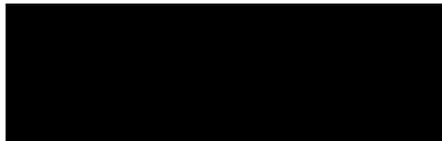


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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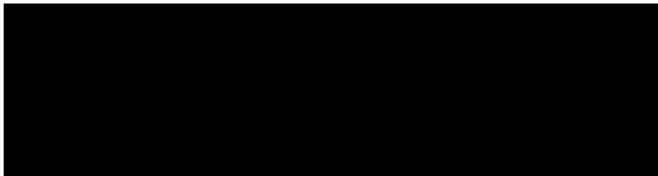
APPLICANT:



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, Cleveland, Ohio, 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 has resided in the United States since December 4, 1998, when he presented a South Korean passport which did not belong to him to gain admission into the United States. He 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. 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 with his U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to present sufficient evidence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated October 28, 2011.

On appeal, counsel for the applicant submits a brief in support. Therein, counsel asserts the Field Office Director erred by failing to consider all the individual hardship factors cumulatively. *Brief in support of appeal*, November 28, 2011. Counsel then contends if the presence of family ties in and outside the United States, country conditions, the financial impact of separation or relocation, and significant conditions of health are considered, the applicant would meet his burden of showing extreme hardship to his spouse. *Id.*

The record includes, but is not limited to, the brief in support, statements from the applicant's spouse, a psychological evaluation, evidence of medical issues, evidence of birth, marriage, residence, and citizenship, financial documents, copies of U.S. Federal Income Tax returns, evidence of country conditions, statements from family and friends, other applications and petitions filed on behalf of the applicant, evidence of removal proceedings, documents related to criminal proceedings, educational documents, documents related to the family business, and photographs. 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:

- (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.

Section 212(i) of the Act provides:

- (1) The [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.

In the present case, the applicant admitted under oath that on December 4, 1998 he presented a Korean passport bearing the name [REDACTED] which did not belong to him to gain admission into the United States. *Sworn statement*, December 4, 1998. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

The record also shows that the applicant was convicted of a domestic violence charge on February 10, 2009 under Ohio code §2919.25. The field office director did not address whether or not this conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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.

Counsel indicates the applicant's spouse does not have any family in China, and that her parents and siblings are all U.S. Citizens or lawful permanent residents living in the United States. *Brief in support of appeal*, November 28, 2011. Moreover, counsel claims if the family were to relocate to China, the applicant's spouse would not be able to find employment or run her own restaurant as she is able to do here. *Id.* In support, counsel submits articles on women's rights and employment prospects in China. *Work Woes Dog China's Women*, *Radio Free Asia*, March 9, 2009. The applicant's spouse corroborates counsel's assertion, stating as a woman she could not run her business in China as she does here, she would be charged a significant amount of money

for her children to attend school, and she would be charged more for medical care. *Affidavit of applicant's spouse*, February 1, 2011. Additionally, counsel asserts the applicant's spouse would be potentially subject to fines or detention in labor reeducation camps because she has two children, who were born in the United States and are U.S. Citizens. *Id.* In support, the applicant submits a 2009 U.S. Department of State Human Rights Report on China. The applicant's spouse additionally contends the applicant would be unable to support the family financially while in China, as he has been removed from the Fujian province household register and consequently will be denied employment opportunities there. *Affidavit of applicant's spouse*, February 1, 2011.

Counsel asserts if the applicant returned to China without the spouse, the spouse would be unable to support herself without the applicant working in the restaurant, especially given that she takes care of their two small children. *Id.* The applicant's spouse adds that she spends most of her time at home due to caretaking responsibilities for the children as well as a health issue due to a prior car accident. *Affidavit of applicant's spouse*, February 1, 2011. A 2008 disease verification form from [REDACTED] was submitted to show the applicant's spouse has a contusion on her left lateral upper hip bone due to a car accident, her mobility is limited, and partial working ability is lost. *Letter from [REDACTED]* August 2, 2008.

Counsel also describes psychological and emotional issues the applicant's spouse experienced when the applicant was detained by Immigration and Customs Enforcement. A psychological evaluation indicates that she experiences a severe level of clinical depression due to the applicant being removed from the home and possibly being sent to China. *Psychological evaluation*, June 3, 2010. The applicant's spouse confirms her already severe depression would be exacerbated by separation from her husband, given that loss would mean having to parent alone, earn money, and lose her business and her home. *Affidavit of applicant's spouse*, February 1, 2011. She explains her psychological state would also worsen given relocation to China due to the stress of change, the unavailability of jobs, the possibility of one-child violation penalties, and loss of contact with the remainder of her family. *Id.*

Affidavits from family and friends confirm although the applicant's spouse owns the family business, the applicant actually runs the restaurant due to the spouse's health problems and responsibilities towards her children. *Affidavit of [REDACTED]*, undated, *Affidavit of [REDACTED]*, undated, *Affidavit of [REDACTED]*, undated. These affidavits also state the government charges a large amount of money for foreign children to attend school, that medical care is also more expensive for foreigners, and that both the applicant and her spouse run the risk of being subject to sanctions for violating China's one-child policies. *Id.*

Despite numerous assertions, the evidence of record does not establish the applicant and his spouse would be subject to penalties under China's one-child policy. Both the children were born in the United States, and are U.S. Citizens. *See birth certificates, [REDACTED]* January 15, 2002, [REDACTED] April 23, 2004. A translated letter of record from the Administrative Office of the National Population and Family Planning Committee to the Fujian Province Population and Family Planning Committee states that as long as a husband and wife are both citizens of China, they are subject to the family planning laws of China, regardless of where their children are born.

Letter from Administrative Office of the National Population and Family Planning Committee, March 14, 2006. The applicant's spouse became a U.S. Citizen in 2010, which, according to the letter, exempts her and the applicant from being subject to Chinese family planning laws. *Id.*, see also *citizenship certificate*.

Despite insufficient evidence on whether the applicant or his spouse would have to pay fines due to violation of the one-child policy, there is sufficient evidence that applicant's spouse experiences significant financial difficulties. The U.S. Federal Income Tax Returns show that the household's 2008 adjusted gross income is \$19,278.00, which is insufficient to meet 100% of the poverty guidelines for a family of four. See *2008 Form 1040A, U.S. Individual Income Tax Return*, see also *Form I-864P, Poverty Guidelines*, March 1, 2011. It is evident from the spouse's affidavit and other supporting declarations that while the applicant works at the restaurant, the spouse stays at home and takes care of the children. *Affidavit of applicant's spouse*, February 1, 2011, *Affidavit of [REDACTED]* undated, *Affidavit of [REDACTED]* undated, *Affidavit of [REDACTED]* undated. There is also some indication that in 2008 the applicant's spouse had limited mobility and a reduced ability to work due to a car accident. *Letter from [REDACTED]* August 2, 2008. However, the psychological evaluation relays that the spouse explained this accident occurred when she was 13 or 14 years old, and does not state how this is affecting her currently. *Psychological evaluation*, June 3, 2010. Nevertheless, given the evidence of record, the AAO finds the applicant's spouse is fully supported financially by the applicant, and without the applicant's income, she would experience even more financial difficulties.

The spouse's depression as set forth in the psychological evaluation and confirmed in her own affidavit is acknowledged. However, the spouse's psychological issues alone do not rise above and beyond that which is normally experienced by relatives of inadmissible aliens. *Psychological evaluation*, June 3, 2010. When this emotional and psychological hardship is viewed cumulatively with financial difficulties, loss of the family business, as well as some medical issues, the AAO finds the applicant has shown his spouse would experience extreme hardship if the applicant were to return to China without his spouse.

Some hardship upon relocation to China is supported by the record. Although there is an article submitted on difficulties finding and maintaining employment as a woman in China, the assertion that the applicant's spouse, a native-born Chinese who has visited China recently, would experience such significant hardship, is not supported by the evidence of record. Furthermore, there is insufficient evidence to support assertions that the applicant himself would be unable to meet household expenses in China. As discussed above, the record also does not show the applicant and her spouse would be subject to penalties for violation of China's one-child policy. Moreover, it is noted that the spouse is a native of China, has taught her children relevant language skills, and became a U.S. Citizen in 2010. The AAO acknowledges that relocating to China would result in the applicant and the spouse losing their family business, and that it would cause some emotional and other difficulties for the applicant's spouse. However, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families relocate as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of relocation on

the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and she relocates to China with the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 his 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.¹

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.

¹ It is noted that even if extreme hardship to the applicant's spouse were found, a favorable exercise of discretion may not be warranted given the applicant's 2009 conviction for domestic violence, which appear to be related to the applicant's family, as well as his immigration violations.