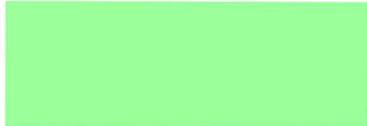


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

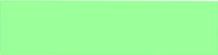
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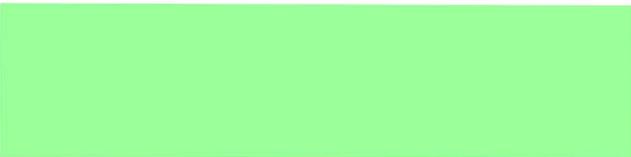
Office: WASHINGTON FIELD OFFICE

FILE: 

IN RE: Applicant: 

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Washington D.C., and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 having attempted to procure a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had 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. *Decision of the Field Office Director*, dated May 3, 2013.

In support of the appeal, counsel for the applicant submitted the Form I-290B, Notice of Appeal (Form I-290B), dated May 30, 2013. On the Form I-290B, counsel indicated that a brief and/or additional evidence in support of the appeal would be submitted within 30 days. As of today, no brief and/or additional evidence in support of the instant appeal has been received. The record is thus considered complete and was reviewed in its entirety in rendering this decision.

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

- (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.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), 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 Attorney General (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...

On appeal, counsel maintains that the applicant did not willfully misrepresent a material fact in order to procure admission. Counsel asserts that while the applicant was in possession of a fraudulent document, the applicant voluntarily disclosed that he was not in possession of a valid entry

document at the time of his entry to the United States and stated that he wished to apply for political asylum, which he subsequently did. See *Form I-290B*, dated May 30, 2013.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Pursuant to the record, the applicant arrived on December 31, 1991 from [REDACTED] and presented a Japanese passport which contained a nonimmigrant visa which was photo-substituted and altered. After further questioning, the applicant admitted that he was assisted by a Peruvian man named [REDACTED] who charged him \$6000 for the passport. It was at that point that the applicant provided his true identity and requested asylum. See *Order to Appear Deferred Inspection*, dated January 1, 1992.

In *Matter of D-L- & A-M*, the Board of Immigration Appeals (BIA) held that outside of the transit without visa context, an alien is not excludable for seeking entry by fraud or willful misrepresentation of a material fact where there is no evidence that the alien presented or intended to present fraudulent documents or documents containing material misrepresentations to an authorized official of the United States Government in an attempt to enter on those documents. In the case, the BIA determined that the evidence showed that the applicants purchased a fraudulent Spanish passport bearing a nonimmigrant visa for the United States; upon arrival in Miami, they surrendered the false document to U.S. immigration officials, immediately revealed their true identity, and asked to apply for asylum. The BIA concluded that their action did not provide a basis for excludability under section 212(a)(19) of the Act as it did not involve fraud or misrepresentation to an authorized official of the United States Government. *Id.* at 412-413. In the instant case, the applicant presented a fraudulent passport containing a photo-substituted and altered nonimmigrant visa to an immigration official in order to gain admission into the United States. The record does not establish that, upon entry in the United States, he surrendered the false document to U.S. immigration officials and immediately revealed his true identity. Thus, the fact pattern of the applicant's misrepresentation is distinguishable from that in *Matter of D-L- & A-M*. In the applicant's case, the record indicates that he only revealed his true identity after having unsuccessfully attempted to procure admission by fraud or willful misrepresentation. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure entry to the United States by fraud or willful misrepresentation.

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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a 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*, 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 v. I.N.S.*, 138 F.3d 1292, 1293 (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.

Counsel maintains that the applicant's U.S. citizen spouse will suffer hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility. In support, a letter has been provided by [REDACTED] MD, the applicant's spouse's treating physician. Dr. [REDACTED] states that the applicant's spouse is suffering from numerous medical conditions, including dizziness, headaches, anemia and arthritis. Dr. [REDACTED] further notes that the applicant's spouse has a severe form of hereditary thalassemia anemia and states she needs to be closely monitored, it is likely that she will need nutritional counseling and possible medications to manage her symptoms, and she may need blood transfusions in the future if the condition worsens. Dr. [REDACTED] contends that the applicant has been very supportive and takes care of his wife when she is suffering from ongoing dizziness and severe headaches. Were the applicant to reside abroad, Dr. [REDACTED] concludes that the applicant's spouse could experience severe harm. *Letter from [REDACTED] M.D.*, dated August 15, 2012.

To begin, no letter has been provided from the applicant's spouse detailing what, if any, hardships she will experience were her husband to relocate abroad. As for the medical issues raised by Dr. [REDACTED] the letter provided is from August 15, 2012, more than 9 months prior to the instant appeal submission. No current documentation has been provided by counsel establishing the applicant's spouse's medical condition and what specific hardships she will face were her husband to relocate abroad. As established in the record, despite the applicant's spouse's medical conditions, she is gainfully employed, earning over \$25,000 in 2011. See *Request for Verification of Employment*. Further, the record establishes that the applicant's spouse's uncle, whom she resided with prior to marrying the applicant, resides in [REDACTED] Virginia. It has not been established that he is unable to assist her should the need arise. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Finally, as noted by Dr. [REDACTED] the applicant's spouse's medical condition is hereditary. It has not been established that the applicant's spouse was unable to care for herself with respect to this condition prior to marrying the applicant in 2005, when she was in her mid-40s.

The AAO recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's spouse will experience extreme hardship were she to remain in the United States while the applicant relocates abroad due to his inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. As noted

above, the applicant's spouse has not provided any statement establishing what specific hardships she would encounter were she to return to China, her native country, to reside with the applicant due to his inadmissibility. The only reference to hardship is from Dr. [REDACTED] who states that there is a concern that blood will not be properly screened for diseases prior to transfusion in China. *Supra* at 1. In support, an article has been provided from the United Nations Development Programme. This article does not establish that the applicant's spouse specifically would be at risk were she to need a blood transfusion in China. It only notes that commercially donated blood or plasma should be avoided. It has thus not been established that the applicant's spouse would experience extreme hardship were she to relocate to China to reside with the applicant due to his inadmissibility.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law.

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 not been met.

ORDER: The appeal is dismissed.