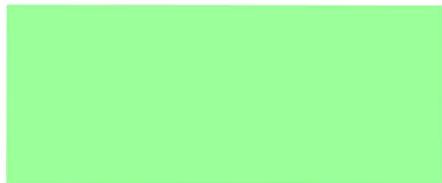


(b)(6)

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

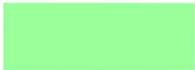


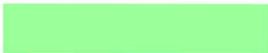
**U.S. Citizenship
and Immigration
Services**



DATE: **MAY 15 2013**

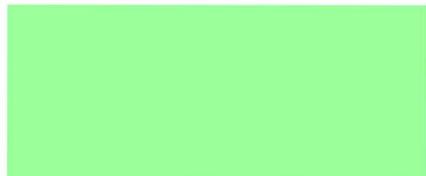
Office: NEW YORK

File: 

IN RE: Applicant: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 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,


for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and a 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 procuring or attempting to procure U.S. admission by fraud or willfully misrepresenting a material fact. The applicant is seeking a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and family.

The district director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director, August 17, 2012.*

On appeal, counsel for the applicant contends that USCIS erred in misconstruing the extreme hardships that the applicant's husband is suffering, and will continue to suffer, due to his medical conditions as a result of the applicant's inadmissibility, as well as the consequences to both parents and their children of moving to China.¹ In support of the appeal, counsel submits a brief and updated documentation including, but not limited to the qualifying relative's hardship statement and a translation of provincial family planning regulations. The record also contains financial and medical documentation submitted in support of the original waiver request; marriage, divorce, and birth records; country condition information; the denial decision; and documents pertaining to the asylum application and removal order. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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)(1) of the Act provides:

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 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

¹ Despite contesting the section 212(a)(6)(C)(i) inadmissibility in the waiver application, the applicant has not pursued on appeal the claim that, immediately upon deplaning in Honolulu, she disclosed being a Chinese citizen without documentation, divulged her true name, and surrendered the fraudulent passport and identification card used to board the plane in Hong Kong. The record does not substantiate this contention, an Immigration Judge found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, and the AAO notes that the applicant did not contest the charge of inadmissibility in proceedings before the IJ.

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 [...].

The record shows that the applicant presented a false United Kingdom passport issued in another person's name but bearing her own photo as well as a false Hong Kong Permanent Identity Card when she arrived in Hawaii on August 26, 1999. Based on her sworn statement the following day, immigration authorities charged her with attempting to procure U.S. admission by fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act and issued her a Notice to Appear in removal proceedings. On January 11, 2001, an Immigration Judge ordered the applicant removed and denied her applications for asylum, withholding of removal, and related relief.

A waiver of inadmissibility under section 212(i) of the Act is dependent 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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse 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 provided a list of factors it deemed relevant in determining whether an applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established her husband would suffer extreme hardship if he relocated to China, the record reflects that the cumulative effect of problems directly impacting him due to his documented medical conditions, coupled with hardships he would experience due to difficulties to which his children would be subject, would represent hardship that rises to the level of “extreme.” There is extensive documentation that the qualifying relative was diagnosed in 2011, before the age of 30, with Hepatitis B (HBV), a chronic liver infection. On his doctor’s recommendation, he enrolled in an HBV monitoring program, has blood and related screenings three or four times per year and is receiving treatment for chronic HBV to prevent progression of the disease, but the evidence shows he remains at risk of developing life-threatening complications, including cirrhosis and liver cancer. The record also shows that the applicant’s husband was confirmed in 2011 to have a herniated lumbar disc, after having been treated since the previous year for lower back pain. As a result of his conditions, the qualifying relative’s work options and mobility have both been curtailed. Official U.S. government reporting establishes that “[t]he standards of medical care in China are not equivalent to those in the United States,” recommends that special arrangements be made outside major cities, warns that common over-the-counter as well as prescription medications are difficult to obtain, and notes that hepatitis is endemic. *China—Country Specific Information*, U.S. Department of State (DOS), January 28, 2013.

Documentation also shows that the qualifying relative has four children – ages 2, 5, 6, and 7 -- all of whom were born and have lived their entire lives in the United States. All except the youngest are

eligible to enroll in school. Their father fears that they would have great difficulty adjusting to the Chinese education system, as they lack even a basic command of the Chinese language.” *Cf. Kao and Lin*, 23 I&N Dec. 45, 50 (BIA 2001)(“These children have lived their entire lives in the United States and are completely integrated into their American lifestyles.”). The record also reflects that the eldest child has had a cyst-like facial tumor drained several times, and that the condition can be expected to recur and require further treatment. Whereas the child has an ongoing relationship with doctors treating him, the DOS report noted above suggests that such treatment may not be available in China, either due to the child’s location or to his parents’ inability to pay. Counsel for the applicant contends that the applicant and her husband would both be subject to potential coercive sterilization for violating the Chinese “one-child” policy, if their children accompany them. While a translation in the record of the relevant Fujian Province Regulations is inconclusive how they will be applied to the qualifying relative and his wife, it suffices to raise the issue that, despite the qualifying relative’s naturalized U.S. citizen status, all family members could be treated as Chinese citizens subject to Chinese laws, including those about family planning. We note that the *Consular Information Sheet, China*, April 11, 2002, submitted by the applicant substantiates this concern by stating that, “[i]f one or both parents of a child are PRC nationals who have not permanently settled in another country, then China regards the child as a PRC national and does not recognize any other citizenship the child may acquire at birth, including U.S. citizenship.”

Based on the totality of the circumstances, the evidence is sufficient to establish that a qualifying relative would experience extreme hardship by returning to China. The record shows that he has lived most of his adult life in the United States, married and had four children, benefitted from the medical care available here, and has an ongoing need for access to such care. Although the qualifying relative was born in China, the United States is the only country where his children have ever lived, one child suffers from a chronic medical condition, and their father is fearful about their future prospects in China.

As regards whether the qualifying relative will experience emotional or physical hardship due to separation from the applicant, the record confirms the applicant’s husband learned that his worsening lower back pain was due to a herniated disc around the same time he was diagnosed with chronic HBV, in 2011. The record contains documentation supporting his treating physician’s conclusion that his back pain was at least partly attributable to muscle weakening (which thus allowed injury when he lifted heavy food containers and cooking implements during prolonged standing while working as a cook), as well as reduced ability to heal, due to his liver disease. The applicant’s husband contends that he and his children were abandoned by their mother, and the record indicates that it was she who initiated divorce proceedings and relinquished full custody of their children to him. There is evidence that the applicant, after losing custody of her child by a former boyfriend, devoted herself to her husband’s children, and he states that she is the only mother they have ever known due to their youth when his former wife left.

The record reflects circumstances that after two failed marriages, the qualifying relative was a single working parent to three young children when he met the applicant. The applicant filled the role of wife and mother, the couple had a child together in 2011, and the family now numbers six members. There is evidence that the applicant has been responsible for taking the oldest child for medical

treatment of the reoccurring facial tumor noted above. The applicant's husband expresses fear about the adverse impact his wife's departure will have on his children. The record indicates that hardship to the children will represent hardship to him and cause stress and anxiety that would aggravate his medical conditions. These same conditions would make it difficult for the qualifying relative to visit the applicant overseas due to health concerns discussed above.

Besides the qualifying relative's own health/safety issues, the record substantiates his concern for the applicant's personal security by noting that, as a Chinese citizen who never acquired permanent residency abroad, the fact that she has borne two children would potentially subject her to societal stigma and forced sterilization. The U.S. State Department confirms that reproductive rights remain problematic, despite legislative reform efforts, due to inconsistent provincial enforcement approaches. *See Country Reports on Human Rights Practices for 2012--China*, April 19, 2013. The qualifying relative notes his concern and worry about traveling with his children to visit his wife, as this would raise questions about her compliance with China's one-child policy, while not taking the children would deny his wife contact with her one biological child and three stepchildren.

Regarding the financial component of separation hardship, the applicant's presence in the United States will spare her husband the high cost of traveling overseas for visits with his wife. There is evidence that the applicant's husband worked as a cook from 2007 to 2010, thereafter being employed as a full-time manager another restaurant. Documentation shows that the qualifying relative's annual earnings doubled to approximately \$40,000 in the new position. Although the applicant has provided no information regarding the cost of childcare services necessitated by her absence, the AAO notes that her husband's income would be burdened by any additional expense associated with raising four children under the age of eight.

For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's husband will experience due to his wife's inadmissibility rises to the level of extreme. The AAO concludes based on the evidence provided that, were her husband to remain in the United States without the applicant due to her inadmissibility, he would suffer extreme hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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 favorable factors in this matter are the hardships the applicant's husband and children would face if the applicant were to reside in China, regardless of whether they accompanied the applicant or remained here; the applicant's lack of any criminal record; supportive statements; and passage of nearly 14 years since the applicant's misrepresentations. The unfavorable factors in this matter are the applicant's willful misrepresentations.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the equities involved, including the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility and for consent to reapply for admission, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is granted.