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



U.S. Citizenship and Immigration Services



H5

DATE: **JAN 07 2012**

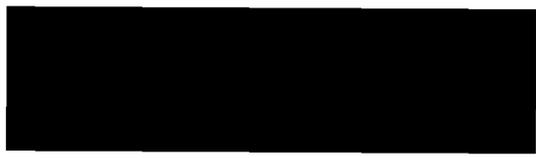
OFFICE: GUANGZHOU, CHINA

File:

IN RE: Applicant:

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:



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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

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 November 21, 2008.

On appeal, counsel asserts that the applicant's spouse has suffered extreme hardship "not just living apart but that he is unable to function normally at work and at his everyday lives." See *Form I-290B*, Notice of Appeal or Motion, received December 22, 2008.

The record contains, but is not limited to: Form I-601, Intent to Denial Notice, and Denial; several hardship letters from the applicant's spouse and several letters from the applicant; birth and marriage records; employment letter; credit report; tax returns and tax/earnings statements; bank statements; billing statements; nonimmigrant and immigrant visa applications, Forms I-130 and I-129F. 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 reflects that the applicant purchased counterfeit documents in an attempt to gain entry into the United States in July or August 2002. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). On appeal counsel asserts that the applicant did not willfully misrepresent herself. See *Counsel's Cover Letter*, dated December 18, 2008. Additionally, the applicant asserts that she was deceived and did nothing wrong. See *Applicant's Letter 3*, dated December 12, 2008. The applicant's assertions on appeal are inconsistent with previous statements in which she acknowledged that she "began to surmise that it was illegal to go to U.S. at this time." See *Applicant's Letter 1*, undated. Additionally, the applicant attempted to enter the United States with a counterfeit visa and accordingly admitted: "I was attempting to enter the United States illegally on or about July 23, 2002 when I was stopped by US officials stationed in New Zealand. After questioning me for a few hours the US officials sent me back to China from New Zealand. The reason why I failed to mention the fact was that I

honestly believed that I did not have to mention it since I did not physically enter the United States. Looking back, I believe that I made a serious mistake in not disclosing the fact.” See *Applicant’s Letter 2*, dated February 5, 2005. 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 petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) of the Act, the burden is on the applicant to establish that she is not ineligible. See Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met this burden. Based upon the foregoing, the AAO finds that the applicant made a willful misrepresentation in seeking to procure admission to the United States and is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 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. 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 record reflects that the applicant's spouse is a 36 year old native of China and citizen of the United States. Addressing hardship related to separation, the applicant's spouse states: “If my wife were unable to reunite with me in the United States, it would hurt me greatly because I have been waiting for my wife to be reunited with me in the United States ever since we married on September 23, 2003. See *Hardship Affidavit 2*, dated February 5, 2005. He states that despite their separation, “we have communicated regularly over the phone and our love for each other has

only increased over the years.” *Id.* The applicant’s spouse states that he loves his wife very much and thinks about her day and night just longing for the day they can reunite again. *Id.* He states that the days he has spent missing his wife have caused much loneliness to his life in the U.S. *Id.* Counsel asserts that the applicant’s spouse “is unable to function normally at work and at his everyday lives.” See *Form I-290B*, Notice of Appeal or Motion, received December 22, 2008. The record contains no documentary evidence to support counsel’s assertion. Rather, in an *Employment Letter*, dated December 8, 2008, [REDACTED] Assistant Room Service Manager, asserts: “[REDACTED] has worked at the [REDACTED] for the last six years. [REDACTED] is a professional individual with many talents. [REDACTED] is honest, dependable, and reliable. This company needs more employees like [REDACTED].” 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)).

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant’s spouse. The difficulties described, however, do not take the present case beyond those hardships ordinarily associated with the inadmissibility or removal of a family member, and the evidence in the record is insufficient to establish that the challenges to the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

With regard to relocation, the applicant’s spouse states: “If I eventually am not able to bring my wife to reunite with me in the states, then I will give up all I have in the states and return to China for her. I cannot bear with even the slightest thought of my wife fighting the pain of being alone in China. I do not know whether or not I will be able to find a good job in China, nor do I know if I can provide a safe and well living environment for my wife in China. But I must be with my wife.” See *Hardship Letter 3*, dated December 10, 2008. No documentary evidence has been submitted that addresses economic or safety concerns in China, and the evidence in the record is insufficient to demonstrate that the applicant’s spouse will be unable to secure employment or provide for himself and his wife therein. The applicant’s spouse states that if he decides to relocate to China the decision will deeply impact his family. *Id.* He states: “I am the only son in the family. If I abandoned my parents in the states to go to China by myself, I would be an impious son who brought sorrow and hardships into their lives.” *Id.* The applicant’s spouse does not address the sorrow he believes his parents would experience or define and describe the hardships to which he refers. The applicant’s spouse states: “I would not be able to pay for the house in the states, provide monetary support or even pay for the mortgage.” *Id.* It is unclear whether the applicant’s spouse is referring to one property or two, and the only documentary evidence in the record of home ownership or mortgages is contained in a *Credit Report*, dated December 16, 2008 which includes three mortgage-related entries: “[REDACTED] Date Opened 01/2003, Paid, Closed/Never Late; [REDACTED] Date Opened 12/2005, Open/Never Late; and [REDACTED] Date Opened 03/2008, Open/Never Late. The applicant’s spouse does not address the possibility of selling any real property should he decide to relocate to China to be with his wife, and the evidence in the record is insufficient to establish that he would be unable to pay his mortgage(s) in such event. The statement is also unclear as to whether the applicant’s spouse currently supports his parents financially and the evidence in the record is insufficient to establish that he would be unable to do so upon relocation.

The AAO has considered cumulatively all assertions of hardship related to relocation, including that the applicant's spouse would have to readjust to a country he has not lived in for a number of years, his significant family ties to the United States – particularly his parents, community ties, steady employment, home ownership, and economic prospects in China as presented. Considered in the aggregate, the AAO finds that the evidence is insufficient to demonstrate that the applicant's U.S. citizen spouse 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 her U.S. Citizen spouse as required under section 212(i) of the Act. 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 sections 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.