



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 07 2013

OFFICE: PHILADELPHIA

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:
[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.

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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Philadelphia, Pennsylvania. An appeal of the denial was rejected by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The applicant is a native and citizen of China who was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the United States by willfully misrepresenting a material fact. The applicant's parents are U.S. citizens, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of his inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that he may live in the United States with his parents and family.

The applicant is also inadmissible under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for having been ordered excluded and removed, and seeking admission within ten years of departure or removal.¹

In a decision dated March 24, 2009, the director determined the applicant had failed to establish that a qualifying family member would experience extreme hardship if he were denied admission into the United States. The Form I-601 waiver application was denied accordingly. The AAO determined, in a decision dated June 20, 2011, that the applicant's appeal was improperly filed by an individual not authorized to file the appeal. The appeal was rejected accordingly pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

In the present motion to reopen and reconsider, new counsel asserts the applicant was unaware the attorney hired to file his appeal was suspended from the practice of law and not an authorized representative for immigration purposes, and that the AAO should therefore consider the applicant's appeal as a *pro se* filing by the applicant. Counsel asserts further that new and previously submitted evidence establish the applicant's U.S. citizen parents will experience extreme emotional, physical, and financial hardship if the applicant is denied admission into the United States. In support of these assertions counsel submits letters from the applicant and his parents, medical and psychological evaluation information; financial evidence; academic documentation for the applicant's U.S. citizen children; and country-conditions evidence. Photos, birth certificates and proof of U.S. citizenship of the applicant's parents and children are also contained in the record.

Counsel also submits another AAO decision in an attempt to demonstrate that the AAO has found extreme hardship in scenarios similar the applicant's. The AAO notes that only AAO decisions that are published and designated as precedents in accordance with the requirements outlined in 8 C.F.R. § 103.3(c) are binding on Service officers. The decision submitted by counsel is unpublished and not designated as precedent decisions. The findings made in the other AAO decision therefore have no binding precedential value for purposes of the applicant's case.

¹ It is noted that the applicant must obtain permission to reapply for admission by filing Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), in order to overcome inadmissibility under section 212(a)(9)(A)(i) of the Act. The record does not reflect that the applicant filed Form I-212.

The entire record was reviewed and considered in rendering a decision on the motion.

The regulations state in pertinent part at 8 C.F.R. § 103.5(a):

(a) Motions to reopen or reconsider

.....

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

Counsel has met the requirements for a motion to reopen. The motion to reopen the AAO's June 20, 2011 decision is therefore granted.

Section 212(a)(6)(C) of the Act provides, in pertinent part that:

(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 on May 22, 1995, the applicant attempted to procure admission into the United States by using a Singapore passport and B1/B2 visitor visa that belonged to another person, [REDACTED]. When U.S. immigration officers determined that the passport did not belong to the applicant, he requested asylum at the airport and was paroled into the country pending exclusion proceedings.² The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for seeking to procure admission into the United States by willfully misrepresenting a material fact. Counsel does not contest the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

² The applicant was ordered excluded and removed *in absentia* on October 21, 1996, and an appeal to the Board of Immigration Appeals was rejected as untimely on April 16, 1997. The applicant has not departed the country since 1995.

Section 212(i) of the Act states:

The Attorney General [now Secretary, Department 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.

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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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 Kao & 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 applicant's U.S. citizen mother and father are his qualifying relatives under section 212(i) of the Act. The applicant refers to hardship his two U.S. citizen children would experience if the waiver application is denied. Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. Hardship to the applicant's children will therefore not be considered, except as it may affect the applicant's qualifying family members.

The applicant states in an affidavit that his parents and two children live with him; his parents count on him to care for them as they get older and after his father is no longer able to work; he worries his parents would miss him and would be unable to care for his children on their own; he worries his children would be unable to attend school in China; and he fears he could be penalized with "fines or worse" in China because he violated the one-child policy.

The applicant's mother and father state in a June 2006 joint affidavit that the applicant is a devoted son with two children, and that he works hard to take care of his children. They have their own jobs and have little time to care for their grandchildren. They also state that they are getting old and need the applicant to take care of them, the applicant's children need him, and their forced separation from the applicant would cause them emotional and financial hardship.

The applicant's father states in additional affidavits that the applicant lives with them, is their youngest son, and that it is customary in China for sons to care for their parents. Although he and his wife have other children in the United States, the applicant's siblings cannot help them because they have their own families. The applicant's father works 12 hours a day, 3 days a week, he gets tired and his "legs, back and shoulders hurt," and he cannot do this much longer. He depends on the applicant to help them financially, and he does not know what they will do when they are too old to work and unable to support themselves on Social Security benefits alone. The applicant also does repairs around their house, makes sure they take their medications and get to their medical appointments, and is with them every day. The applicant would be unable to help them financially from China because it is difficult to find work there. In addition, the applicant's father indicates that he has blood pressure problems and he would receive inferior medical care in China. He worries about the applicant's mother because they have no money to visit the applicant in China, and the applicant's mother fears she will never see the applicant again, is depressed and "cries all the time," and "says she wants to die." The applicant's father also worries that the government in China could

punish the applicant because he has two children, and he worries about the children's inability to speak Mandarin and the possibility that they will have inferior benefits in China.

Medical evidence reflects the applicant's father has poorly controlled hypertension and hyperlipidemia and that he is on medication for his condition. The applicant's mother has hypertension, hyperlipidemia and osteoporosis and is on medication, and the applicant "has been helping them in their medical care."

Letters from family members attest to hardships the applicant's parents would experience if the applicant is denied admission into the United States. The record also contains copies of the applicant's parent's property tax and utility bills and reflects his parents purchased a home in January 2000. Federal income tax evidence reflects the applicant's parents earn approximately \$23,000 a year and confirms the applicant's father receives \$632 a month in Social Security benefits.

In addition, the record contains country-conditions articles discussing problems that accompany the average 8 percent annual economic growth in China and the possibility of a future slow-down in economic growth and unemployment in China.

A psychological report for the applicant's mother and father indicates the applicant is their first child, the applicant is the primary caregiver for his children because their mother left soon after the children were born, and the applicant's mother and father feel they would be unable to care for their grandchildren if the applicant returns to China. The therapist states that after receiving news that the applicant's adjustment of status application was denied, the applicant's mother "became acutely depressed and anxious" and his father's "blood pressure became so high that he needed emergency medical attention." The therapist states that the applicant's father had excessive anxiety on the day of their interview and diagnoses the applicant's mother with major depressive disorder, single episode, due to worries about their son and grandchildren. The therapist notes that the applicant's mother "denied having any immediate suicidal plan"; he concludes, however, that she would "most likely become suicidal and need inpatient psychiatric care" if the applicant were not allowed to stay in the United States.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's mother and father would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission into the United States and they relocated to China to be with him. Although the applicant's parents were born and raised in China, they are naturalized U.S. citizens and have resided many years in this country. They own a home in the United States, their other children are in this country, the applicant's father is employed in the United States, and country-conditions evidence reflects that medical care is inferior in China. See http://travel.state.gov/travel/cis_pa_tw/cis/cis_1089.html. The cumulative hardship upon relocation to China rises above that normally experienced upon relocation upon removal or inadmissibility.

The AAO finds, nevertheless, that the evidence in the record, when considered in the aggregate, fails to establish the applicant's mother and father would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the country and his mother and father remained in the United States. The applicant's father was found to be

experiencing excessive anxiety the day of his interview and the applicant's mother was diagnosed with major depressive disorder. The value of the conclusions reached in the psychological report are diminished, however, in that the conclusions are based on one interview with the applicant's mother and father, the report fails to reflect an ongoing patient-doctor relationship or any treatment plan for the conditions noted, there is no indication the therapist independently verified information provided to him, and the record lacks evidence to corroborate key information used in making the diagnoses. The evidence in the record fails to corroborate statements that the applicant is the primary caregiver for his children, that he and his children live with the applicant's parents, that he contributes financially to his parents' household, or that his parents would have custody of the children if the applicant were not allowed to remain in the United States. The evidence also fails to establish the applicant's mother and father would be unable to receive care for their medical conditions in the applicant's absence, or that they are dependent upon on the applicant to ensure they take their medicine. Moreover, the record does not show that the applicant's siblings are unable to provide assistance and care to their parents. Country-conditions evidence fails to address or confirm the fear that the applicant and his children could be penalized in China for violating the one-child policy. Furthermore, the record lacks evidence to corroborate assertions that the applicant's parents would be unable to visit the applicant in China.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. Furthermore, because the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for an 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 motion is granted. The underlying application remains denied.