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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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DATE: **MAR 23 2012**

OFFICE: DETROIT, MI

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

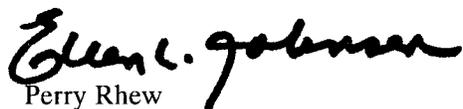
ON BEHALF OF APPLICANT:



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.

Thank you,



Perry Rhew

Chief, Administrative Appeals Office

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

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to enter the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the son of a U.S. citizen and a lawful permanent resident. He 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 found that the applicant had failed to establish that his inadmissibility would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated September 14, 2011.

On appeal, counsel contends that the applicant is not inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act but, alternately, asserts that United States Citizenship and Immigration Services (USCIS) did not consider all of the evidence in the applicant's case and failed to apply the appropriate legal standard in considering the extreme hardship claim. *Form I-290B, Notice of Appeal or Motion*, dated October 4, 2011; *see also counsel's brief*, dated October 11, 2011.

The record includes, but is not limited to, statements from the applicant, his parents and his siblings; tax returns for the applicant and his business; tax returns for the applicant's siblings; Internal Revenue Service (IRS) statements relating to the applicant's father; documentation relating to the applicant's business; documentation of the applicant's financial obligations; country conditions information on China; materials relating to the Falun Gong; psychological evaluations of the applicant's father and mother; and medical statements and reports for the applicant's father. The entire record was reviewed and all relevant information considered in reaching a 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 establishes that, on April 25, 1991, the then 17-year-old applicant attempted to enter the United States using a counterfeit visitor's visa.

On appeal, counsel contends that the applicant is not subject to section 212(a)(6)(C)(i) of the Act as USCIS has not established that the applicant was aware of the fraudulent nature of his visa at the time of his attempted entry. Counsel asserts that the burden of proving fraud is always on the government and that the documentation on which USCIS based its section 212(a)(6)(C)(i) finding, the applicant's April 29, 1992 sworn statement, does not indicate that the applicant admitted

knowing that his visa was fraudulent. Counsel also maintains that at the time of his attempted entry, the applicant could not have made a false representation to the immigration officer at the port-of-entry because he could not read, write or speak English. He further finds it unreasonable for USCIS to conclude that the applicant, an uneducated and unsophisticated minor from a small village in China, could have had the intent to commit fraud or an understanding of what documents were required to enter the United States at the time he sought admission. Counsel states that the applicant learned of the fraudulent nature of his visa only after he was detained.

In light of counsel's assertions, the AAO will first consider if USCIS has erred in barring the applicant's admission to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C)(i) of the Act is violated by committing fraud or willfully misrepresenting a material fact. The Board of Immigration Appeals (BIA) has found fraud to consist of "false representations of a material fact made with knowledge of its falsity and with intent to deceive" and that in the immigration context, a finding of fraud requires that an individual "know the falsity of his or her statement, intend to deceive the Government official, and succeed in this deception." See *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956); see also *In re Tijam*, 22 I&N Dec. 408, 424-25 (BIA 1998). Willful misrepresentation does not require an intent to deceive, only the knowledge that the representation is false. See *Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009)(citing to *Witter v. I.N.S.*, 113 F.3d 549, 554 (5th Cir. 1997); see also *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995); *In re Tijam*, *supra*. "The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary." See *Mwongera*, *supra*. Therefore, a section 212(a)(6)(C)(i) finding of inadmissibility requires a determination that an individual has committed fraud or misrepresentation with an understanding of what he or she was doing.

Referencing *Singh v. Gonzales*, 451 F.3d 400 (6th Cir. 2006)(citing *Forbes vs. INS*, 48 F.3d 439, 441-442 (9th Cir. 1995), counsel first asserts that it is USCIS' burden to establish the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act and that it has failed to meet that burden as it has provided no clear, unequivocal and convincing proof that the applicant was aware of the fraudulent nature of his visa at the time of his 1991 attempt to enter the United States. Although the AAO acknowledges the government's burden in establishing removability under the Act, we note that the current proceeding relates to admissibility, where the burden of proof shifts to the applicant. Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proving eligibility for admission is entirely on the applicant. Accordingly, in the present matter, it is the applicant's burden to prove that he is admissible to the United States, rather than for USCIS to prove that he is not.

Counsel also contends that the applicant could not have made a false representation at the port-of-entry because he could not read, write or speak English and that as an uneducated and unsophisticated minor, he lacked the capacity to understand the documentary requirements for admission to the United States or to form the intent to commit fraud. The record, however, does not establish that the applicant's inspection took place in English as his April 29, 1991 sworn statement indicates that he was questioned in Chinese. Neither does it support counsel's assertions regarding the applicant's naiveté when he arrived at the port-of-entry.

While in his sworn statement, the applicant attests that he was unaware of what arrangements had been made to bring him to the United States and that he believed the visa in his passport to be genuine, we also note that he stated that his only relative in the United States at that time was an aunt

and that he had come to the United States because he was a member of the student movement in China, claims that were not true. Subsequent statements by the applicant and his family members indicate that in 1991, the applicant's father was already in the United States and had been for approximately six years, and that the applicant was not part of the student movement in China, but had been working in agriculture since the age of 14 to help support his family. The AAO finds the applicant's lack of truthfulness in providing the preceding information to call into question not only his claim that he believed his visa to be genuine, but to indicate, despite his lack of formal education and rural upbringing, an awareness of U.S. immigration law and policies then in place.

Further, although we acknowledge that the applicant was only 17-years-old at the time he sought admission to the United States, we do not find his status as a minor to preclude a 212(a)(6)(C)(i) finding of inadmissibility. The issue of age and its relationship to an individual's culpability have been addressed by several circuit courts in cases involving immigration fraud. In the previously discussed *Singh v. Gonzales*, the Sixth Circuit Court of Appeals found that the immigration fraud committed by the parents of a five-year-old child could not be imputed to her as fraudulent conduct "necessarily includes both knowledge of falsity and an intent to deceive" and requires proof of such. 451 F.3d 400, 407 (6th Cir. 2006). The Sixth Circuit found that imputing fraud to a five-year-old child was "even further beyond the pale," than imputing a parent's negligence to that child. *Id.*, at 407. However, in *Malik v. Mukasey*, the Seventh Circuit Court of Appeals found that two 17-year-old brothers whose father had misrepresented their identities, nationality, and religious affiliation when he listed them as derivatives on his asylum application, could be held accountable for that fraud. While the brothers contended that the immigration judge had erred by imputing their father's fraud to them, the court concluded that the brothers "given their ages at the time" were accountable for the misrepresentations. The court also indicated in its opinion that the BIA had previously acknowledged that while the brothers were young at the time their father filed for asylum, "they were old enough to know better and to be held accountable for their actions." 546 F.3d 890, 892-893 (7th Cir. 2008). In deciding the case, the Seventh Circuit specifically noted that young was a "relative term and that "[b]eing over 16 - and eligible for a driver's license - is quite different than being 10." *Id.*, at 892.

In the present case, the record demonstrates that the applicant was less than a month away from his 18th birthday when he presented a passport with a counterfeit visa to an immigration inspector and that he did so voluntarily. Although counsel contends that the applicant, an uneducated, unsophisticated minor at the time of his arrival, was unaware of the fraudulent nature of the visa he presented, the record does not support counsel's assertion. Accordingly, the AAO finds that the applicant sought admission to the United States on April 25, 1991 by knowingly presenting a counterfeit visa and that, like the respondents in *Malik v. Mukasey*, he was old enough to understand that seeking admission with a counterfeit visa was wrong. We, therefore, conclude that the applicant's use of a counterfeit visa in his 1991 attempt to enter the United States constitutes a willful misrepresentation of a material fact and bars his admission under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

- (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 would result extreme hardship for a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's parents are the only qualifying relatives in the present case. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to the applicant's spouse. 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*, 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 BIA 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 BIA 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 BIA 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

We now turn to a consideration of whether the record establishes that the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act would result in extreme hardship for her spouse.

On appeal, counsel asserts that both of the applicant's parents are suffering from depression and anxiety as a result of the applicant's immigration situation, in part because of their fear that he would be persecuted in China as a practitioner of Falun Gong. Counsel also contends that both of the applicant's parents live with him and are financially dependent on him. Counsel maintains that the applicant's father has not worked for many years because of poor health and that he has no ability to support himself or his wife. Counsel further states that the applicant's removal would have a profound psychological effect on his father's mental and physical health as his father expected the applicant, his oldest son, to be with him for the rest of his life.

In an August 9, 2011 statement, the applicant's mother asserts that the applicant pays all her and his father's bills since they have no income as a result of their health conditions. She states that she worries about where she and her husband would live and who would care for them in the applicant's absence, as well as who would drive them to doctors' appointments and to do errands. The applicant's mother maintains that she and her husband would have to apply for U.S. government assistance as the applicant lacks the education necessary to obtain the type of employment in China that would support him and them in the United States. Although she indicates that she has two other adult children, the applicant's mother asserts that in Chinese culture, the applicant is responsible for looking after her and his father because he is the oldest son. She also states that her daughter is married and living with her husband, and, further, that she and her husband do not get along with their younger son and his wife.

With regard to the emotional hardship she would experience if the applicant is removed, the applicant's mother asserts that she has undergone eight years of mental suffering as a result of the applicant's immigration situation and that it has had a significant impact on her mental health. She also states that she and the applicant practice Falun Gong, which has helped with her serious depression, but that she is also aware that this affiliation would place the applicant at risk in China as the government tortures people who are Falun Gong practitioners.

In a separate August 9, 2011 statement, the applicant's father indicates that he and his wife are dependent on the applicant for emotional, physical and financial support. He states that the applicant has been in the United States since he was 17-years-old and that he would, therefore, not be able to earn a living for himself in China, much less support his parents in the United States. The applicant's father also asserts that he cannot bear the thought of his son being persecuted in China for his adherence to Falun Gong.

In a December 26, 2009 statement, the applicant maintains that his parents are dependent on him and cannot function without his assistance. He states that his father relies on him to take him to his doctors' appointments, get his medications and drive him where he needs to go. His mother, the applicant asserts, does not speak English or know how to drive and that she also depends on him to drive her to doctors' appointments and wherever else she needs to go. He reports that his sister is married and living in another state and that his younger brother is experiencing his own financial and personal difficulties, and is not in a position to take care of their parents. The applicant states that if he is removed, his parents would suffer emotionally and financially.

The record offers the following documentary evidence in support of the applicant's claim that his father would suffer extreme hardship if he is removed and his father remains in the United States.

A medical statement from [REDACTED], dated August 29, 2006, and medical notes from the Vision Institute of Michigan, dated August 17, 2006, establish that the applicant's father has very poor vision in both eyes, with the right eye being the worst as a result of a prior injury. In his statement, [REDACTED] reports that the applicant's father best corrected visual acuity in his right eye was limited to "hand motion vision" and that his vision in his left eye was 20/200. The notes from the Vision Institute of Michigan state that there is no treatment that will improve the applicant's father's vision in either eye.

A medical statement from [REDACTED] dated September 1, 2006, establishes that he saw the applicant's father for high blood pressure, headaches, dizziness and heart palpitations, performed an EKG, did some initial blood work and tentatively concluded that the applicant's father was suffering from primary hypertension, although he recommended additional testing when the family could afford it. [REDACTED] notes that the applicant's father requires assistance from his family and that such assistance was being provided by the applicant. [REDACTED] also indicates that the applicant's father did not speak English.

Also submitted for the record is a September 14, 2009 psychological evaluation of the applicant's father prepared by [REDACTED] which finds him to be suffering from Major Depressive Disorder without Psychotic Features. [REDACTED] evaluation indicates that she based this finding on a clinical interview of the applicant's father, as well as the results of the Mental Status Checklist for Adults, the Beck Hopelessness Scale, the Burns Anxiety Inventory, and the Burns Depression Checklist that she administered to him. The applicant's father's depressive disorder, [REDACTED] reports, is directly related to the applicant's immigration problems. She also notes that the applicant's father and mother's total dependence on him is culturally appropriate and that the applicant's father is extraordinarily fearful with regard to how he and his wife would survive without the applicant. [REDACTED] maintains that the applicant's father would experience severe mental anguish as a result of his separation from the applicant.

The record also contains statements from the applicant's siblings regarding their ability to assist their parents in his absence. In a December 18, 2009 statement, the applicant's younger brother asserts that he is not sure how his parents would be able to survive without the applicant. While he states that he could offer help from time to time, he also indicates that he now has a family of his own and a number of financial obligations that would prevent him from helping his parents financially for any length of time. In a December 26, 2009 statement, the applicant's sister also contends that she cannot contribute to her parents' financial support. She notes that as she is now married, Chinese tradition ties her to her husband's family rather than her own and, further, that she does not have the income to help her parents as she and her husband are struggling financially.

The AAO notes that the record includes IRS statements that indicate the applicant's father reported no income for 2004, 2005 and 2006, and that the applicant's tax returns as of 2005, report his parents as his dependents. Copies of driver's licenses and identity cards in the record establish that the applicant and his parents reside at the same residence and copies of a 2009 property tax statement addressed to the applicant, a Quit Claim Deed, and mortgage checks are sufficient to establish the applicant as the owner of this residence. Copies of a range of billing statements, all addressed to the applicant, demonstrate that the applicant is also responsible for the costs associated with home ownership.

While the record does not establish the applicant's mother as a Falun Gong follower, it does include online material from falonggonghome@hotmail.com that indicates the applicant is an active Falun Gong participant and that he leads a Falun Gong group. Included in the record is an article from *The Journal of the American Academy of Psychiatry and the Law*, entitled "Psychiatric Abuse of Falun Gong Practitioners in China," by [REDACTED] and [REDACTED], Volume 20, Number 1, 2002 that reports on the persecution of Falun Gong practitioners in China, including their incarceration in mental hospitals. We also note the submitted section on China from the International Religious Freedom Report 2008 published by the U.S. Department of State, which indicates that the Chinese government harshly represses religious groups designated as cults, among which it includes the Falun Gong. The report also indicates that some foreign observers estimated that at least half of the 250,000 officially recorded inmates in China's reeducation-through-labor camps were Falun Gong adherents.

Online articles submitted for the record indicate that in Chinese culture, the oldest son in a family is responsible for the care of his parents in their later years and that it is the eldest son who assumes responsibility as head of the household when his father's health no longer allows him to continue in this role. This material similarly supports the assertions made by the applicant's sister that in Chinese culture, her marriage has made her part of her husband's family and that her responsibilities to her parents have been supplanted by those to her in-laws.

Having reviewed the preceding documentation, the AAO finds the record to establish that the applicant's father would experience extreme hardship in his absence. While we do not find the record to establish that the applicant's father's currently suffers from the hypertension with which he was diagnosed in 2006, we take note of his significantly and permanently impaired vision, and find it sufficient to establish that he is not able to work to support himself and his wife. We also acknowledge that the applicant is financially supporting parents and that his adult siblings who previously resided with their parents are now married and living on their own, his sister in Alabama and his brother in another city in Michigan. We further find the record to establish that the

applicant's father is suffering from depression resulting from his concerns about the applicant's immigration situation, and that the applicant's father specifically fears that the applicant would be persecuted as a Falun Gong follower upon return to China, a fear that the country conditions materials in the record establish as well-founded. When the applicant's father's physical health, his financial dependence on the applicant, his depressed mental state, his fears relating to the applicant's treatment upon return to China and the normal hardships that result from the separation of a family are considered in the aggregate, the AAO finds the applicant to have demonstrated that his father would suffer extreme hardship if the waiver application is denied and his father remains in the United States.

We also find the applicant to have submitted sufficient evidence to demonstrate that relocation to China would result in extreme hardship for his father.

On appeal, counsel contends that the applicant's parents no longer have family in China and that their children, other than the applicant, live in the United States. Counsel also asserts that the medical conditions from which the applicant's father suffers would become worse if he relocated to China, as he would not be able to obtain adequate medical care. Counsel states that medical treatment in China is expensive and that the healthcare system is corrupt, requiring patients to bribe medical providers to obtain decent care. Counsel also contends that the applicant and his parents would experience financial hardship if they returned to China. He claims that the applicant's father would not be able to work in China as he is too old and too sick, and has abandoned his Chinese citizenship. Counsel also maintains that the applicant's chances of finding a decent job in China are remote. Counsel further states that because she practices Falun Gong, the applicant's mother would be persecuted if she returned to China.

In their statements, the applicant's parents both assert that they would experience hardship if they returned to China with the applicant. The applicant's father states that he has no family left in China and that his only sister lives in New York City. He also maintains that he would not be welcome in China because having become a U.S. citizen, he has lost his Chinese citizenship. As a result, he states, he could not live permanently in China, but would be allowed only temporary visits. The applicant's mother contends that she cannot go back to China because she would be arrested by the Chinese government for practicing Falun Gong.

In his 2009 statement, the applicant contends that his parents would have significant concerns regarding relocation to China. He asserts that he and his mother are Falun Gong practitioners and that his parents are aware that the Chinese government persecutes such individuals. The applicant also points out that he and his parents would have no family in China to help them with relocation, nor would they have any housing available to them. He also states that it would be difficult for him to find a job in China and that, as a result, he would be unable to support his parents. The applicant asserts that he could not count on his USC siblings for financial help.

The applicant also maintains that in China his father would not be able to obtain the same level of healthcare he receives in the United States. He claims that after 12 years, his father has reached a level of comfort with his healthcare providers in the United States and that new medical practitioners and new medications would add to the difficulties of relocation for his father, affecting his already fragile emotional state.

In support of the applicant's claim that relocation would result in extreme hardship for his father, the record contains the previously discussed country conditions information on the abuse and imprisonment of Falun Gong adherents by the Chinese government, as well as materials indicating systemic problems in Chinese healthcare, including a BBC News online article, last updated on March 2, 2006, "The high price of illness in China," which reports that China's prior system of providing near-universal access to basic healthcare has been dismantled and that the poor are failing to seek medical treatment because of the costs involved. Also submitted for the record is a second online article, "Looking for a cure to corruption," from China Daily, updated as of February 9, 2009, which addresses problems in China's healthcare system, including the scarcity of doctors and medicine in rural areas, over-priced drugs, doctors taking kickbacks from pharmaceutical companies and hospitals holding patients for ransom. A third submission, a November 20, 2009 digest published online by the China Digital Times, includes summaries of more than a dozen articles dealing with the need for reform in China's healthcare system. The AAO also observes that the 2009 psychological evaluation of the applicant's father prepared by [REDACTED] indicates that a return to China would exacerbate his depressive symptoms, which she states are already extreme.

Having reviewed the record, the AAO notes that the applicant's father has lived in the United States since 1985 and that his family ties are to the United States. We also note that he is 62-years-old, with significantly impaired vision, which cannot be improved through treatment. We further acknowledge the applicant's father's concerns that his son's affiliation with Falun Gong would place the family at risk upon return to China. When these hardship factors are considered in combination with the disruptions and difficulties normally created by relocation, the AAO finds the applicant to have established that a return to China would result in extreme hardship for his father.

In that the record demonstrates that the applicant's inadmissibility would result in extreme hardship for his father, the applicant has established statutory eligibility for a waiver under section 212(a)(6)(C)(i) of the Act. Therefore, the AAO finds no need to consider the extent to which the record also proves that the applicant's mother would experience extreme hardship and turns to the exercise of discretion in the present case.

In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and

other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's use of a fraudulent visa in his April 25, 1991 attempt to enter the United States for which he now seeks a waiver and his periods of unlawful residence and employment in the United States. The favorable factors are the applicant's family ties to the United States; the extreme hardship to his U.S. citizen father if the waiver application is denied, his business ownership; his consistent payment of taxes since 2001; the absence of a criminal record; and the statements from family members regarding the role he has played in the family's financial survival, which began when he left elementary school to go to work in China.

The misrepresentation committed by the applicant was serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal will be sustained.