

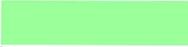


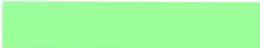
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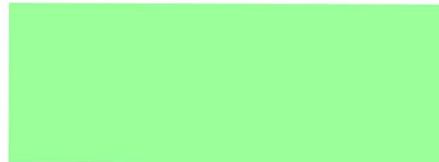
Office: NEW YORK

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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.

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse 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 his U.S. citizen spouse and children.

The District Director concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of District Director*, dated July 24, 2012.

On appeal, counsel for the applicant asserts that the District Director based the denial on an inappropriately narrow definition of extreme hardship. Additionally, counsel contends that the District Director failed to consider certain hardship factors and ignored portions of the evidence the applicant had submitted. *Counsel's Brief*.

The record includes, but is not limited to: medical records relating to the qualifying spouse; letters from the applicant's children; statements from the qualifying spouse; a statement from the applicant; letters of support from friends; country conditions information; financial records; and a letter from the applicant's employer. 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 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 record reflects that the applicant applied for admission at Los Angeles International Airport on December 21, 1990 by presenting a photo-substituted passport which bore the name and birthdate of another person. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States through fraud or misrepresentation. He does not contest this finding of inadmissibility on appeal. He is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a U.S. citizen.

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 to his children can only be considered insofar as it causes extreme hardship to his qualifying spouse. 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 (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 U.S. 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 qualifying spouse asserts that she would suffer extreme hardship if the applicant were removed. She states that she has suffered from serious medical problems for the past several years and that she needs the applicant’s physical, emotional, and financial support. She notes that she has ongoing stomach problems, abdominal pain, sciatica, and severe headaches and that she can no longer work. She states that although she worked sporadically from 2007 to 2010, she had to travel from New York to Iowa for the job and she only worked for a few weeks at a time. She asserts that she eventually had to stop working due to her poor health. The qualifying spouse indicates that the applicant now provides for her. She also states that the applicant cares for her when she is in pain, takes her to the doctor, and picks up her prescriptions. She contends that she would have to return to China with the applicant if he were removed, but that relocation would negatively influence her health.

The AAO finds that the qualifying spouse would suffer extreme hardship if she were separated from the applicant. The record reflects that the qualifying spouse suffers from several serious medical problems which result in her need for regular care and assistance. She has been treated for chronic headaches, high lipids, irritable bowel syndrome, back pain caused by a herniated disc and degenerative disc disease, abdominal pain related to *heliobacter pylori* infection, and gastroesophageal reflux. Medical records also demonstrate that she takes numerous prescription medications, which her doctor states are necessary to maintain her health. See *Letter from* [REDACTED], dated September 11, 2012. The record also shows that the applicant accompanies the

qualifying spouse to her doctor's appointments and that he helps her fill her prescriptions. *See Note from* [REDACTED], dated August 7, 2012 and *Letter from* [REDACTED] dated August 7, 2012. Furthermore, the applicant's four adult U.S. citizen children all assert that the qualifying spouse needs assistance due to her poor health and that they are unable to provide her with the care she needs. *See Letters from* [REDACTED] and [REDACTED]

The record further demonstrates that the qualifying spouse would experience significant financial difficulties if the applicant were removed. Although the qualifying spouse worked intermittently in the past, she has been unable to do so since 2010 due to her health condition. Additionally, tax records indicate that even when the qualifying spouse was working, she typically earned between \$6,000 and \$9,600 per year, an amount below the federal poverty guidelines for a single-person household. The applicant's income during the past several years has been between \$8,925 and \$18,000 per year, raising the total income for the couple above the poverty guidelines. Additionally, the AAO notes that the qualifying spouse was unable to find work in her home state of New York and that she therefore traveled by car or bus to Iowa every few weeks between 2007 and 2010 in order to work in restaurants owned by her daughter's friend. Resuming such travel in order to work would not be possible for the qualifying spouse due to her current health condition.

The AAO also finds that the qualifying spouse would experience extreme hardship if she were to relocate to China. The qualifying spouse receives necessary medical treatment and prescription medications in the United States but would likely be unable to receive such care in China. According to the U.S. Department of State:

The standards of medical care in China are not equivalent to those in the United States. If you plan to travel outside of major Chinese cities, you should consider making special preparations.

Travelers have reported difficulty passing through customs inspection when arriving with large quantities of prescription medications. If you regularly take over-the-counter or prescription medication, bring your own supply in the original container, including each drug's generic name, and carry the doctor's prescription with you. Many commonly-used U.S. drugs and medications are not available in China, and some that bear names that are the same as or similar to prescription medications from the United States may not contain the same ingredients or may be counterfeit. If you try to have medications sent to you from outside China, you may have problems getting them released by Chinese Customs and/or you may have to pay high customs duties.

In most rural areas, only rudimentary medical facilities are available, often with poorly trained personnel who have little medical equipment and medications. Rural clinics are often reluctant to accept responsibility for treating foreigners, even in emergency situations.

*See U.S. Department of State, Country Specific Information: China*, dated January 28, 2013.

Additionally, if the qualifying spouse were to relocate, she would be separated from her four U.S. citizen children. Furthermore, she has resided in the United States since 1998 and has been a naturalized citizen since 2005. Readjusting to life in China after such a long period of residence in the United States would be difficult for the qualifying spouse.

When considered in the aggregate, the qualifying spouse's serious medical conditions, financial difficulties, and ties to the United States would create extreme hardship for her if she were separated from the applicant or if she were to relocate to China. Therefore, the applicant has established that his U.S. citizen spouse will face extreme hardship if the applicant's waiver request is denied. *See Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996); *see also Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 566 (BIA 1999).

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. 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 . . . 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).

*Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 favorable factors in this case include the extreme hardship the qualifying spouse would suffer if the applicant’s waiver application were denied; the fact that the applicant has four U.S. citizen children; the applicant’s residence of over 22 years in the United States; the fact that he has held a steady job and paid taxes; and the absence of any criminal record. Additionally, the record contains letters of support from friends and neighbors who assert that the applicant is a valued member of his community who readily assists others without expecting anything in return. The unfavorable factor is the applicant’s attempt to obtain admission to the United States by presenting a fraudulent passport.

Although the applicant’s violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.