

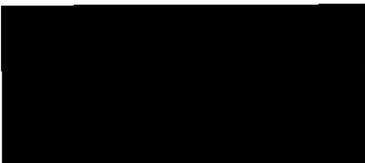
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



#15

DATE: **JUL 24 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:

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of China who presented a passport bearing a false date of birth in an attempt to obtain a U.S. visa. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). He is the son of a Lawful Permanent Resident (LPR). The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his LPR father, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 23, 2010.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act because he did not intend to commit a misrepresentation and because it was his father who committed a misrepresentation on his behalf. *Form I-290B*, received June 13, 2010. Counsel further asserts that the applicant's parents and grandparents will experience extreme hardship due to his inadmissibility.

The record contains, but is not limited to, the following evidence: a statement from the applicant's father; copies of permanent resident cards for members of the applicant's family; a statement from the applicant; a statement from [REDACTED] pertaining to the applicant's father; medical records pertaining to the applicant's grand-parents; copies of social security statements for the applicant's grand-parents; and copies of pay stubs and health insurance benefits for the applicant's parents. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) 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 chapter is inadmissible.

The record indicates that the applicant presented a passport with a false birth date in order to qualify as a dependent child for an immigrant visa. The Field Office Director found the applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The applicant asserts that he did not know that his birth date was incorrect, and that it was his father who applied for the applicant's visa. Based on this counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C) of the Act.

If a misrepresentation is made by an applicant's attorney or agent, the applicant will be responsible for this misrepresentation if the applicant was aware of the action taken by the representative. This includes oral misrepresentations made at the border upon entry by an aider of the alien's illegal entry. See USCIS Memorandum, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators*, from Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate, Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, Pearl Chang, Acting Chief, Office of Policy and Strategy, dated May 3, 2009. However, the AAO notes that there must be some evidentiary basis for United States Citizenship and Immigration Services to conclude that an applicant has misrepresented a material fact. *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).

In this case, the record indicates that the applicant attended his visa application interview and presented his passport bearing a false date of birth. In addition, United States Citizenship and Immigration Service (USCIS) records indicate that the applicant attended his visa application interview and that it was the applicant who presented his passport to the interviewing officer. Although the applicant and his father claim that it was the father who obtained his altered passport, this does not overcome the fact that the applicant was an adult at the time he presented it to the interviewing officer, and he was legally responsible for any representation made before a U.S. government official, and that it was the applicant who presented his passport when asked to verify the details on the application for his immigrant visa. Based on these observations the AAO does not find the record to substantiate the applicant's assertions and the AAO concludes that he misrepresented a material fact in an attempt to obtain a benefit under 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. The applicant's parents are the only qualifying relatives in this case. 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-Moralez*, 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 asserts on appeal that his parents would suffer extreme hardship if his waiver is not granted. *Appellant's Brief*, received August 16, 2010. He states that his father is 60 years old, has health problems and would be unable to travel back and forth to China to see him. He further states that without his presence, his parents would be the only ones to care for his grand-parents, who are over 80 and have their own health problems. He further states that, due to his permanent inadmissibility, his parents would experience emotional hardship.

The record includes a brief statement from the applicant's father's doctor. In the statement, [REDACTED] states that the applicant's father suffers from hypertension and type 2 diabetes. While this evidence is sufficient to establish that the applicant's father may be experiencing some health issues, the brief statement does not establish the degree and severity of his condition, what is required to control his condition, and the extent to which it impacts his ability to function on a daily basis. There is no evidence which indicates the applicant's father is unable to care for himself, or that the applicant's mother and brother would be unable to provide any necessary physical assistance.

The record includes extensive medical documentation regarding the applicant's grand-parents. However, most of the documentation submitted consists of lab reports, test results and internal notes written by doctors. The raw medical data does not sufficiently explain what burden that must be borne by the applicant's father in caring for them. The AAO also notes that the record includes statements from the applicant's brother pertaining to his own application for a waiver which indicates that he feels a responsibility to help provide physically and financially for their grand-parents. *Statement of the Applicant's Brother*, dated November 2010.

With regard to the emotional hardship of separation between the applicant and his parents, the AAO recognizes and acknowledges that there would be some emotional impact due to separation, but in this case the record does not contain any documentation which distinguishes any emotional impact on them from that which is commonly experienced by the relatives of inadmissible aliens who remain in the United States.

When the hardship impacts upon separation are considered in the aggregate, the AAO does not find them to rise to the level of extreme hardship. As such, the applicant has failed to establish that a qualifying relative will experience extreme hardship due to separation.

The applicant states that his parents would be unable to relocate to China because his grand-parents would be left unattended. *Appellant's Brief*, received August 16, 2010.

The applicant's father has submitted a statement asserting that his parents depend on him, and that if he relocated to China he would be unable to find the employment and health benefits he has obtained in the United States. *Statement of the Applicant's Father*, received August 16, 2010.

As noted above, the applicant's brother states that he feels a responsibility to help provide for his parents and grand-parents physically and financially. *Statement of the Applicant's Brother*, dated November 2010. Based on this evidence the AAO does not find the record to support the applicant's assertion that his grand-parents would be left unattended if his parents relocated to China.

With regard to the applicant's father's assertion that he would be unable to find employment or health benefits if he relocated to China, the AAO notes that there is no evidence in the record which corroborates his assertion. Nonetheless, the AAO will consider the advanced age and length of time his parents have resided in the United States when aggregating the impacts on them to due to relocation.

When the evidence regarding the impacts of relocation is examined as a whole, the AAO concludes that there it is insufficient to establish that the impacts on the applicant's parents, when considered in the aggregate, rise above the common consequences associated with relocation to a degree of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's parents face extreme hardship if he is refused admission. The AAO recognizes that the applicant's parents may experience emotional impacts due to separation from the applicant. However, this and other impacts arising from separation are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.