



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



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Date: **DEC 19 2012** Office: ST. ALBANS, VERMONT

FILE:



IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Albans, Vermont. The matter 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 Act for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, the applicant contends she had no knowledge that her prior lawyer submitted faulty documents. The applicant contends her husband will be seriously depressed and that his health will be negatively impacted if her waiver application is denied.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on December 17, 2007; a letter from [REDACTED] a letter from [REDACTED] son; a note from [REDACTED] physician; a letter from a psychologist; copies of tax returns, bills, bank account statements, and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

In general.—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) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien

In this case, the record shows that in May 2005, the applicant filed a Form I-140 Immigrant Petition for Alien Worker which was denied by the Nebraska Service Center in October 2005. The applicant filed an appeal to the AAO which issued a notice of intent to dismiss the appeal in November 2006 based on the applicant's submission of altered documents in support of her Form I-140. Specifically, the AAO stated that in more than ten articles submitted by the applicant in support of her Form I-140, the applicant falsely substituted her name in place of others' names and submitted a fraudulent offer of employment letter. The AAO provided the applicant an opportunity to respond to the finding of fraud. In response, the applicant withdrew her appeal. The AAO dismissed the appeal based on the applicant's withdrawal while also making a finding of fraud. In the instant appeal of her waiver application, the applicant contends that her lawyer submitted faulty documents without her knowledge or approval.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After a careful review of the record, the AAO finds that the applicant has not met her burden of proving she is admissible to the United States. The record shows that the applicant was previously represented by the Law Offices of Vinh K. Ly in Salt Lake City, Utah. The applicant's contention that she was misled by a "travel agency" is unsupported by any evidence and the applicant fails to provide any specific details regarding this purported travel agency. In any event, the record shows that the Form I-140 was signed only by the applicant, certifying under penalty of perjury that the petition and the evidence submitted with it are all true and correct. Under Part 9 of Form I-140, Signature of Person Preparing Form, If Other Than Above, there is no person listed as being the preparer of the petition, other than the applicant herself. Considering these factors, the AAO finds that the applicant has not shown through independent, competent, and objective evidence that she is admissible to the United States. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, [REDACTED] states that his wife has changed his life and gives him the strength to live. According to [REDACTED] his former marriage was totally different and he was always fighting with his ex-wife. In addition, [REDACTED] states he has high blood pressure and hyperthyroidism. He contends his wife reminds him every morning to take his medication. He states that one morning, he had a cramp in his leg and his wife took care of him and bought him fish oil. He states she is a good wife and that they are happy together.

After a careful review of the record, there is insufficient evidence to show that the applicant's husband, [REDACTED] will suffer extreme hardship if the applicant's waiver application were denied. Significantly, [REDACTED] does not discuss the possibility of returning to China, where he was born, to avoid the hardship of separation and he does not address whether such a move would cause him extreme hardship. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Although the AAO is sympathetic to the couple's circumstances, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Regarding [REDACTED] health conditions, the record contains a note from his physician confirming that [REDACTED] has hypothyroidism, hypertension, hyperlipidemia, and chronic knee pain, and that "[h]e is on medical treatment for these diseases." Nonetheless, the physician's note does not address the prognosis or severity of [REDACTED] conditions or provide any specifics regarding the treatment he is undergoing. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. To the extent the record contains a letter from a psychologist, the letter does not diagnose [REDACTED] with any mental health condition and describes the common, typical responses of being separated from a loved one. The AAO notes that although the record contains financial documentation, the applicant has not made a claim of financial hardship and, in fact, asserts that she and her husband co-own a nail salon which employs seven full-time employees and generates approximately \$300,000 excluding tips. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship the applicant's husband will experience amounts to extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *See* 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.