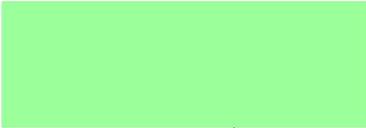


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

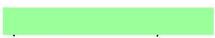


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 30 2013** Office: **BLOOMINGTON, MINNESOTA** FILE: 

IN RE: Applicant: 

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:



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 that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Bloomington, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of the People's Republic of China (China) who was found to be inadmissible to the United States 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), for procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen and the father of two U.S. citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and children.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 17, 2011.

On appeal the applicant, through counsel, claims that United States Citizenship and Immigration Services (USCIS) did not properly consider the evidence of hardship to the applicant's wife, in particular her medical, emotional, and financial issues. *Form I-290B, Notice of Appeal or Motion*, filed September 19, 2011. Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's briefs, statements from the applicant and his wife, letters of support, medical and mental health documents for the applicant's wife, financial and business documents, employment documents for the applicant's wife, household and utility bills, photographs, articles on atopic dermatitis and hepatitis B discrimination in China, and country-conditions documents on China. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (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

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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. 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 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 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 v. INS*, 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.

In the present case, the record indicates that on December 7, 1996, the applicant entered the United States as a nonimmigrant visitor, using a fraudulent passport and visa that he had purchased. Based on the applicant’s misrepresentation, the AAO finds that he is inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel does not contest the applicant’s inadmissibility.

The record contains references to hardship the applicant’s children 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. 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 children will not be separately considered, except as it may affect the applicant’s spouse.

Describing the hardship she would suffer should she join the applicant in China, in her affidavit dated November 13, 2012, the applicant’s wife claims that because of her chronic hepatitis B, she and her family would “suffer extremely” in China. Medical documentation in the record establishes that the applicant’s wife has chronic hepatitis B and atopic dermatitis. She states that she became infected with hepatitis B in China when she was child, and it has “caused difficulties in [her] life ever since.” She claims that she was expelled from her daycare center, her parents had difficulty finding an elementary school that would accept her because of her disease, and children were told not to play with her. She states she “can’t help but feel shameful” about it even now. Documentation in the record shows that people with hepatitis B suffer widespread social and employment discrimination in China. She claims that the possibility of having to return to China makes her anxious and the discrimination that she will suffer will cause the family financial difficulties. In her letter dated September 20, 2012, licensed social worker [REDACTED] diagnoses the applicant’s wife with severe anxiety disorder with panic attacks.

In his affidavit dated February 7, 2011, the applicant states it will be difficult for him and his wife to make a living in China, and their "life would be destroyed." The applicant's wife states that it would be difficult for her to find employment because hepatitis B carriers are discriminated against in the Chinese job market. She states that if she leaves the United States, not only will she lose her career and full-time job, she will lose her restaurant and the savings she put into the business. Additionally, in her affidavit dated February 7, 2011, the applicant's wife states that, having lived in the United States for most of her adult life, she has "no social network" in China that might help her with employment options there.

In her brief in support of the Form I-601, dated February 11, 2011, counsel states the applicant's daughter will have "more opportunities in the future, stronger health care, and better quality of life" in the United States. The applicant's wife states that going to China could run their daughter's future; she wants their daughter to be educated in the United States.

Based on the record as a whole, including the applicant's wife's medical conditions and possible disruption of her treatments, the pervasive discrimination against individuals with hepatitis B in China, her minimal ties to China, the possible loss of her business, employment issues, financial issues, and the emotional effect to raising their children in China, the AAO finds that the applicant's wife would suffer extreme hardship if she were to join the applicant in China.

Regarding the hardship caused by their separation, the applicant's wife states she cannot manage their restaurant, take care of their two young children, and continue working full-time as a marketing analyst without the applicant's support. Business documents in the record show that the applicant's wife purchased a restaurant in April 2012. She claims that when she is not working in her full-time position as a marketing analyst, she works at the restaurant. [REDACTED] reports that according to the applicant's wife, she works over 70 hours a week. The applicant's wife states after the birth of their second child, their "expenses climbed dramatically," and with her income from her full-time job and the restaurant, they "are barely getting by each month." She states their yearly expenses are approximately \$73,283, while their gross income is between \$65,000 and \$70,000.

The applicant's wife states with her new business and newborn daughter, her responsibilities have increased and the stress affects her physically. She explains that her eczema becomes worse with stress. Medical documentation in the record establishes that the applicant's wife has atopic dermatitis and she takes medication for her condition. Additionally, as noted above, she suffers from chronic hepatitis B. In her letter dated January 12, 2012, nurse practitioner [REDACTED] states the applicant's wife suffers from atopic dermatitis, which sometimes becomes infected, and that stress can aggravate this disorder. She claims that she has treated the applicant's wife since 2006.

The applicant's wife states the applicant gives their children "unconditional love and care." She states the applicant cares for their children while she works. She claims that she has no family nearby who could help care for their children, and she would have to give up "one or even both of [her] jobs" without the applicant's help. [REDACTED] reports that according to the applicant's wife, she and the applicant "share child care and domestic responsibilities."

The applicant's wife states the applicant helps keep her from becoming depressed. [REDACTED] states the applicant's wife suffers from "extreme anxiety and worry, exacerbated by the possibility of [the applicant] being deported to China." She diagnoses the applicant's wife with anxiety disorder with panic attacks and indicates her "current stress level on a scale of 1-10 is 9+." She claims that if the applicant returns to China, "the independent functioning of [the applicant's wife] and [their] daughters would be severely jeopardized and her mental health put at severe risk."

The AAO finds that when the applicant's spouse's hardships are considered in the aggregate, specifically her medical and mental health issues, financial issues, and having to care for their two young children alone, the record establishes that the applicant's wife would face extreme hardship if she remained in the United States in his absence. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(i) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien 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 section 212(h)(1)(B) 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).

See Matter of Mendez-Moralez, 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 adverse factors in the present case include the applicant's misrepresentation, unlawful presence, and unauthorized employment. The favorable and mitigating factors are the applicant's U.S. citizen wife and children, the extreme hardship to his wife if he were refused admission, and the absence of a criminal record.

The AAO finds that although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse

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factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for 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 met that burden.

ORDER: The appeal is sustained.