



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE: **DEC 05 2013**

OFFICE: GUANGZHOU, CHINA

FILE: [REDACTED]

IN RE: [REDACTED]

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Guangzhou, China. An appeal of the denial was summarily dismissed by the Administrative Appeals Office (AAO). The AAO will now reopen the matter on service motion. The appeal will be dismissed.

The applicant, a native and citizen of China was found inadmissible 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), due to her attempted procurement of a visa to the United States through fraud or material misrepresentation. The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with her U.S. lawful permanent resident spouse.

In a decision dated May 22, 2012, the Field Office Director concluded that the applicant did not demonstrate that her U.S. lawful permanent resident spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly. On appeal, the applicant indicated that a brief and/or evidence would be submitted to the AAO within 30 days of the filing of the appeal. Pursuant to 8 C.F.R. § 103.3(a)(2)(vii) and (viii), an affected party may request additional time to file a brief, which is to be submitted directly to the AAO. No brief or additional evidence was in the record and the appeal was summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1). Subsequently, a brief prepared by the applicant not containing her alien number was located and connected to the record. The AAO will reopen our prior decision on service motion and adjudicate the appeal.

In support of the waiver application, the record includes, but is not limited to: statements from the applicant, a statement from the applicant's spouse; a statement from the applicant's brother-in-law; several years of U.S. federal income tax returns for the applicant's spouse; medical records for the applicant's spouse; and documentation of the applicant's immigration history.

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 applicant is inadmissible under section 212(a)(6)(C) of the Act, which 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.

...

A misrepresentation is generally material only if by making it the alien received a benefit for which he would not otherwise have been eligible. See *Kungys v. United States*, 485 U.S. 759 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation must be shown by clear, unequivocal,

and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* 495 U.S. at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

"It is not necessary that an 'intent to deceive' be established by proof, or that the officer believes and acts upon the false representation," but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)).

The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act in regards to her attempted procurement of a visa to the United States in 1999. The applicant, who sought a visa as the spouse of an individual under the Chinese Student Protection Act, presented a fake lawful permanent resident card for her husband to the U.S. consulate in connection with the visa application. The applicant's husband was not a lawful permanent resident of the United States at the time. The applicant now states that she paid someone to assist her with this visa application and she thought that the process that she was pursuing was legitimate. The applicant, however, has not presented any documentation demonstrating that or why she believed that the lawful permanent resident card she presented was legitimate. She has not shown that she was lacking in capacity to exercise judgment and thus unable to review the documentation prepared on her behalf. The AAO finds that to the extent that the applicant claims that her misrepresentation was not willful, this contention lacks sufficient support for us to disturb the finding of inadmissibility. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a visa to the United States through fraud or willful misrepresentation. This is a permanent ground of inadmissibility. The applicant's statement that it has been more than ten years since the time of the activities for which she was found inadmissible does not affect her inadmissibility.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section, in pertinent part, states that:

- (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 in this case is the applicant's U.S. lawful permanent resident spouse. The applicant states that her U.S. citizen mother-in-law is a qualifying relative; however, this is not the case under the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver, and hardship to the applicant or her mother-in-law will not be separately considered, except as it may affect the applicant's spouse. 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).

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.

Regarding the hardship of separation, the applicant claims that her spouse suffers physical and financial hardship, but these claims are not adequately supported by the evidence in the record. On appeal, the applicant states that her U.S. lawful permanent resident spouse is “anxious and despaired” and that he suffered a seizure recently as a result of the applicant’s inadmissibility. The applicant states that her spouse was almost paralyzed and that his physical and mental condition is not well. The record does not contain documentation of the applicant’s spouse’s current physical or mental condition. The most recent medical documentation on record, dating from 2011 and early 2012, includes multiple Requests for Consultation” from [REDACTED], an appointment reminder for a pacemaker check, and receipts indicating that claims have been filed to the applicant’s spouse’s Medicare HMO. The notes in those documents are illegible or fail to indicate the current condition of the applicant’s spouse. But, absent an explanation in plain language from the treating physician of the exact nature and severity of any condition 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 medical condition or the treatment needed. The evidence on the record is insufficient to establish the applicant’s spouse’s present medical condition, the role of the applicant’s inadmissibility in affecting any condition, or any treatment or care needed.

In regards to financial hardship, the record contains insufficient evidence to establish the hardship claims. The most recent financial documents in the record include the applicant’s spouse’s 2010 Federal Income Tax Returns where the applicant’s spouse reported an adjusted gross income of \$8,596 from “casual labor.” No additional documentation was provided regarding the source of the applicant’s spouse’s income or his expenses. Little weight can be afforded to the applicant’s spouse’s assertions in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175

(BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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)). Based on this limited information it is not possible to determine the degree of financial hardship experienced by the applicant. The applicant has not distinguished the hardship that her spouse would experience from the type of hardship normally experienced by individuals who are separated as the result of immigration violations. The record does not establish that the hardships the applicant’s spouse faces, considered in the aggregate, rise to the level of “extreme.”

We must also consider whether the applicant’s U.S. lawful permanent resident spouse would suffer extreme hardship should he relocate to his native China to reside with the applicant. The applicant states that although her husband visits her in China for medical treatment and spousal visits, he cannot live in China permanently due to his fear of persecution. The applicant has not provided any documentation to support her assertion that her husband, a citizen of China, would suffer persecution if he were to permanently reside there. Little weight can be afforded to the applicant’s spouse’s assertions in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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)). Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. However, the applicant states that her spouse has traveled to China for medical treatment, therefore, his medical condition does not seem to be an impediment to relocation. The record does not establish that the hardships that the applicant’s spouse would face upon relocation abroad with applicant would rise to the level of “extreme” as contemplated by statute and case law.

The applicant’s spouse’s concern over the applicant’s immigration status is neither doubted nor minimized, but the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i), of the Act, be above and beyond the normal, expected hardship involved in such cases.

NON-PRECEDENT DECISION

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In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying relative 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 she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility, 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. The appeal is therefore dismissed.

ORDER: The appeal is dismissed.