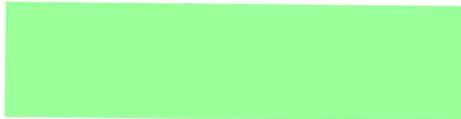


(b)(6)

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

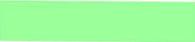


**U.S. Citizenship
and Immigration
Services**



Date: JUL 18 2013

Office: SAN JOSE, CA

FILE: 

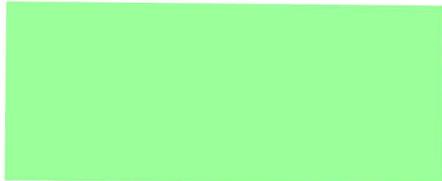
IN RE:

Applicant: 

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:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Jose, California, denied the waiver application and the Administrative Appeals Office (AAO) dismissed an appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying waiver application will be granted.

The applicant is a native and citizen of China who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. The AAO dismissed the appeal, finding that although the applicant established that her husband would suffer extreme hardship if he relocated to China, the applicant did not establish that he would suffer extreme hardship if he remained in the United States.

On motion, counsel contends the AAO erred in discounting the psychological assessment in the record. Counsel submits additional evidence of hardship on motion.

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. 8 C.F.R. § 103.5(a)(2). 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted a brief and additional documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen. Accordingly, the motion is granted.

In addition to the documents specified in the AAO's initial decision, the record also contains a medical evaluation of the applicant's husband, [REDACTED] and a letter from [REDACTED] manager. The entire record was reviewed and considered in rendering this decision on motion.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien

In this case, the AAO had previously found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. Counsel does not contest this finding of inadmissibility on motion.

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.

After a careful review of the entire record, the AAO finds that the applicant’s husband, [REDACTED] will suffer extreme hardship if the applicant’s waiver application were denied. The AAO previously found that if [REDACTED] returned to China, where he was born, to be with his wife, he would experience extreme hardship. The AAO will not disturb that finding. The AAO also finds that if [REDACTED] remains in the United States without his wife, he would suffer extreme hardship. Additional evidence submitted on motion shows that [REDACTED] has several on-going medical problems for which he requires his wife’s assistance, including gastrointestinal issues for which he had a stomach biopsy and gastritis, chest pain that frequently wakes him from sleep, back and joint pain that wakes him from sleep, Hashimoto’s thyroiditis for which he takes medication, severe depression, generalized anxiety disorder, memory loss, and hair loss. According to [REDACTED] physician, [REDACTED] was receiving treatment for his pain at an acupuncture clinic, but because acupuncture massage is very time-consuming and requires [REDACTED] to miss work, his wife was trained in acupuncture massage and gives [REDACTED] massages to ease his chest pain, back pain, and joint pain. The record includes documentation from two acupuncture clinics showing that [REDACTED] has received body movement therapy and acupuncture treatment for his health problems on numerous occasions. The physician also contends [REDACTED] wife helps prepares him a special diet to address his gastrointestinal problems, arranges his doctor’s visits, monitors his symptoms, and provides emotional support for his depression and anxiety. The physician contends [REDACTED] is a highly sensitive individual and, considering the severity of his depression, is at risk for self-harm or suicide if he was separated from his wife. In addition, a letter from [REDACTED] manager submitted on motion corroborates the contention that [REDACTED] mental and physical health have been deteriorating at an alarming rate. According to his manager, [REDACTED] was one of the top performers at work and consistently had high reviews, but since his wife’s waiver application was

denied, he has taken a considerable amount of time off from work to see his doctors for back and chest pain, has lost concentration during meetings, and has become emotionally unstable. The manager contends [REDACTED] change in behavior has been noticed by other managers and co-workers and states that if his wife departed the United States, it “could easily cost him his career.” Considering the new evidence submitted on motion, in addition to the psychological evaluation already in the record and [REDACTED] history of “decompensating” after broken relationships or separation from his wife and child, the AAO finds that the hardship [REDACTED] would suffer if he remains in the United States is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant’s willful misrepresentation of a material fact in order to procure an immigration benefit. The favorable and mitigating factors in the present case include: the applicant’s family ties to the United States, including her U.S. citizen husband and child; the hardship to the applicant’s family if she were refused admission; letters of support describing the applicant as a kind, responsible, loving, intelligent, and responsible person; the applicant’s involvement in the community, including serving as the [REDACTED] [REDACTED] the applicant’s expression of remorse for violating the immigration laws of the United States and taking full responsibility for her actions; and the applicant’s lack of any arrests or criminal convictions.

The AAO finds that, although the applicant’s immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In application proceedings, it is the applicant’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The motion will be granted and the underlying waiver application is approved.