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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: JUL 16 2013

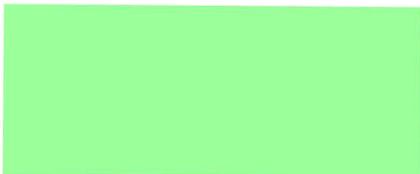
OFFICE: NEW YORK

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) and 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 (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,

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 District Director, New York, New York. The matter came before the Administrative Appeals Office (AAO) on appeal and the appeal was dismissed. The matter is again before the AAO on motion to reopen and reconsider. 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 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 attempting to procure admission into the United States through willful misrepresentation of a material fact. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his lawful permanent resident spouse.

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated May 10, 2011.

On appeal, the AAO concluded that the applicant's spouse would suffer extreme hardship based on separation, but not relocation, and dismissed the appeal accordingly. *See Decision of the Administrative Appeals Office*, dated January 31, 2013.

In response, counsel submits a brief contesting the applicant's inadmissibility and the AAO's decision of extreme hardship based on relocation. Counsel submits evidence from the World Health Organization as evidence. *See Form I-290B, Notice of Appeal or Motion (Form I-290B)*, received March 4, 2013, *and counsel's brief*.

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Counsel submits two tables from The World Health Organization's World Health Report from 2000 as evidence. 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 USCIS policy. A motion to reconsider a decision on an application must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Counsel asserts that the AAO incorrectly applied the law and cites precedent decisions as evidence in his brief. The AAO finds that the applicant has met the requirements of 8 C.F.R. § 103.5(a)(3), and the motion to reconsider will be granted.

The record has been supplemented on motion with: Form I-290B and counsel's brief, and tables from the World Health Report 2000. The entire record was reviewed in rendering a decision on motion.

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 the applicant attempted to enter the United States on August 24, 1991 at John F. Kennedy international airport in New York with a counterfeit U.S. visa. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i).

Counsel contends the inadmissibility, stating that no U.S. official “believed and acted upon” the U.S. visa that the applicant presented. *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). Counsel sites two cases in his brief that are distinguishable from the applicant’s case. In *Matter of Y-G-*, 20 I&N Dec. 794, 797 (BIA 1994), the applicant informed the immigration inspector immediately upon entry that the documents he obtained for entry were fraudulent. In *Matter of D-L- & A-M-*, 20I&N Dec. 33 (BIA 1991) the applicants similarly surrendered their false documents to immigration officials and immediately revealed their true identity. In the present case, the record reflects that the applicant applied for admission to the United States using his passport with a fraudulent U.S. visa. In addition, while a finding of fraud requires that a U.S. official believe and act upon the fraudulent submission, misrepresentation has no such requirement. The plain language of the statute only requires that an alien seek to procure admission or other benefit, not that they succeed. Only upon further questioning by a U.S. official did the applicant admit that man in Bangkok sold him a U.S. visa for \$500 U.S. dollars. The applicant did not immediately volunteer information that he obtained his U.S. visa through improper means upon entry to the United States. *Matter of Namio*, 14 I. & N. Dec. 412, 414 (BIA 1973). The applicant’s ignorance regarding the validity of the visa when he purchased it from sources other an official channels does not offset his burden of proof that he did not willfully misrepresent a material fact to a U.S. government official. As such, the AAO remains with its decision that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

- (1) 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant and his child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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*, 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 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).

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 (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 59 year-old spouse is a native and citizen of China, has lived in the United States since 2001 and been a lawful permanent resident of the United States since 2003. She indicates that she lives in New York with the applicant, has four children, three of whom are U.S. citizens, and eight U.S. citizen grandchildren. Evidence shows naturalization certificates for three of their children, but no indication of the whereabouts of their fourth child. The applicant's wife states that she and the applicant are retired and revolve their lives around visiting their children and grandchildren who live in New York and North Carolina. Financial documents of the applicant's social security income were submitted as evidence, but evidence as to the applicant's spouse's income or employment situation were not found in the record. Her statements and medical evidence also demonstrate that she has several chronic health problems, including diabetes, heart disease, high blood pressure, hypertension, hypertrophic cardiomyopathy, heart murmur, and a history of gastric ulcers. She has been twice hospitalized due to bleedings of these ulcers. She regularly visits physicians in New York and North Carolina and takes medication.

On motion, counsel asserts that the applicant's spouse being accustomed to the medical care in the United States would cause her extreme hardship were she to relocate to China. Counsel indicates that the medical care in China is inferior to the medical care in the United States and submits two tables from the 2000 World Health Report as evidence. The AAO notes that such reports have been updated as of 2013 and do not clearly indicate an inferior healthcare system in China. *See World Health Statistic 2013, World Health Organization, available at: http://www.who.int/gho/publications/world_health_statistics/2013/en/index.html*. Counsel also indicates that the hardship suffered from separation from her children and grandchildren would be just as extreme as hardship caused by separation from the applicant, especially given cultural traditions surrounding funeral rites. While separation from family members is a significant factor, there is no indication that the applicant's family would be unable to visit the applicant's spouse in China. Counsel further asserts that the applicant would not be able to financially support his spouse if forced to relocate. Financial documents besides the applicant's social security income

were not submitted to show how the applicant and his spouse support themselves currently and the significant monetary hardship that would result from relocation.

Considering cumulatively all assertions of relocation-related hardship to the applicant's spouse, the AAO finds that the applicant has not met his burden of proof to indicate that his spouse would suffer extreme hardship based on relocation. While the AAO understands that a change in lifestyle, healthcare systems, and separation from family in the United States causes significant hardship, the level of hardship in the applicant's spouse's case cannot be found to rise to the level of extreme hardship based on the evidence in the record.

The AAO has previously found extreme hardship to the applicant's spouse based on separation from the applicant. There is no indication the applicant's spouse's personal circumstances have changed such that she would not experience such separation-related hardship.

Although the applicant has demonstrated that his qualifying relative spouse would experience extreme hardship based on separation, we can only 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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. As 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. Accordingly, the appeal will be dismissed.

ORDER: The motion is granted, and the underlying Form I-601 application remains denied.