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



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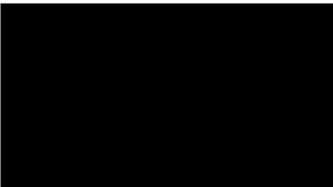
DATE: **APR 27 2012** OFFICE: SAN JOSE, CALIFORNIA

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 Jose, 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 Taiwan who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant 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. See *Decision of the Field Office Director*, dated October 27, 2009.

On appeal counsel asserts that the applicant's spouse will suffer extreme hardship of an emotional, familial and economic nature if the waiver is not granted. See *Form I-290*, Notice of Appeal or Motion, received November 5, 2009.

The record contains, but is not limited to: Form I-290B and counsel's briefs; numerous immigration applications and petitions; hardship letter; employment and friend's letter; false documents submitted in support of Form I-140; and divorce, marriage and birth records. 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.

The record reflects that the applicant entered the United States on March 8, 2007 as a B-2 visitor. On June 25, 2007, the applicant concurrently filed Form I-140, Immigrant Petition for Alien Worker under Section 203(b)(1)(A) Alien of Extraordinary Ability and Form I-485, Application to Adjust Status. The applicant asserted on Form I-140 that she is an artist of extraordinary ability and submitted supporting evidence including photographs of herself next to the work of another artist falsely asserted to be her own. It was additionally discovered that the position asserted on Form I-140 did not exist and the asserted petitioning company contact was not employed by said company. Both petitions were denied accordingly on May 17, 2008 and the applicant was found to be inadmissible under § 212(a)(6)(C)(i). The record supports this finding, the applicant does

not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.¹

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

- (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 the applicant's spouse's children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is her only qualifying relative. 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.

¹ Though inadmissibility is not contested by the applicant through counsel, the applicant's spouse states: "SHE was a victim of fraud, signing a document she did not know the contents of, by an individual MISREPRESENTING herself as an accredited immigration legal service..." The AAO notes that the applicant had the duty and responsibility to review the forms and compiled documentation prior to submission.

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 reflects that the applicant's spouse is a 59-year-old native and citizen of the United States whom the applicant married on October 8, 2008. Addressing separation-related hardship, the applicant states that he loves his wife and counsel asserts that the couple is recently married and it would be very difficult for them to be separated this soon in their marriage. Counsel asserts that the applicant's spouse would suffer economic hardship due to having to travel to Taiwan on a regular basis. An expedia.com printout was submitted showing roundtrip flights at [REDACTED] and

more. A July 7, 2009 letter from the applicant's employer asserts that he has been employed by the [REDACTED] since April 6, 2009 and earns an "annual salary of upper five figures." The evidence in the record is insufficient to demonstrate, in context, the applicant's spouse's actual income, expenses and the affect travel to Taiwan would have on his regular budget. Counsel asserts that the applicant's spouse works full-time and any time spent traveling to visit his wife in Taiwan "would be unpaid time" and that travel for "any long periods of time" would place his employment position at risk. No documentary evidence addressing unpaid leave or job risk has been submitted. 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)).

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. The difficulties described, however, do not take the present case beyond those hardships ordinarily associated with removal or inadmissibility of a family member, and the evidence in the record is insufficient to demonstrate that the challenges to the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, counsel asserts that the applicant's spouse has lived his entire life in the United States and does not read, write, or speak Mandarin Chinese which would greatly hinder his employment prospects in Taiwan. The applicant's spouse states that language literacy is a great barrier which would take him eons to overcome in order to secure a decent job. He contends that he researched employment opportunities in Taiwan and found his chances of any substantial, sustaining job or income is next to nil. The applicant's spouse maintains that his financial stability depends upon his employment in an industry with which he has been associated for more than twenty years, and relocation to Taiwan would render him financially unstable. The applicant's spouse further notes that his elderly parents are in their 80s and have health issues requiring him to be a short plane ride away in case of family emergency. The applicant's spouse also has two adult children in the United States and he states that relocation to Taiwan would render the destruction of the family fabric.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including his lifelong residence in the United States and difficulty adjusting to a country, culture, and language with which he is unfamiliar; his close family ties in the U.S. - particularly to his elderly parents, two adult children, and his maternal grandparents; his long-term employment in the U.S. and asserted economic and employment concerns - particularly with regard to conducting business in a language he does not speak, read, or write.

When considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if he were to relocate to Taiwan to be with the applicant.

Although the applicant has demonstrated that her qualifying relative spouse 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 these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.