient evidence to establish that anticipated hardships at home and at work cannot be mitigated by finding other help and, thus, will rise to the level of "extreme."

¹ The record shows applicant earning \$20,000 annually since 2009 and his wife \$43,500 for 2010. We note that the applicant reportedly contributes 12 hour work days for an unspecified number of days per week.

As regards establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that the qualifying relative is a 45 year-old, naturalized U.S. citizen who has lived over 20 years here after emigrating from Vietnam, whereas the applicant is a native of Guangzhou, China. Faced with moving to China, the applicant's wife expresses a number of concerns: all her family is in the United States, so she has no friends, relatives, or ties there other than her husband; having adjusted to the U.S. lifestyle, she fears running afoul of tight restrictions under a communist regime with a poor human rights record; she worries about cultural adjustment, gender discrimination, and limits on work opportunities for women; and, she is afraid of being unable to maintain continuity of treatment for several medical conditions. Further, even if able to find work, she notes that the reduced wages will be insufficient for her to meet mortgage obligations on her U.S. home. Finally, she states that her departure would have a negative impact on her mother: first, she claims to be the only one of three siblings available to care for her mother, who currently lives with her; second, she states her mother does not have the financial means to live in the home by herself; and, finally, she asserts that, as her mother will have difficulty replacing her unique role at the restaurant, the business will be at risk of closing, which would leave her mother without income.

While observing that mere diminution in earnings or inability to pursue a profession does not comprise hardship that rises to the level of "extreme," we note loss of a family business that is a going concern represents a significant adverse impact. The record further indicates that the job market in China is difficult for women as well as foreigners. *See 2010 Human Rights Report--China*, U.S. Department of State. Despite showing the qualifying relative's fluency in both Mandarin and Cantonese, the evidence nevertheless supports her concerns regarding restrictions on civil liberty, unavailability of medical treatments, and the added impact of these circumstances due to her lack of ties to the country.

Based on a totality of the circumstances, the AAO finds the applicant has established that his wife would suffer extreme hardship were she to leave her adopted country for one where she has no ties. Language competency alone does not outweigh the significant obstacles she would encounter in moving to China. Accordingly, we conclude the applicant has established that a qualifying relative would suffer extreme hardship were she to relocate abroad to continue residing with the applicant.

A review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant, the record fails to establish that the applicant's spouse would suffer extreme hardship were she to remain in the United States while the applicant resides abroad. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse 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.



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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 waiver application is denied.