



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

DATE: **APR 05 2013** OFFICE: LOS ANGELES, CALIFORNIA

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:

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 with the field office or service center that originally decided your case by filing a 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Los Angeles, California, denied the waiver application. The applicant appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. On May 25, 2012, the applicant filed a motion to reopen and reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be granted. The previous decision of the AAO will be affirmed.

The applicant is a native and citizen of the People's Republic of China (PRC) 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 procured fraudulent documentation to the United States through willful misrepresentation and presenting the documentation to receive an immigration benefit. The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative, and denied his Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO affirmed the Field Office Director's decision on appeal.

On motion, the applicant's spouse contends she would suffer extreme emotional and financial hardship as evidenced by additional documentation that demonstrates country conditions in the PRC, and accordingly, she is requesting that the applicant's waiver application be approved.

The record includes, but is not limited to: letters of support; identity, employment, and financial documents; and documents on conditions in the PRC. The entire record was reviewed and considered in rendering a decision on the motion.

Section 212(a)(6)(C) of the Act provides, in relevant 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 Act is inadmissible.

(iii) Waiver Authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The Field Office Director found the applicant inadmissible under section 212(a)(6)(C) of the Act for having procured an I-94 card bearing a counterfeit I-551 stamp, indicating the applicant's lawful admission for permanent residence, valid from April 1, 2001, until April 1, 2002. The applicant presented the I-94 card as evidence in support of his Application to Register Permanent Residence or Adjust Status (Form I-485). On motion, the applicant does not contest the finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act.

Section 212(i) of the Act provides, in relevant part:

(1) The Attorney General [now Secretary of Homeland Security (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.

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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen wife is the only demonstrated qualifying relative in this case. 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 of Immigration Appeals (BIA) 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 *Id.* at 568; *In re 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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 v. I.N.S.*, 138 F.3d 1292, 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.

In support of the applicant’s motion, the applicant’s spouse contends she would suffer extreme emotional and financial hardship upon separation from the applicant as: their entire life would be impacted, and they would suffer a decline in their emotional and mental health; she is being torn between her responsibilities and commitments to the applicant, her family, her country, and her way of life; family unification is very important, and there is a strong bond between a husband and a wife as well as a bond that an individual “inherits” when children are present, and upon taking away these bonds, she will experience stress; the applicant wants the opportunity to raise and support his family along with her in the United States and to provide their children the love and support of a “complete” family; he is their only source of income, which allows her to focus on raising her children; her family would be subjected to living in substandard conditions without his salary, and he would lose “great employment”; and he is a very proactive and productive member of society.

Although the applicant’s spouse may experience emotional and financial hardship in the applicant’s absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. In its previous decision, the AAO noted the record did not include evidence of the applicant’s spouse’s mental health or her inability to function in the applicant’s absence, and it did not include evidence of her inability to meet her financial obligations or to economically support herself in the applicant’s absence. The AAO notes the motion does not include any evidence to address these concerns other than what has been self-reported by the applicant’s spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). And, absent an explanation in plain language from the treating mental health professional of the nature and severity of any conditions and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a mental health condition or the treatment needed. Moreover, the AAO notes the record is unclear concerning whether the applicant is the sole breadwinner as evidence in the record indicates his spouse has been employed in a full-time capacity by [REDACTED] since January 21, 2002, as a Poker Dealer earning an hourly wage of \$8.00 (plus tips). See *Employment Letter Issued by Jenny Paz, Payroll Clerk*, dated September 18, 2008. The AAO is thus unable to conclude the record establishes the applicant's spouse's hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship the applicant's spouse may experience in the applicant's absence, but finds even when this hardship is considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

In support of the applicant's motion, the applicant's spouse contends she would suffer extreme hardship upon relocation to the PRC as: she would be separated from all of her close family and friends; she would lose her community and professional ties, and most importantly her freedom; she has not lived in the PRC for more than 20 years; she was raised in the United States, where she was brought as a child, and would have a difficult time adapting to the culture and political lifestyle of the PRC; she lost her citizenship in the PRC as it does not recognize dual citizenship; she would have to renounce her U.S. citizenship, which she is unwilling to do; the applicant wants their children to have opportunities he did not have and to provide them with the best education, medical care, and the safest surroundings; she refuses to relocate their children to an education system of a lower quality or limited scope and where they would lose the opportunity of a higher education; she refuses to have limitations on the availability of training programs or internships; and she and the applicant would have a difficult time finding employment due to their age.

Although the applicant's spouse may experience hardship upon relocating with her family to the PRC to be with the applicant, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record is unclear concerning the applicant's spouse's length of time in the United States as she previously indicated, "My family and I sold all the properties and stocks in [the PRC] and spent enormous amount of money [sic] to move to the U.S. and established family here to participate in building up this country. In 14 years, we have abided by the U.S. laws and have not done anything against the interests of this country. I have regarded the U.S. as my second motherland and put into this country all my finance and my emotions [sic]." *Ying Xing's Letter of Support*, dated December 16, 2008. Also, the record does not contain sufficient evidence of her family ties in the United States. And, although the record includes information provided by the Immigration and Refugee Board of Canada concerning nationality and citizenship laws in the PRC, there is no indication she would need to renounce her U.S. citizenship to reside in the PRC.

Moreover, the AAO notes the articles submitted with the applicant's motion concerning labor conditions in the PRC appear to be unvetted by a reputable organization or agency with a defined methodology for reporting such conditions. Rather, the information reported in the articles is an individual's compilation of various articles found on the Internet: "I am not professor or an expert on the subjects I write about but I have done a fair amount of reading about them. I try to use good sources (see below) and have been doing what I am doing—collecting and organizing information and facts— for several years now and have developed some skill at it. The text is written as factoids in travel guide, magazine and newspaper styles rather than an academic style. I don't have footnotes and bibliographies but often I list the source under the first fact in each section. When a source is not listed the information can be taken to be a generally accepted fact (often seen in at least two different places) or has been arrived at through observation (direct or second hand through other sources), by common sense or was taken from a newspaper or magazine article that didn't attribute it ... When I write about a country I divide the piles into culture, economics, government, history, etc. and pick out and write about facts I think are interesting or informative ... More and more I am cutting and pasting sections of articles that I have gotten off the Internet. I am doing this simply because there is so much information out there and to keep up to date means there really isn't time to sift through all the articles and write about them. One advantage of this approach is that the newer information in my articles is better sourced than before." <http://factsanddetails.com/index.php?itemid=1002> [last accessed on March 28, 2013]. Accordingly, the AAO gives reduced weight to the discussion of labor conditions in the PRC as referenced in the articles. Additionally, the AAO recognizes the desires of a parent to provide educational opportunities to a child and that the parent may experience hardship because of this circumstance. However, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of relocation with the applicant.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be granted and the previous decision of the AAO will be affirmed.

**ORDER:** The motion is granted. The previous decision of the AAO is affirmed. The application remains denied.