

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

[REDACTED]

DATE: NOV 06 2012

OFFICE: NEW YORK, NEW YORK

File: [REDACTED]

IN RE:

Applicant: [REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to be "Perry Rhew", with a long horizontal line extending to the right.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

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 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 with her U.S. citizen father and three minor children.

The District 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 District Director*, dated May 20, 2008.

On appeal, counsel asserts that if the waiver is not granted the applicant's U.S. citizen father will suffer extreme hardship. *See Notice of Appeal or Motion*, received June 19, 2008.

The record contains, but is not limited to: Form I-290B and counsel's brief; various immigration applications and petitions; a hardship affidavit, a psychological evaluation and a medical record concerning the applicant's father; the applicant's affidavit; letters of character reference and support; medical and school records concerning the applicant's children; birth and marriage certificates; and documents related to the applicant's inadmissibility. 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 shows that on March 28, 1992, the applicant attempted to enter the United States by presenting a Japanese passport that was not her own. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) 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 father is the 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 father is a 61-year-old native of China and citizen of the United States. He states that his “reason for the hardship” is that he fell a few years ago and still experiences pains sometimes. The applicant’s father explains that the applicant has been a big help to him after his divorce, she would take him to see the doctor, helps him with his food shopping, and makes sure he gets his prescriptions, and he believes that without her he would not survive. The applicant maintains that her father resides with her, suffers from physical and psychological ailments, and is very dependent on her for emotional and physical support. ██████ asserts that the applicant’s father is closer to the applicant than his two U.S. citizen children who reside out-of-state with their families. ██████ reports that the applicant’s father suffers high blood pressure, stomach ache, back pain, hearing loss and was hospitalized for two weeks in 2001 after breaking his hip. ██████ diagnoses the applicant’s father with major depressive disorder, recurrent, severe without psychotic features. ██████ recommends that the applicant’s father undergo weekly individual psychotherapy to help improve his mood and cope with stresses related to his daughter’s immigration problem and his health problems, and that he try antidepressant medication with a psychiatrist if his condition does not improve significantly with psychotherapy.

Whether the applicant’s father has followed ██████ recommendations and the results thereof is not addressed in the record. ██████ indicates that the applicant provides essential and irreplaceable physical and emotional care for her father and separation from her will cause extreme hardship to him. ██████ concludes that the applicant’s father’s condition will deteriorate beyond any doubt if he loses his daughter’s support due to her immigration problem. ██████ adds that the applicant’s father worries deeply about the effect of the applicant’s potential removal on her three U.S. citizen children, and these concerns exacerbate his conditions. The applicant’s

sister writes that she is very close to the applicant as are her children, all of whom would miss her terribly were she to be removed.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's father including his advanced age, the frailty of his physical and psychological health, his physical, emotional and financial dependence on the applicant with whom he has been living for years and who appears to be his primary caregiver, and the permanent nature of separation from the applicant on account of her inadmissibility. The AAO finds that considered in the aggregate, the evidence is sufficient to demonstrate that the applicant's U.S. citizen father would suffer extreme hardship due to separation from the applicant.

Addressing relocation, the applicant fears that her father would not survive a return to China because life there is very different than the life he has known in the United States since 1989. She expresses great concern about the quality of both medical and psychological care available in China which she indicates is far below the standards of care in the United States. [REDACTED] contends that it is well-known that mental illness is still stigmatized in China and the care for the mentally ill there is poor and at times totally inappropriate. While the AAO acknowledges [REDACTED] professional opinion, it notes that no corroborating country conditions reports have been submitted for the record. [REDACTED] indicates that the applicant's father is afraid that the education of his U.S. citizen grandchildren would falter in China, and the applicant states that their Chinese language skills are not very strong and she worries they will have trouble adjusting to a country, way of life, and culture so different than their own.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's father including adjustment to a country in which he has not resided since 1989; his lengthy 23-year residence in the United States; his close family ties in the United States including to his U.S. citizen children and grandchildren as well as his community ties built over decades; his advanced age and frail physical and psychological condition and stated concerns about the health care available to him in China; and his concerns about the wellbeing of his U.S. citizen grandchildren and how their relocation to China would affect his own wellbeing. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's U.S. citizen father would suffer extreme hardship were he to relocate to China to be with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of*

*Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. See, e.g., *Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Moralez* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)

*Id.* at 301.

The favorable factors in the present case include extreme hardship to the applicant's U.S. citizen father as a result of the applicant's inadmissibility; her significant close family ties to the United States where her father, siblings, and numerous nieces and nephews all reside lawfully; her home ownership and ownership of a business in the United States and her consistent payment of taxes; and her apparent lack of any criminal record. The unfavorable factors are the applicant's immigration violations including the presentation of a false document in order to obtain admission into the United States. Although the applicant's violation of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore,

pursuant to section 212(i) of the Act, the AAO finds 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 establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained. The application is approved.