



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **APR 02 2013**

Office: MILWAUKEE, WI

FILE: [REDACTED]

IN RE: [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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Milwaukee, Wisconsin. The matter 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 gained admission to the United States with a fraudulent passport in January 1999 at Los Angeles Airport, Los Angeles, California. 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 entering the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his wife, a U.S. citizen. 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 wife and children.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated May 12, 2011.

The applicant's attorney, on appeal, asserts that the Field Office Director erred in concluding that the qualifying spouse would not suffer extreme hardship by considering hardship and discretion together. Further, the applicant's attorney contends that the Field Office Director failed to consider or give proper weight to several factors including, but not limited to, the qualifying spouse's psychological, health-related and financial issues.

The record contains the following documentation: the Application for Waiver of Grounds of Inadmissibility (Form I-601); the Notice of Appeal or Motion (Form I-290B); an appeal brief and letters written on behalf of the applicant; copies of prior AAO cases¹; affidavits from the qualifying spouse and applicant; relationship and identification documents for the applicant, qualifying spouse and their children; medical documentation regarding the qualifying spouse and medical expenses; a psychological report regarding the qualifying spouse; photographs; country-conditions materials regarding China; financial documentation; a letter from the applicant's sister and a medical certificate; reference letters for the applicant and qualifying spouse from their accountant, landlord and other members of their community; a police clearance document for the applicant; an approved Form I-130 and an Application to Register Permanent Residence or Adjust Status (Form I-485) with supporting documentation. 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

¹ Only AAO decisions published and designated as precedent decisions in accordance with the requirements outlined in 8 C.F.R. § 103.3(c) are binding on U.S. Citizenship and Immigration Services employees in the administration of the Act.

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admission into the United States or other benefit provided under this Act is inadmissible.

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. The applicant's wife is the only qualifying relative 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-I-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 AAO finds that the applicant’s spouse would suffer extreme hardship as a consequence of being separated from the applicant. With respect to the qualifying spouse’s psychological issues, the psychiatric evaluation indicates that the qualifying spouse has been suffering from major depressive disorder, presenting symptoms of depression, insomnia, decreased appetite, excessive crying and passive suicidal ideations. Further, the qualifying spouse indicates that the applicant is the “center” of their family and describes how dependent, both emotionally and financially, she is on him. In addition, she states that she has no family support in the United States, were the applicant to leave, except for an uncle. In addition, the applicant’s spouse asserts that she has suffered and continues to experience various medical issues, including a terminated pregnancy, a recurrent cough and cysts in her breasts. She explains that the applicant accompanies her to every doctor’s appointment. The record contains medical records confirming her health issues and the applicant’s presence at her appointments in order to act as her translator.

The applicant’s spouse also contends that the qualifying spouse would suffer financial hardship if the applicant returned to China because the applicant is the manager and cook at their restaurant. The qualifying spouse states that she could not run the restaurant because she does not speak English. Documentation in the record supports her assertions. The record contains letters from

members of their community that suggest that the applicant's spouse takes care of the business dealings for their restaurant. Given their financial situation as demonstrated through documentation on the record, including tax returns and expenses, it appears that it would be difficult for the qualifying spouse to hire another person to take care of the responsibilities of the applicant. Similarly, the record through the financial documentation supports the qualifying spouse's assertions regarding her financial inability to travel to China to visit the applicant due to the cost of such travel. As such, the record reflects that the cumulative effect of the psychological, medical and financial hardships the applicant's spouse would experience in the United States without the applicant rises to the level of extreme.

However, the AAO concludes that the applicant has failed to demonstrate that his spouse would suffer extreme hardship in the event that she relocates to China. The qualifying spouse, a native of China, came to the United States in 2000 and has spent most of her life in China. The record reflects that she does not speak English, and the applicant makes no claims that she would have any difficulties adjusting culturally to life in China. Further, the qualifying spouse states that she only has one relative in the United States, an uncle, and that her parents and brother live in China. In addition, according to the Biographic Information Form (G-325A) for the applicant, his parents also live in China.

The applicant's spouse also contends that the applicant faces sterilization, if they return to China due to the national family-planning policies. The record contains a letter from the applicant's sister indicating that she was forced to undergo sterilization after having two children and a medical certificate confirming that she was sterilized. However, the record contains inconsistent documents and testimony about the applicant's plans to have more children and no evidence showing the Chinese government would treat the applicant's family returning from the United States similarly to his sister.

The qualifying spouse also states that she would financially suffer if her family relocated to China because the applicant will be unable to find work as a cook since he cooks Chinese-American food. She states that there is no need for such food in China and that there are already "so many" other Chinese restaurants. She also states that, because they will have no income, they will be unable to afford health care, an education for their children and the cost of renewing their immigration documents in China. However, the record fails to sufficiently corroborate the claim that the applicant's spouse would be unable to obtain employment in China. The country conditions materials in the record do not address economic problems in China, and there is no other documentary evidence to support the assertions in the record. Further, even if the applicant's spouse were unable to obtain comparably-paid employment in China, a qualifying relative's inability to maintain his or her current standard of living upon relocation does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996).

The qualifying spouse also states that she has returned to China twice and that her health was adversely affected due to the air pollution there. She claims she experienced a very bad cough and had to return to the United States immediately. She adds that she visits her doctor in the United States often due to her persistent cough and her breast cysts, so her health care would be costly in China. She also asserts that the health care is "bad" in China. While evidence in the record

indicates that health care in China is not equivalent to that in the United States, it also reflects that hospitals in major Chinese cities have reasonably up-to-date laboratory and imaging facilities. The Form G-325A submitted by the applicant and his spouse indicates that they were born in Fuzhou City, a city of more than seven million, and that their parents continue to reside there. Further, the medical documentation in the record indicates that the applicant's cough symptoms were caused by latent tuberculosis and that she was treated in 2010 for this illness. No current medical documentation demonstrates that she continues to have a persistent cough or links this problem to air pollution in China. Moreover, with regard to the qualifying spouse's cysts, no documentation on the record shows she must see a doctor regularly for this condition, and the record does not establish that she could not receive treatment in China if needed. The AAO therefore does not find the record to establish that the applicant's spouse would experience extreme hardship if she returned 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 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.