

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



U.S. Citizenship
and Immigration
Services



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DATE: **DEC 18 2012**

OFFICE: NEW YORK (HOLTSVILLE)

FILE:



IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i)
and of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i)

ON BEHALF OF APPLICANT:

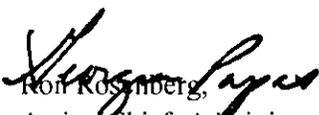


INSTRUCTIONS:

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 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,


Roni Kosynberg,

Acting 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 appeal will be dismissed.

The applicant is a native and citizen of China who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the United States through willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. §1182(i), in order to live in the United States with her U.S. citizen spouse and children.

The District 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 June 22, 2011.

On appeal counsel asserts that the director “erred as a matter of fact and law” and did not offer “a reasoned explanation” for the denial. Moreover, the director did not properly consider the evidence of extreme hardship to the applicant’s qualifying relative in the aggregate. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received July 21, 2011.

The record contains, but is not limited to: Form I-290B and counsel’s brief; Form I-601; Form I-130; Form I-485, Application to Register Permanent Residence or Adjust Status; Form I-589, Application for Asylum and for Withholding of Removal; Board of Immigration Appeals (Board) and Executive Office of Immigration Review decisions and orders; a statement from the applicant’s spouse; a psychological evaluation; a letter from the applicant’s spouse’s acupuncturist; a letter from the applicant’s mother-in-law’s doctor; financial documents; birth and marriage certificates; and country-conditions reports. The entire record was reviewed and considered in rendering a 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 attempted to enter the United States on April 18, 2000 by presenting a false passport with the name [REDACTED] and place of birth as Taiwan. Upon the applicant’s inspection, she admitted to buying and using a fraudulent passport to enter the United States. The immigration inspector found her to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i), for seeking to procure admission to the United States through fraud or misrepresentation. The

record supports the finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act, and the applicant does not contest her inadmissibility. Section 212(i) of the Act states:

- (1) The Attorney General [now Secretary, Department of Homeland Security, "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 first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant and her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the 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-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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or U.S. 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).

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 v. I.N.S.*, 138 F.3d 1292 (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 record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

The applicant’s 36-year-old spouse is a native of China and citizen of the United States. He states he and the applicant “are two people united as one,” and the family “cannot afford to lose her.” He notes in an affidavit submitted on appeal, identical to the one submitted with Form I-601 in June 2009, that the applicant maintains their household, is the family’s “pillar of support,” and takes care of him, their two children and his mother who has rheumatic heart disease, hypercholesterolemia, headaches and insomnia. A letter dated March 24, 2009 from his mother’s doctor was submitted to corroborate claims concerning her medical conditions. He indicates that the applicant is the only one who can care for his mother; he finds it difficult because of his lower

back pain. He submits a letter from an acupuncturist dated June 10, 2009 as evidence of his back condition. He states that the applicant helps to alleviate his pain by massaging him, completing all household chores, preparing meals and distributing their medicines. A psychologist also diagnosed the applicant's spouse on July 22, 2011 with "Major Depressive Disorder, Recurrent, Severe Without Psychotic Features and Anxiety Disorder" based on his history of depressive episodes and his fear and sadness about the applicant's possible deportation. The psychologist states that the applicant's spouse has had suicidal ideations in the past, and the applicant's spouse commented that he has no desire to live if the applicant returns to China. The psychologist recommends weekly supportive psychotherapy and referred the applicant's spouse to a doctor who prescribed him with antidepressant medication. The record does not contain evidence of continued psychotherapy treatment.

The AAO acknowledges that the applicant's husband may be suffering emotional difficulties from the possibility of his wife being separated from him, and such difficulties could increase if the applicant's wife lived abroad. While it is understood that separation of spouses often results in significant psychological challenges, the applicant has not shown that her husband would suffer extreme hardship that is distinguishable from hardship typically faced by the spouses of those deemed inadmissible.

The applicant also indicates that he would suffer financial hardship without the applicant. He states that if the applicant were to separate from him, he would need to quit his job to take care of their children. Counsel asserts that this would deprive the applicant's family of her spouse's income. However, counsel's assertions do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Federal tax returns were submitted as evidence of financial hardship; however, the record lacks evidence regarding the applicant's employment, her spouse's employment, and the financial hardship her separation would cause her spouse. 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)). Additionally, the applicant has not distinguished her husband's financial challenges from those commonly experienced when a family member no longer resides in the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

The applicant's spouse does not mention the hardship he would experience should he relocate to China. The psychologist states that the applicant's spouse does not find it feasible to live in China because his mother, who has "frequent headaches," needs his help. Although the record includes evidence of his mother's medical condition, the record lacks evidence regarding the nature of care she requires, his mother's legal status in the United States, her ability to relocate to China or information about other relatives who could care for her in the United States. The psychologist also notes that the applicant's spouse would not receive the recommended mental-health treatment he requires in China because Chinese society stigmatizes mental-health services and the care is

poor and often inappropriate. However, corroborating evidence of such country-conditions was not submitted. Country-condition reports regarding China's family-planning policies were submitted, but no claim of hardship was made in this regard.

The applicant's spouse's family ties to the United States include their two U.S. citizen children and mother. He has been a permanent resident of the United States since December 2000 and a U.S. citizen since March 2009. The psychologist states that the applicant's spouse works in a nail salon, but the record is unclear as to whether he owns the business. The AAO has considered cumulatively all assertions of relocation-related hardship, including his family ties in the United States, his length of residency in the United States, and his employment. The AAO finds that, considered in the aggregate, the evidence is not sufficient to demonstrate that the applicant's husband would suffer extreme hardship were he to relocate to China to be with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(i) of the Act.

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. 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.