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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



DATE: **FEB 07 2013**

Office: BALTIMORE, MD

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:

[REDACTED]

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;

R. Rosenberg

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, 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 having attempted 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. She 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.

The District Director concluded that the applicant had failed to demonstrate extreme hardship to her qualifying spouse and denied the application accordingly. *See Decision of District Director*, dated October 14, 2011.

On appeal, counsel for the applicant asserts that the District Director erred in finding the applicant inadmissible. Counsel contends that the applicant did not provide false information in her application for adjustment of status. Counsel also claims that the qualifying spouse would suffer extreme hardship if the waiver application were denied. *Counsel's Brief*.

The record includes, but is not limited to: statements from the applicant and the qualifying spouse; statements from the qualifying spouse's parents; two mental health assessments regarding the qualifying spouse; financial records; letters from the qualifying spouse's parents' doctors; and country conditions information. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant contests the finding of inadmissibility on appeal. Pursuant to section 291 of the Act, she bears the burden of demonstrating by a preponderance of the evidence that she is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility "is of equal probative weight," the applicant cannot meet her burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

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.

The record reflects that in her adjustment of status application and interview, the applicant indicated that she had never been deported or removed from the United States at government

expense, had not been excluded within the past year, and was not then in exclusion, deportation, or removal proceedings. However, the applicant had been ordered removed after an immigration judge denied her application for asylum. The District Director therefore found the applicant inadmissible on the grounds that she had failed to disclose her prior removal order. The applicant contends that she did not intend to conceal her immigration history but did not believe that the questions referred to her past removal order. It is unclear whether the applicant was confronted with this inconsistency and given an opportunity to explain. However, the record does reflect that the applicant testified before the immigration court that she had provided false information to an immigration officer regarding events that caused her to leave China and her purpose for entering the United States. The applicant received an opportunity to address this issue through a Notice of Intent to Deny from the District Director dated September 8, 2010. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure entry to the United States through misrepresentation of a material fact. She is eligible to apply for a waiver of inadmissibility under section 212(i) of the Act as the spouse of a U.S. citizen.

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.

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 her children can only be considered insofar as it causes extreme hardship to her 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 states that he would be devastated if the applicant were forced to return to China. He indicates that he and the applicant own and operate a restaurant together, where he cooks and she interacts with customers, and that he would be unable to maintain the business without the applicant's assistance. He also asserts that no one would be available to take care of his four young U.S. citizen children if the applicant were removed. As a result, he would be forced to stay home with his children and would lose his business and his income.

The qualifying spouse also claims that he must support his elderly parents, who live with him in the United States and who have health problems. He indicates that tradition requires this of him as the eldest son and that although he has one sister in the United States, she has her own family and cannot care for their parents. He also notes that he lost his Chinese citizenship when he became a naturalized U.S. citizen and therefore would have no right to live or work in China. Additionally, even if he were able to work in China, he believes he would earn very low wages due to his low education and would be unable to support his family. He also claims that he would be forced to sell his home and business in the United States at a loss if he were to relocate.

Although the qualifying spouse could apply to regain his Chinese citizenship, doing so would require him to renounce his U.S. citizenship. He fears that he would then be unable to obtain a tourist visa to visit his parents, sister, and other relatives in the United States. Also, he states that his two older children are in school and that it would be very difficult for them to adjust to life in China. He notes that his children understand some Chinese but they do not speak, read, or write it. He also states that his children would not be entitled to education, healthcare, or other services in China because they are not citizens of that country. Finally, he fears that he or the applicant would be subjected to forced sterilization in China due to the fact that they have four children. The qualifying spouse states that he has become depressed due to the applicant's immigration situation.

The AAO finds that the qualifying spouse would suffer extreme hardship on separation from the applicant if the waiver application were denied. The record reflects that the applicant and the qualifying spouse operate their restaurant together and that their combined efforts prevent them from having to hire additional staff, therefore ensuring an income from the business. Documentation on the record indicates that if the applicant were unable to assist in the daily functioning of the restaurant, the qualifying spouse would have difficulty maintaining it. Additionally, when not working at the restaurant, the applicant cares for her four U.S. citizen children, whose ages range from one to seven years old, and assists the qualifying spouse's parents. The qualifying spouse's parents are elderly and suffer from medical problems which make them unable to care for the applicant's children. Therefore, if the applicant were removed, the qualifying spouse would have to care for his children alone, to the detriment of his restaurant business, or pay for full-time childcare.

Additionally, two psychiatric evaluations in the record indicate that the qualifying spouse has experienced serious mental health problems in response to the applicant's immigration situation. An evaluation conducted in 2010 indicated that the qualifying spouse was experiencing anxiety

at that time due to the applicant's inadmissibility. *See Affidavit of Liz B. Craig, MSW, LICSW*, dated October 6, 2010. A more recent evaluation indicates that the qualifying spouse's mental health has worsened significantly since the applicant's waiver application was denied. The evaluation diagnoses the qualifying spouse with major depressive disorder, panic disorder, and generalized anxiety and notes that he must take two prescription medications to treat those problems. *See Psychiatric Assessment and Treatment, Jimmy S. Chen, M.D., Ph.D.*, dated November 23, 2011.

The applicant has also provided sufficient evidence to demonstrate that her qualifying spouse would suffer extreme hardship if he were to relocate to China. The qualifying spouse has lived in the United States for over ten years and has close family ties here. He is responsible for caring for his elderly parents, who have health problems and who live with him and his family. Trauma to his four young U.S. citizen children, all of whom speak English and two of whom are accustomed to the U.S. school system, would also cause hardship to the qualifying spouse. Additionally, the qualifying spouse would lose his home and business if he were to relocate. Finally, the qualifying spouse is no longer a citizen of China and would have no right to live or work in that country. *See Nationality Law of the People's Republic of China*. Regaining his Chinese citizenship would require him to renounce his U.S. citizenship and could also subject him to harsh family planning policies in China. In the aggregate, the AAO finds that these factors would create extreme hardship for the qualifying spouse if the waiver application were denied. The AAO therefore finds that the applicant has established extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act.

In that the applicant has established that the bars to her 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).

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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 were removed, the fact that the applicant has four young U.S. citizen children, and the daily assistance the applicant provides to her in-laws. The unfavorable factor is the applicant’s attempt to obtain admission to the United States through misrepresentation of a material fact.

Although the applicant’s violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factor. 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 her burden and the appeal will be sustained.

ORDER: The appeal is sustained.