



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



115

DATE: DEC 19 2012

OFFICE: GUANGZHOU, CHINA

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:

SELF-REPRESENTED

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 with the field office or service center that originally decided your case by filing a 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,

A large, stylized handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg,
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Guangzhou, China 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 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 willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 1182(i), in order to reside in the United States with her lawful permanent resident spouse and adult U.S. citizen son.

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 August 19, 2011.

On appeal the applicant contests section 212(a)(6)(C)(i) inadmissibility, and contends that her spouse, a lawful permanent resident since 2010, will suffer extreme hardship if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion*, received September 19, 2011.

The record contains, but is not limited to: Form I-290B; various immigration applications and petitions; two hardship affidavits; two affidavits from the applicant's son asserting his own hardship; a sworn statement from the applicant and a letter from her son addressing the applicant's inadmissibility; medical records for the applicant's spouse; tax and income records for the applicant's son and daughter-in-law; and numerous documents related to the fraudulent Form I-140 petition filed on the applicant's behalf and the subsequent Notice of Intent to Revoke to which no response was submitted. 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 shows that on October 14, 1995 the applicant entered the United States pursuant to an L-1A visa as the Controller for a Hunan-based company called [REDACTED] for the petitioned purpose of serving as an intra-company managerial transferee for the company's California subsidiary, [REDACTED]. Sometime in 1997 the applicant retained the services of an immigration consultant named [REDACTED] d/b/a [REDACTED] to obtain L-1A nonimmigrant status and to apply for lawful permanent residence as a multi-national executive or manager of [REDACTED]. The former Immigration and Naturalization Service (INS) discovered that [REDACTED] through [REDACTED] submitted thousands of self-generated business documents with L-1A visa applications and Form I-140 petitions for alien workers for at least 21

sham L1-A companies, including ██████████. Based on the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The applicant contends that she trusted ██████████ because she believed she was an attorney and was always led to believe that everything was going fine with her permanent residency process. The applicant's son states that he went with the applicant when she met with ██████████ who told them she was not an attorney but had a group of attorneys working for her. He adds that he and the applicant believed ██████████ entirely. The applicant and her son assert that rather than being willing participants in ██████████ scheme to defraud immigration authorities, the applicant is an innocent victim of the fraud scheme. The AAO notes that on September 9, 2002 the INS issued a Notice of Intent to Revoke (NOIR) the Form I-140 petition on the applicant's behalf. The NOIR, mailed to ██████████ business address of record, the same address at which the applicant admitted on June 5, 2002 to residing, details the results of the investigation against ██████████ and ██████████. The NOIR details that INS special agents conducted a site visit at the official business address of ██████████ on June 5, 2002 and found the applicant residing there in what appeared to be converted living quarters and displaying on a dresser therein business cards for a massage business in her name at the same address. The NOIR details other findings including that the applicant was the only employee receiving wages from ██████████ Inc. since at least January 1, 2000, that for the first and second quarters of fiscal year 2001 she received only \$600 per month, and that she was not supervising anyone, had no employees, and was earning approximately \$3.75 per hour. The NOIR concludes that the evidence failed to establish: (1) that the applicant was employed in the United States in a managerial or executive capacity; (2) that ██████████ was conducting business in the United States; and (3) that a qualifying business relationship exists between the United States and foreign entities, as defined by 8 C.F.R. § 204.5(j)(2). ██████████ was given 30 days to offer evidence and/or rebuttal to the NOIR. The Form I-140 petition was subsequently revoked when no such response was received, the applicant's Form I-485 application to adjust status was denied, and the applicant chose not to appeal the denial but rather to voluntarily depart in December 2002 to China where she has remained ever since.

The applicant indicates that when she first entered the United States, ██████████ truly did exist although she was the sole employee/manager as a result of two colleagues having their L-1 applications denied. She explains that ██████████ did offer her support in the beginning of her venture as she tried to build the company in the United States despite her having no English-language skills or employees. The AAO finds that even if the applicant was genuinely misled into believing that ██████████ was an attorney and/or that the Form I-140 petition filed on her behalf was legitimate, the applicant was well aware that she was not in compliance with the terms of her L-1A visa requiring that she be employed in a managerial or executive capacity for ██████████, Inc. The applicant was aware that she was earning only \$600 per month and was managing no employees. She was aware that she was residing at the address at which ██████████ was falsely proffering to the INS that it was conducting business, the business through which the applicant falsely sought L-1A extensions, an approved Form I-140 petition, and adjustment of status to that of lawful permanent resident. Based on the foregoing, the applicant has not shown that she was erroneously deemed inadmissible under section 212(a)(6)(C)(i) of the Act, and she requires a waiver under section 212(i) of the Act.

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 and her child 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-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 applicant's spouse is a 56-year-old native of China who has been a lawful permanent resident of the United States since August 25, 2010 when he entered the country in that status. The applicant's spouse states that he has suffered from hypertension for more than 30 years, diabetes for more than 15 years, and acute recurrent cerebral infarction since March 2010. He maintains that the applicant is the only person who can take care of him, she is responsible for injecting him twice daily with insulin, he totally depends in his daily life on her careful service and without her he cannot survive. The applicant's spouse does not address from whom he has been receiving daily insulin injections since relocating to the United States in August 2010 or whether he receives any health-related care from his son or daughter-in-law with whom he has resided since then, nor does he address who cared for him from October 1995 to December 2002 in China when the applicant resided in the United States. A single-paragraph letter from [REDACTED] states that the applicant's spouse has had diabetes and hypertension for more than 15 years, "is taking pills and insulin injection," has a history of peptic ulcer disease resulting in partial gastric resection in 1993, and is a smoker. A partial (one half-page) English translation of a 23-page Chinese-language medical document asserts that the applicant's spouse was admitted to a hospital in China from March 3, 2010 to March 21, 2010 for acute recurrent cerebral infarction, has "Three degree Hypertension: an extremely dangerous situation," and "Type 2 Diabetes mellitus." Little can be determined from this document which has not been accompanied by a full, certified English translation as required under 8 C.F.R. § 103.2(b)(3).¹ Accordingly, only minimal weight can be given in these proceedings to the partial translation described.

¹ 8 C.F.R. § 103.2(b)(3). Translations. Any document containing foreign language submitted to United States Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The applicant's spouse states that it would be a huge financial burden for him to continue traveling back and forth to China to visit his wife as he is now a retiree depending on a limited pension. The record contains no corroborating documentary evidence demonstrating the applicant's spouse's current income from any source or his other assets, the costs incurred by him personally for his previous trips to China or the current cost of travel thereto, or demonstrating his expenses of any kind from which a determination of economic hardship might be made. 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)). While the AAO recognizes that international travel can be costly, the evidence in the record does not demonstrate that the applicant's spouse is unable to afford such cost or that he is unable to meet any financial obligations he may have in the applicant's absence.

The applicant's 30-year-old son asserts that his mother's inadmissibility has been "no less than a disaster" to him. As discussed above, hardship to the applicant's children can be considered only insofar as it results in hardship to the applicant's qualifying relative – here the applicant's spouse. The applicant's son states that in Chinese tradition the adult child is to take care of his aging parents who are to live with him and his family. The applicant's son maintains that as his parents' only child his mother and father must live in his home with him, his wife, and their two children - all of whom are U.S. citizens. He contends that traveling with his wife, children and father to China to visit his mother regularly would cost him more than \$10,000 each time which would be a significant financial burden, whereas having his mother live with them in the United States would cost nothing. While the AAO recognizes that the applicant's son has faced challenges as a result of his mother's inadmissibility, the evidence is insufficient to establish that such challenges have caused or will cause difficulties rising to the level of extreme hardship to the applicant's qualifying relative spouse.

The AAO has considered in the aggregate all assertions of separation-related hardship to the applicant's spouse including his lengthy marriage to the applicant and the emotional, physical, health-related and asserted economic impact of separation. The AAO has also considered that during their marriage the applicant and her spouse have spent many years living thousands of miles apart from one another, all during which the latter suffered from hypertension and diabetes. The AAO has further considered that the applicant's spouse was only admitted to the United States as a lawful permanent resident in late August 2010 at which time he voluntarily left the applicant behind in China, aware of her inadmissibility. The AAO acknowledges that separation from the applicant has and will continue to cause various difficulties for her lawful permanent resident spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

With regard to relocation, the record shows that the applicant's spouse was born in China and resided there until just over two years ago when, at 55-years-old, he was admitted to the United States as a lawful permanent resident. The applicant's spouse states that his acute recurrent cerebral infarction is a life-threatening condition which requires emergency surgery. No documentary evidence corroborating an imminent need for surgery has been submitted. He

maintains that it would be better for him to remain in the United States because China is a place with poor, unreliable health care where his health and life would be placed at risk. The record contains no documentary evidence addressing health care or any other conditions in China. The applicant's spouse asserts that when he required hospitalization in China in March 2010, he was only afforded medical treatment as a result of a wealthy family member paying bribes to the hospital and the treating physician. These assertions are not corroborated by the record which shows that the applicant's spouse was hospitalized for approximately 2 ½ weeks in March 2010 during which he received treatment for his condition. The applicant's spouse additionally contends that China has poor and unhealthy conditions and heavy air pollution such that his son cannot even take his youngest child to visit the applicant given that his elder child became ill there. The record contains no documentary evidence addressing the air quality or other conditions in China and nothing showing that the applicant's spouse would be adversely affected by these conditions after having resided there until recently, for 55 years.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including his significant family ties to the United States, particularly to his only son and grandchildren with whom he has resided since being admitted as a lawful permanent resident in August 2010; his significant medical conditions and preference to remain in the United States for treatment related thereto; and his stated medical, health-related, and air quality concerns regarding China. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's lawful permanent resident spouse would suffer extreme hardship were he to relocate to China to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.