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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



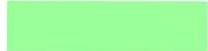
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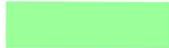
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Office: SAN FRANCISCO

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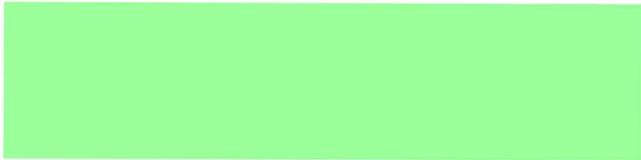


IN RE: Applicant:



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,

R. Rosenberg

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California, 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 procured a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, she 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 her U.S. citizen spouse.

The field office director found that the applicant 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 March 19, 2013.

In support of the appeal, counsel for the applicant submits the following: a brief; declarations from the applicant and her spouse; support letters; biographic documentation pertaining to the applicant's spouse's mother; medical documentation regarding the applicant's spouse; information about employment and visas for foreigners in China; and family photographs. The entire record was reviewed and considered 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...

With respect to the field office director's finding of inadmissibility, the record establishes that the applicant misrepresented her marital status in 2005 when applying for a visitor visa. Specifically,

the applicant claimed to be married when in fact she was divorced. In addition, the record establishes that the applicant stated that her intention was to visit her son in the United States, when in fact the applicant did not have a son residing in the United States. The applicant was issued the nonimmigrant visa and subsequently entered the United States with that visa in September 2005. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for procuring a visa and subsequent 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 or her mother-in-law 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 (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.

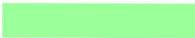
The applicant’s U.S. citizen spouse contends that he will suffer hardship were he to remain in the United States while his spouse relocates abroad due to her inadmissibility. In a declaration the applicant’s spouse first explains that he has retired as a result of his poor health and needs his wife’s financial support. In addition, the applicant’s spouse maintains that he is dealing with numerous health problems, including diabetes and high blood pressure, and he relies on his wife to help care for him on a daily basis. He notes that the applicant makes sure he takes the proper medications, gives him daily insulin shots, and is a loving companion. Further, the applicant’s spouse contends that his mother, currently in her nineties, lives with him, and his wife provides his mother with much love and care, which is a great relief to him. *Declaration from George Chu*, dated May 15, 2013.

The AAO acknowledges the applicant’s spouse’s contention that he will experience emotional hardship were he to remain in the United States while his wife relocates abroad, but the record does not establish the severity of this hardship or the effects on his daily life. A letter from the applicant’s spouse’s treating physician notes that a family member is needed to take care of the applicant’s spouse, as he suffers from numerous medical conditions, including diabetes, cardiovascular disease, myocardial infarction, lower back pain and memory loss. The letter does not, however, provide detail about any limitations on his daily activities and ability to care for himself or what specific hardships he will experience were his wife to reside abroad. The applicant’s spouse has numerous siblings, including at least two that reside in the United States, and the record does not indicate that they would be unable to assist their brother should the need arise. As for the financial hardship referenced, counsel has not provided any documentation on appeal establishing the applicant’s and

her spouse's income and expenses and assets and liabilities to establish that were the applicant to relocate abroad, her spouse would experience financial hardship. Nor has any financial documentation been provided to establish what specific financial contributions the applicant is making to the household at this time. Alternatively, it has not been established that the applicant would be unable to obtain gainful employment in China that would permit her to assist her husband in the United States 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, with respect to the applicant's mother, the record fails to establish her current medical conditions, the severity of her situation, what assistance she needs on a day to day basis, and what specific hardships she will experience were her daughter-in-law to relocate abroad. As noted above, the applicant's spouse's mother has numerous children. It has not been established that the applicant's spouse, who is currently retired and living with his mother, or his brothers or sisters are unable to care for their mother as needed. As such, it has not been established that the applicant's spouse would experience extreme hardship were he to remain in the United States while his wife relocates abroad due to her inadmissibility.

In regard to relocating abroad to reside with the applicant as a result of her inadmissibility, the applicant's spouse contends that he and his mother would not be able to reside in China with the applicant because he is a native of Taiwan and is currently a U.S. citizen. *Supra* at 2. On appeal, counsel states that as a result of his age, the applicant's spouse will not be able to obtain gainful employment. Counsel further asserts that the applicant's spouse and mother will not be able to obtain a permanent resident permit to allow them to live in China. In support, counsel has provided two articles regarding employment of foreigners and procedures to obtain residence permits in China. The AAO notes that the applicant's spouse is currently retired, and the record does not establish that he would need to obtain employment in China or that he would be unable to do so if necessary. Moreover, the article provided by counsel does not establish that the applicant's spouse specifically would not be able to obtain residence in China. Finally, the record establishes that the applicant has two grown sons who reside in China, and there is no evidence that they would be unable to assist the applicant's spouse were he to relocate to China. The applicant has not established that her spouse will experience extreme hardship were he to relocate abroad to reside with the applicant as a result of her 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.