

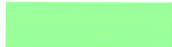
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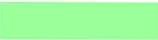


U.S. Citizenship
and Immigration
Services



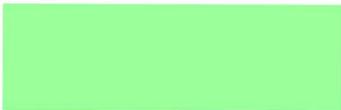
Date: **MAR 14 2013** Office: LOUISVILLE, KY

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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 dismissed.

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 fraud or willful misrepresentation of a material fact in order to obtain 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 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 notes that the field office director denied the Notice of Appeal or Motion (Form I-290B) on April 23, 2012. The field office director did not have jurisdiction to deny the appeal and, therefore, the AAO withdraws that denial.

On appeal, counsel contends the applicant is not inadmissible because she did not willfully misrepresent her marital status in order to procure an immigration benefit. Counsel also contends that even if the AAO finds the applicant did willfully misrepresent her marital status, any misrepresentation was not material.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on February 22, 2011; an affidavit from the applicant; an affidavit from a letter from the child support documents; a copy of 2010 tax return; 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 pertinent part:

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 that the applicant filed a visa application with the U.S. Consulate on November 18, 2010, and stated on her application that she was married to [REDACTED] listed a shared address, listed his birthday, and listed his city and country of birth. However, the record indicates that the applicant was divorced from [REDACTED] as of December 19, 2007. The field office director concluded that the applicant committed fraud and misrepresentation by knowingly concealing her marital status in order to obtain a visa to enter the United States.

The applicant states that she contacted a professional travel agency, [REDACTED] to prepare all the paperwork for a tourist visa to the United States. She states she gave the travel agency copies of all of her information, including a copy of her divorce certificate, and completed a questionnaire which included fundamental information, including her ex-spouse's name and date of birth. According to the applicant, during her visa interview, she was asked only a few questions, including what was the purpose of her visit and how long would she stay in the United States. The applicant contends the consular officer examined her company's business license and the title certificates of the properties she owns. She states that no one asked her about her marital status and that she had carried her divorce certificate with her, along with all of the other materials she had submitted to the travel agency. She contends she signed her application without proofreading it and that the travel agency must have erroneously marked "no" to the question asking if anyone assisted with the filing of the application. The applicant states that her visa was approved and that she was shocked to learn during her adjustment of status interview in 2011 that her visa application had a mistake about her marital status and mistakenly indicated that no one assisted her with completing the visa application. The applicant contends that she had trusted the travel agency. She states she had no need to lie about her marital status on her visa application because she had enough strong financial and business ties to China to get a visa and that she had traveled to other countries, such as Australia and Thailand, without any trouble getting a tourist visa. In support of her contentions, the applicant submits a letter from the travel agency which states that the applicant hired the company to handle her application for a tourist visa to the United States, that the company "looked up the saved raw materials provided by the client[,] and indeed found a copy of [the applicant's] Divorce Certificate." The travel agency states, "we acknowledge that it was our employee's carelessness that caused the wrong marital status on [the applicant's] visa application."

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document"). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

(b)(6)

After a careful review of the record, the AAO finds the applicant has not met her burden of proving she is admissible to the United States. Although the letter from the travel agency claims that an employee's carelessness caused the applicant's incorrect marital status on the visa application, significantly, the visa application did not merely check the wrong box for the applicant's marital status. Rather, the visa application contains numerous details of the applicant's purported marriage, indicating more deliberate action. For example, the visa application indicates the applicant's purported spouse's full name, date of birth, nationality, city of birth, country of birth, and address. Notably, the spouse's address is listed as the "same as home address." Moreover, the visa application indicates that no one assisted the applicant with filing the application. The AAO finds it unconvincing that a purported "professional" travel agency that was specifically hired to complete the visa application would indicate that no one assisted in filing the application. Furthermore, the letter from the travel agency states that it "indeed found a copy of [the applicant's] Divorce Certificate." Although the travel agency claims to have a copy of the divorce certificate and the applicant contends she carried her divorce certificate with her to her consular interview, inexplicably, the record does not contain a copy of this alleged divorce certificate. Instead, the only divorce certificate contained in the record for the applicant and [REDACTED] is dated January 5, 2011, after the applicant's visa application and interview.

In addition, the record shows that the applicant entered the United States on January 25, 2011, and that she married her current husband, [REDACTED] on February 22, 2011, less than one month after her arrival. According to [REDACTED] affidavit, the couple met in China in December 2010, the applicant stayed with him after she arrived in the United States on January 25, 2011, and they married on February 22, 2011. The Department of State Foreign Affairs Manual states that, "[i]n determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application or to an immigration officer when applying for admission. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, . . . [a]pply for adjustment of status to permanent resident. . . ." *DOS Foreign Affairs Manual*, § 40.63 N4.7(a)(1). The Department of State developed the 30/60-day rule, which states that "[i]f an alien violates his or her nonimmigrant status in a manner described in 9 FAM 40.63 N4.7-1 [including seeking unauthorized employment or taking up permanent residence] within 30 days of entry, you may presume that the applicant misrepresented his or her intention in seeking a visa or entry." *Id.* at § 40.63 N4.7-2.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis in these situations to be persuasive. In the case at hand, the applicant entered the United States, lived with a U.S. citizen, and married the U.S. citizen within thirty days of entry. Therefore, there is a presumption that the applicant's intention was not to merely visit the United States, as allowed by her visa, but rather, to take up permanent residence in the United States with her husband. Based on all of these factors, the AAO finds that the applicant has not met her burden of proving she is admissible to the United States. To the extent counsel suggests that the government failed to establish a factual foundation for a finding of inadmissibility, failed to make any analysis of whether

a willful misrepresentation was made of a material fact, and relies on cases such as *Matter of Bosuego*, 17 I&N Dec. 125 (BIA 1980), the AAO notes that counsel is relying on cases in which the alien is in deportation or removal proceedings. While the government has the burden of establishing deportability or removability, it is the alien's burden of proving admissibility. See Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has failed to meet her burden of proof. Regarding counsel's contention that the applicant's marital status was immaterial because she has other ties, such as family and property, in China, the AAO disagrees. Claiming that the applicant was married to a Chinese citizen was material because it shut off a line of inquiry relevant to the applicant's eligibility for a non-immigrant visa. Specifically, the applicant's visa application would likely have been denied had the consular officer known the applicant was unmarried and going to live with a U.S. citizen boyfriend or fiancé. 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 being separated from his wife would lead to depression, mental health and other problems, and eventually lead to the breakup of their marriage. He states that if his wife’s waiver application were denied, he would have to go to China with his wife. According to [REDACTED] he would have to wait five years before he would become eligible to apply for permanent residence in China, making it more difficult to find a job in China. He states that he received his PhD in Nuclear Engineering in 1995 and works as an associate professor of nuclear and radiological engineering. He states he would most likely find a teaching job in a university if he moved to China. However, he states that his income in China would be much less than compared to the United States and that he would have difficulty paying his child support obligation of \$900 per month.

After a careful review of the record, there is insufficient evidence to show that the applicant’s husband, [REDACTED] will suffer extreme hardship if the applicant’s waiver application were denied. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Aside from stating he would be depressed and suffer mental health and other problems, [REDACTED] does not discuss with any detail the possibility of remaining in the United States without his wife. Although the AAO is sympathetic to the couple’s circumstances, the record does not show that the applicant’s situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected).

(b)(6)

With respect to relocating to China to avoid the hardship of separation, there is insufficient evidence in the record to show extreme hardship. The record shows that [REDACTED] was born in China and according to his Biographic Information form (Form G-325A), he had two previous marriages in China and his mother continues to reside in China. Therefore, the record indicates [REDACTED] is familiar with Chinese culture and continues to have family ties in China. In addition, according to [REDACTED] himself, he could find employment teaching at a university in China. Although the record contains documentation corroborating his claim that he would have to pay \$900 for child support, there is insufficient evidence in the record suggesting that this expense would pose an extreme hardship. According to his 2010 tax return, [REDACTED] earned \$88,571 in wages. There is no evidence addressing his assets and according to the applicant, she owns significant assets, including a townhouse worth \$550,000, 6 offices in an office building worth \$700,000, and \$300,000 in stocks and bank accounts. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship the applicant's husband would experience if he returned to China amounts to extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.