



U.S. Citizenship  
and Immigration  
Services

715

DATE:

OCT 19 2012

OFFICE: NEWARK, NJ

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)

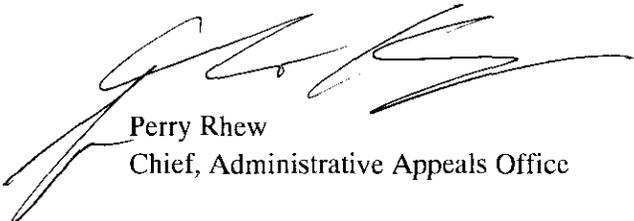
ON BEHALF OF APPLICANT:

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.

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, Newark, New Jersey, 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 January 10, 1992 when she sought to procure admission into the United States by presenting a photograph-substituted Singaporean passport which did not belong to her. She 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 admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and the daughter of a U.S. Citizen and is the beneficiary of an approved 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 her U.S. Citizen spouse and parent.

The Field Office Director concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and that the applicant failed to establish that the bar to admission would impose extreme hardship on her U.S. citizen husband or father, the qualifying relatives, and denied the application accordingly. *Decision of Field Office Director* dated March 7, 2011.

On appeal, the applicant submits a brief and copies of documents previously filed.

The record includes, but is not limited to, the doctor's letter, hardship statements from the applicant's spouse, parent and children, financial documents, and other applications and petitions. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C) of the Act, which 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.

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 she sought to procure admission into the United States by presenting a photograph-substituted Singaporean passport to immigration officials which did not belong to her. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relatives for a waiver of this inadmissibility are her U.S. Citizen spouse and parent.

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.

The applicant’s spouse explains that he would suffer extreme hardship if he is separated from his wife because she cares for the couple’s three children and the three grandparents (the applicant’s father and the applicant’s husband’s parents) living in the same household. The record reveals that the applicant has been a housewife since 1992 and that the applicant’s husband works as a cook to support his family. The current ages of the applicant’s children are 16, 23 and 24. The record does not contain supporting evidence showing that the grandparents are living in the same household or that the applicant is otherwise caring for them and her husband is supporting them financially. Apart from a brief letter of the applicant’s father’s physician, no other medical or financial evidence has been included to indicate the needs of the grandparents. *Letter from* [REDACTED] [REDACTED] dated February 18, 2011. The applicant’s husband indicates that he believes that his father has Parkinson’s disease but does not include supporting medical evidence with this appeal. *Affidavit from Applicant’s Husband*, dated February 21, 2011. The applicant’s spouse also claims that if his wife returns to China, she may be forced to undergo sterilization since she has three children. Counsel states that the applicant’s husband will experience extreme emotional hardship because the applicant may be persecuted for having three children, but offers no supporting evidence of current country conditions in China with respect to sterilization or persecution of families that have had three children. The record lacks sufficient evidence demonstrating that the emotional, medical, or other impacts of separation on the applicant’s spouse are in the aggregate above and beyond the hardships normally experienced due to a spouse’s inadmissibility, such that the applicant’s husband would experience extreme hardship if the waiver application is denied and he is separated from the applicant.

The record also does not demonstrate that the applicant's spouse would experience extreme hardship upon relocation to China. The applicant's spouse claims that it would be difficult for his children to adapt because his daughters are firmly settled in the United States and his son was born in this country and barely speaks Chinese. Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse and father are the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's qualifying relatives. The applicant's spouse does not discuss the effects that his children's hardship upon relocation would have on him.

The applicant's spouse further asserts that if the family returns to China, his wife may be forced to undergo sterilization since they have three children. He claims that sterilization would leave the applicant in poor health and impose hardship on them because they "do not want to lose the option of having more children." The latter claim lacks credibility as the record shows that the applicant and her husband are now 46 and 47 years old. Counsel also asserts that the applicant's husband will experience extreme emotional hardship upon relocation because the applicant may be persecuted for having three children, but he submits no supporting evidence of current country conditions in China with respect to sterilization or persecution of families that have had three children and are now beyond their child-bearing years. The preponderance of the evidence does not show that the applicant's husband's difficulties in China would rise above the hardships commonly created when families relocate as a result of inadmissibility or removal. The record lacks sufficient evidence to demonstrate that the emotional and other impacts of relocation on the applicant's spouse would in the aggregate constitute extreme hardship.

The record establishes that the applicant's father would suffer extreme hardship upon relocation to China. The relevant evidence shows that he is over 70 years old, suffering from cancer, undergoing chemotherapy, and relies on others to take care of him. *Letter from* [REDACTED] dated February 18, 2011; *Affidavit of the Applicant's Father*, dated February 21, 2011. These circumstances demonstrate that the applicant's father would suffer extreme hardship upon relocation to China.

The record does not, however, show that the applicant's father would suffer extreme hardship if he remained in the United States and the applicant returned to China. The applicant's father explains that he would suffer extreme hardship if he is separated from his daughter because she provides for his daily needs as he is recovering from cancer. *Affidavit of the Applicant's Father*, dated February 21, 2011. He explains that he is a widower, relies "almost exclusively" on the applicant to take care of him and he "would be at a great loss emotionally" if the applicant were forced to return to China. The letter from the applicant's father's physician states briefly that the applicant's father is being treated for cancer with chemotherapy and experiences fatigue and bloating. *Letter from* [REDACTED] dated February 18, 2011. The letter asserts that the applicant "wants to take care of his [sic] father" and that her presence "will help [his] recovery and also provide psychological support," but [REDACTED] does not indicate that the applicant is or has been the sole or primary caregiver for her father. *Id.* The record does not contain evidence that other relatives, such as the adult grandchildren or other individuals, could not or do not already

provide for some of the applicant's father's basic needs in the absence of the applicant. The record lacks sufficient evidence to demonstrate the emotional, medical, or other impacts of separation on the applicant's father are in the aggregate above and beyond the hardships normally experienced due to inadmissibility, such that the applicant's father would experience extreme hardship if the waiver application is denied and he is separated from the applicant.

Although the applicant has established that her father would suffer extreme hardship upon relocation to China, 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 relocation *and* the scenario of separation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship to her qualifying relatives from separation and to her husband upon relocation, we cannot find that refusal of admission would result in extreme hardship to either of her qualifying relatives.

The applicant has failed to establish extreme hardship to her U.S. Citizen spouse or parent, as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for a 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.