



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

H5

DATE: DEC 07 2012

Office: LAS VEGAS

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:

[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Las Vegas, Nevada, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of China and citizen of Canada 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 seeking to procure admission to the United States by fraud or misrepresentation. She is married to a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest this finding of inadmissibility, and is seeking a waiver of inadmissibility in order to live in the United States with her husband.

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 Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director, April 27, 2011.*

On appeal, the applicant provides new hardship evidence including, but not limited to, a psychological evaluation; statement from her husband; and support letters from family, friends, and business contacts. The record on appeal also includes documentation submitted with the waiver request, as well as information regarding her nonimmigrant waivers and parole status. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides:

- (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)(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 [...].

The record reflects that, on August 27, 2004, the applicant attempted to procure admission by claiming to be a visitor for pleasure, when her true purpose was to settle in Los Angeles to work in furtherance of her career as a recording artist. After she admitted her misrepresentation,¹ the applicant was ordered removed. Although the five-year bar under section 212(a)(9)(A)(i) of the Act due to her section 235(b)(1) expedited removal has expired, the permanent bar for misrepresentation requires she obtain a waiver in order to immigrate on her husband's spousal petition.

¹ In secondary inspection, she explained having authorized the advance shipment of furniture and household items from Canada to a rented home in the United States and said she planned to rent out her house in Canada.

A waiver of inadmissibility under section 212(j) 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 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-Moralez*, 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 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 v. INS.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 applicant's husband contends his wife's immigration problems are causing him emotional hardship and notes that, after two prior failed marriages and a three-year courtship preceding his May 10, 2010 marriage, he has grown attached to the applicant. The qualifying relative's primary care physician reports that his patient is hypertensive and has high cholesterol, and displays insomnia, mood swings, and other mental health issues, for which he was referred to a specialist. There is documentation that he visited a psychotherapist and received an initial diagnostic evaluation of moderate depression, severe anxiety, and high probability of bipolar disorder. The psychological evaluation concludes that these disorders and their symptoms will persist until the applicant's immigration issues are resolved, and recommends treatment consisting of medication and psychotherapy. The primary care doctor noted, too, that some of his patient's symptoms are also due to poor health habits. There is no evidence that the qualifying relative is currently taking blood pressure or cholesterol medication, has made health-related lifestyle changes, or has pursued any of the psychotherapist's recommended treatments. The record shows that, in addition to three adult children from a prior marriage, the applicant's husband has an extensive support network in Michigan -- at least two brothers and other extended family, as well as personal and professional contacts -- where he maintains one of two homes (the other being in Nevada) and manages the three offices of his dental practice. The applicant does not claim her husband is suffering financial hardship due to separation.

The record fails to show that the cumulative effect of the hardships the applicant's husband might experience due to his wife's absence goes beyond the hardship normally imposed by the separation from a loved one. There is documentation that he has the financial means to visit his wife in Canada to mitigate the pain of loss, as well as the ability to manage his business remotely while he is away from Michigan, such as when he resides at his Nevada home. The AAO thus concludes that, based on the evidence, the applicant has not established that her husband would suffer extreme hardship if he remained in the United States without the applicant.

Regarding hardship from relocation, the qualifying relative claims that he would suffer financial loss if he moved to Canada with the applicant. Tax records confirm that he has a successful dental practice and support letters substantiate his commitment to his business, but documentation fails to show the extent to which the success of the business depends on his U.S. presence. While reflecting that he enjoys patient contact, the record shows that he has administrators working as office managers at each workplace, and that he is able to manage the business when living at his Nevada

home or visiting one of his offices and not the others. The record does not support the claim that moving to Canada would require the qualifying relative to abandon his business. While the AAO recognizes that maintaining the business from Canada may require changes, such as adopting a different approach to scheduling or modifying his role, we note that the qualifying relative has demonstrated an ability to maintain his practice remotely. Finally, there is no support for the claim that he would be unable to pursue his profession in Canada. While we recognize that some certification process may be required for him to be licensed in Canada, he has provided no information on this point. Also unsupported is the claim that neither the qualifying relative nor his wife has viable employment opportunities in Canada. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

There is no evidence the qualifying relative has any serious medical condition requiring treatment that is unavailable at the relocation destination. He contends that it would be difficult for him to obtain health insurance in Canada. The record does not substantiate this claim, or explain why he would not qualify for benefits as the spouse of a Canadian citizen. There is documentation that he has substantial assets, including a business and real property, in the United States, as well as extensive family, personal, and professional ties to this country. Besides having a sister-in-law in Canada, the record also reflects that the applicant's husband owns real property valued at over a million Canadian dollars with his wife in Canada. While sensitive that leaving the United States will impose some hardship, the AAO notes evidence that his financial situation will afford him the ability to travel from Canada to the United States, for business or pleasure. As such, it has not been established that the applicant's spouse would experience extreme hardship were he to relocate to Canada as a result of the applicant's inadmissibility.

The documentation on record, when considered in its totality, reflects that the applicant has not established her husband will suffer extreme hardship if his wife is unable to live in the United States as a permanent resident. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation is typical of individuals separated as a result of removal and inadmissibility, and the AAO therefore finds that the applicant has failed to establish extreme hardship to her husband as required under section 212(i) of the Act.

In proceedings for waiver of grounds of inadmissibility under section 212(i) of the Act, 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.