

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



U.S. Citizenship
and Immigration
Services

[REDACTED]

HLS

Date: DEC 24 2012

Office: PHILADELPHIA, PA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

[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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania. 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 willful misrepresentation of a material fact in order to procure 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 and children 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, counsel contends the applicant established extreme hardship, particularly considering the applicant's husband would be unable to run his bakery business while caring for the couple's three children and considering his psychiatric history.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on June 21, 2010; an affidavit from the applicant; an affidavit from a letter from the applicant's employer; a psychological evaluation; copies of tax returns, bills, 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 the applicant entered the United States in June 2005 under the Visa Waiver Pilot Program using a Portuguese passport. A copy of the passport in the record shows

the applicant claimed that she was a citizen and national of Portugal, and that she was born in Macau. The applicant now admits she is a citizen of the People's Republic of China. Nonetheless, the applicant contends she always believed she had used a valid and genuine Portuguese passport. According to the applicant, her husband's friend, █████, helped her get a Portuguese passport because he purportedly had a friend who worked for the Macau government. The applicant contends that █████ gave her a Portuguese passport and told her it was obtained from the Immigration Bureau of Macau. She states she believed the Portuguese passport and Macau birth certificate were genuine documents. The applicant states that when her husband called █████ to ask him why the immigration official questioned the validity of the documents, █████ hung up on him and they have been unable to contact or locate █████ ever since.

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 applicant has not provided any explanation for why she originally asserted she was a citizen and national of Portugal when she is, in fact, a citizen of China. Similarly, the applicant provides no explanation for why she originally asserted she was born in Macau when she was actually born in Guangdong, China. As the applicant admits that she was born in Guangdong, China, she obviously would have known that the birth certificate indicating that she was born in Macau was fraudulent. Therefore, her claim that she didn't know the documents were fraudulent is not persuasive. 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 marriage to the applicant is his third marriage. According to [REDACTED] he has dealt with more sorrow than happiness for most of his life due to his previous failed marriages. He states his wife is his true love and that they recently had a

son together. [REDACTED] states that if his wife returned to China, he would be unable to care for his son by himself. He states he also has two children from his first marriage and would be unable to care for three children by himself. He contends his wife cares for her two step-children as if they were her own and she takes care of the family so he can concentrate on running their bakery business which opened two years ago and which is finally becoming profitable. He states his wife takes care of him, massaging his legs after he has been standing on his feet all day long. In addition, [REDACTED] states he has been diagnosed with Major Depressive Disorder and that when his second marriage ended, he suffered from a major depressive episode. Furthermore, [REDACTED] states he cannot return to China to be with his wife because he has lived in the United States for so long that he does not know any other way of life. He states it would be extremely difficult for him to find a job in China and his two older children cannot read, write, or speak Chinese. He also contends that mental diseases are still stigmatized in China and he would not receive the treatment he needs.

After a careful review of the record, there is insufficient evidence to show that the applicant's husband, [REDACTED], will suffer extreme hardship if his wife's waiver application were denied. 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. Regarding psychological hardship, the record contains a psychological evaluation diagnosing [REDACTED] with Major Depressive Disorder and Anxiety Disorder. The psychologist describes [REDACTED] symptoms of sadness, anxiety, insomnia, poor appetite, pessimism, low energy, brief suicidal ideations, and irritability. The AAO notes that [REDACTED] met with the psychologist once, one month after learning that his wife's waiver application was denied. Although the AAO is sympathetic to the family's circumstances and recognizes that the input of any health professional is respected and valuable, the record does not show that [REDACTED] hardship, or the symptoms he has been experiencing, are extreme, atypical, or unique compared to others 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 upon deportation). The AAO recognizes that if [REDACTED] decides to stay in the United States, he would be a single parent to three U.S. citizen children while also running his bakery business. However, the record shows that [REDACTED] two older children are currently seventeen and nineteen years old, and there is no suggestion in the record that he, or any of his children, has any medical problems or special needs. In sum, the record does not show that the hardship [REDACTED] may experience would cause hardship that would be extreme, atypical, or unique compared to others separated from their spouse. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship the applicant's husband will experience amounts to extreme hardship.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if he returned to China to be with his wife. Although he contends he does not know any other way of life, the record shows that [REDACTED] was born in China and married his first two wives in China. He does not contend he does not speak Chinese or that he is unfamiliar with the culture in China. To the extent he contends he would be unable to get adequate mental health treatment in China, there is no evidence he is currently receiving any regular mental health treatment in the United States. The evaluation from the psychologist recommended weekly psychotherapy; however, there is no evidence in the record [REDACTED]

followed up on this recommendation. In addition, there is no evidence in the record to support his contention that he would be unable to find employment in China. To the extent [REDACTED] contends his older children do not speak Chinese, the only qualifying relative in this case is [REDACTED]. There is insufficient evidence to show that any hardship his children may experience would cause [REDACTED] extreme hardship. In sum, there is insufficient evidence in the record to show that [REDACTED] readjustment to living in China would be any more difficult than would normally be expected. Even considering all of the evidence cumulatively, the record does not show that [REDACTED] hardship would be extreme, or that their situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra.*

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.