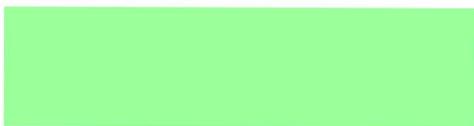




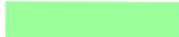
**U.S. Citizenship
and Immigration
Services**

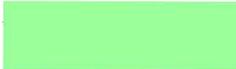
(b)(6)



Date: JUN 06 2013

Office: LOUISVILLE, KY

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 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

(b)(6)

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DISCUSSION: The waiver application was denied by the Field Office Director, Louisville, Kentucky. The matter 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 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 U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children 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.

On appeal, counsel contends the applicant established extreme hardship, particularly considering the psychological and medical documentation in the record. Counsel submits additional evidence of hardship.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on October 14, 2002; copies of the birth certificates of the couple's two U.S. citizen children; an affidavit from the applicant; two affidavits from [REDACTED]; doctors' notes for [REDACTED] and copies of prescription medications; a psychological evaluation; copies of tax returns; a letter from [REDACTED] employer; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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 record shows, and counsel concedes, that the applicant entered the United States in 1997 using a passport that was not her own. Therefore, 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.

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.

In this case, the applicant's husband, [REDACTED] states that he and his wife have two children and that she is their primary caretaker. [REDACTED] contends he has lived with his wife for the past ten years and that they have never been separated except for brief visits. In addition, [REDACTED] contends he has suffered from chronic back pain for several years, which prevents him from doing heavy labor and which prevents him from taking care of himself. He states he needs his wife's assistance to get dressed, brush his teeth, bathe, cook, and do household chores. He states he also suffers from insomnia, lack of appetite, and feelings of hopelessness and despair for which he takes anti-depressants. Furthermore, [REDACTED] contends he cannot return to China, where he was born, because China does not recognize dual citizenship and he and his daughters are U.S. citizens. He contends they would have to apply for a visa in order to visit China for a short period of time. Moreover, according to [REDACTED] his entire family and his life are in the United States.

After a careful review of the entire record, the AAO finds that if the applicant's husband decides to remain in the United States without his wife, he would suffer extreme hardship. The record contains a psychological evaluation for [REDACTED] diagnosing him with Major Depression, Adjustment Disorder with Anxiety, Somatization Disorder with prominent hypochondria, and Dependent Personality Disorder. According to the psychological evaluation, [REDACTED] parents were unable to raise him, so he was raised by his aunt who neglected and mistreated him. According to the psychologist, this early trauma led to [REDACTED] having a moderate level of pathology, a depressive dependency, and an intense fear of separation. The psychologist concludes that [REDACTED] mental health requires him to "live free from the fear of separating from his wife and kids," and that keeping his family united is critical for his mental stability. The psychological evaluation corroborates [REDACTED] contention that he has a deep, emotionally dependent relationship with his wife, and his contention that his wife not only takes care of their children, but of him, too. In addition, the record contains three doctor's notes from [REDACTED] physicians, corroborating his contentions regarding his back pain. According to a chiropractor, [REDACTED] suffers from multiple vertebral malalignment, pinched nerves, and a disc problem which interferes with his work. A note from a neurologist, confirms that [REDACTED] has suffered from severe lower back pain since 2003, and that he has been taking pain medications and has tried physical therapy, but with no significant improvements as his pain is persistent. Another physician contends [REDACTED] back pain has gotten worse in the past few months and the record contains copies of [REDACTED] prescription medications. Considering the psychological evaluation, particularly [REDACTED] "prominent hypochondriacal features" and

dependent personality, in combination with the doctor's notes, the AAO recognizes [REDACTED] contentions that he often needs his wife's assistance psychologically as well as due to his persistent back pain. Therefore, the AAO finds that his wife's presence is critical to his physical and mental health. Considering these unique circumstances of this case cumulatively, the AAO finds that the hardship the applicant's husband would experience if he remains in the United States and is separated from his wife is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if the applicant's husband returned to China to be with his wife, he would experience extreme hardship. As stated above, [REDACTED] has been diagnosed with several mental health issues and, according to the psychologist, due to [REDACTED] childhood trauma, feels alienated from China. In addition, the AAO acknowledges that [REDACTED] has lived in the United States for almost twenty years, his entire adult life, having entered the United States in 1994 when he was fourteen years old. Relocating and readjusting to living in China would be particularly difficult considering his mental health issues and childhood experiences in China. Furthermore, the AAO acknowledges [REDACTED]. [REDACTED] contention that his entire family lives in the United States and that he has no remaining family ties in China. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if he relocated to China to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

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 factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit and her unauthorized presence in the United States. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her U.S. citizen husband and two U.S. citizen children; the extreme hardship to the applicant's family if she were refused admission; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are 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 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.