



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

(b)(6)

[REDACTED]

DATE: **JAN 18 2013**

OFFICE: NEWARK

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

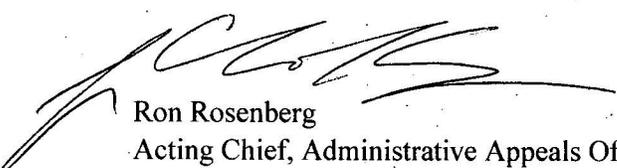
ON BEHALF OF APPLICANT:

[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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). The matter 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 has resided in the United States since April 6, 1994 when he sought to procure admission into the United States by presenting the Japanese passport of another individual to U.S. immigration officials. He 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 seeking to procure admission to the United States by fraud. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative filed by his spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and had failed to establish that the bar to admission would impose extreme hardship on his U.S. citizen spouse, the qualifying relative, and denied the application accordingly. *Decision of Field Office Director*, dated October 19, 2011.

On appeal, counsel submits a brief, hardship statements from the applicant and his family members, medical evidence for the applicant's family members, articles on medical conditions and treatments affecting the applicant's family, articles on country conditions in China, financial and tax records, and support letters. The record also includes, but is not limited to, an additional hardship statement from the applicant's wife, support letters from the applicant's family, additional financial and tax documents, medical records and copies of identification, marriage, birth and death records for the applicant's family. 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 Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

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)(1) of the Act provides, in pertinent part:

The [Secretary of Homeland Security] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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....

The record establishes that the applicant sought to procure admission to the United States on April 6, 1994 with a Japanese passport that did not belong to him. See *Record of Sworn Statement in Affidavit Form*, dated April 6, 1994; *Sworn Statement and Apology Letter of the Applicant*, dated December 12, 2011. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States through fraud. Inadmissibility is not contested on appeal.

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. The applicant's qualifying relative for a waiver of this ground of inadmissibility is his U.S. citizen 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 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).

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*, 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.

The record contains references to hardship the applicant’s child would experience if the waiver application were denied. It is noted that 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. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s child will not be separately considered, except as it may affect the applicant’s qualifying relative.

The record, in the aggregate, establishes that the applicant’s wife will suffer extreme hardship upon relocation to China. The relevant evidence shows that the applicant’s spouse has several medical conditions for which she is seeking ongoing medical care and treatment. The applicant’s wife is being treated for spinal disc bulging and annular tears in her lower spine causing mild spinal stenosis and lateral recess stenosis, for which the applicant’s wife is taking prescription medication to treat the pain, wearing a back brace on a daily basis, and avoiding lifting heavy objects. The applicant’s wife has also suffered from depression, anxiety and insomnia for over three years and takes prescription medication to treat these conditions on a daily basis. The record shows that the standards of medical care in China are not equivalent to those in the United States, especially mental health care, and that many commonly-used medications from the United States are not available in the United States.

The applicant's wife claims that she is scared to move to China because of her status as a practicing Christian and derivative asylum beneficiary because her family fled China due to its treatment of Christians. The record shows that the applicant's wife, child and applicant are baptized Catholics. Country conditions articles in the record demonstrate that Christians continue to be persecuted in China.

The applicant's wife also claims that she will experience emotional distress if forced to separate from her family upon relocation to China because of their close relationships. The record makes clear that the applicant's wife has extensive family ties in the United States, including her brother and her parents, and that her family is very close. The applicant and his wife reside with her aging parents who are suffering from a variety of severe medical conditions and who require the applicant's wife's assistance with daily living activities. The applicant and his wife also financially support her younger brother at a nearby university.

The applicant further claims that his wife will suffer emotional hardship upon relocation due to the poor health of their child and the inability to access comparable medical care for her in China. The applicant's wife states that it breaks her heart to see her child sick and she could not bear the idea of her child being sick in China with limited medical facilities and poor air quality. The record shows that the applicant's child has frequently suffered from breathing and respiratory problems for the past several years, has been diagnosed with Reactive Airways Dysfunction Syndrome (RADS) and bronchiolitis, and requires extensive medical care and treatment with Albuterol via nebulizer to avoid recurrent asthma and pneumonia. The record further shows that comparable medical care and prescription medicine are difficult to access in China and that air quality conditions are poor in China, which would aggravate the child's condition.

The record, in the aggregate, indicates that the degree of medical and emotional difficulties that the applicant's wife would face upon relocation rises to the level of extreme hardship.

The record, in the aggregate, also establishes that the applicant's wife will suffer extreme hardship upon separation from the applicant. Regarding emotional, psychological and medical hardship, the applicant's wife states that she is suffering from depression, anxiety and insomnia due to her husband's uncertain immigration status and the possibility that he may have to leave the country. The applicant's wife explains that possible separation from the applicant causes her stress and worry, interfering with her ability to sleep and concentrate. The record shows that that the applicant's wife has been diagnosed with Major Depressive Disorder, Single, Severe and Generalized Anxiety Disorder for which she has required years of medical treatment and that her mental and physical health has worsened over time. In addition, as previously discussed, the applicant suffers from chronic back pain and began wearing a brace and taking prescription medicine in November 2011 to treat this condition. The applicant's spouse states that she needs the support of the applicant to manage all of her responsibilities, such as caring for her sick parents and child and working in the family business, while managing her own deteriorating and extensive emotional and physical health needs. The medical evidence shows that the applicant's wife's psychological and medical conditions have worsened over time and that she needs

medication to sleep and overcome back pain, must avoid lifting heavy objects and has been referred to physical therapy.

Regarding financial hardship upon separation, the applicant's wife claims that she will not be able to pay for all of her obligations from her wages without the financial support of her husband. The record includes 2010 income tax returns, a monthly budget and monthly income statements for the applicant and his wife, which show that the applicant earns substantially more income than his wife and that his income is necessary to meet the family's monthly expenses. Also, the record shows that the applicant's wife's parents are aging and suffer from a variety of medical conditions. In particular, the applicant's wife's father is partially and permanently disabled after three surgeries to his lower back. He requires assistance with daily tasks from the applicant and the applicant's wife, his daughter, and is unable to work in the family business, a Chinese restaurant. The record also demonstrates that no other family member is able to take over the daily operations of the family-owned restaurant, as the applicant's father-in-law is disabled, the applicant's brother-in-law attends university in a different state with the applicant's financial support, the applicant's wife suffers from chronic back pain and is not able to lift heavy objects, and the applicant's mother-in-law is elderly and ill.

The record, in the aggregate, indicates that the degree of emotional, psychological, medical and financial difficulties that the applicant's wife would face upon separation rises to the level of extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether a waiver was warranted in the exercise of discretion, the Board stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)...

Id. at 301. The Board further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship that the applicant's U.S. citizen spouse would face if the applicant were not able to return to the United States, the applicant's family and community ties in the United States, his payment of taxes, his gainful self-employment and his apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's fraudulent presentation of another person's passport to immigration officers to gain entry into the United States.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In these proceedings, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.