



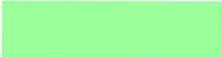
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: OCT 31 2013 OFFICE: BALTIMORE, MARYLAND

File: 

IN RE: 

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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects the applicant is a native and citizen of the People's Republic of China (PRC) who was found to be inadmissible to the United States pursuant to 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 sought to procure admission into the United States by willful misrepresentation. The record also reflects the applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered removed and seeking admission within the proscribed period.¹ The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse and children.

The District Director determined the applicant had not established extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the District Director*, dated February 26, 2013.

On appeal, counsel asserts U.S. Citizenship and Immigration Services (USCIS) failed to apply the proper legal standard in its decision, and its failure to consider evidence of hardship in the aggregate, was a violation of due process. Counsel also asserts USCIS should have considered the opinions of the applicant's friends and relatives concerning hardship to her qualifying relative. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), dated March 26, 2013.

The record includes, but is not limited to: briefs, motions, and correspondence; letters of support; identity, medical, psychological, employment, financial, and academic documents; photographs; and documents on conditions in the PRC. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(C) Misrepresentation.-

(i) 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.

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the District Director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The District Director found the applicant inadmissible for having presented to U.S. immigration officials a photo-substituted passport issued by the Republic of China (Taiwan) upon seeking entry into the United States on May 17, 2000. The applicant does not contest the finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and she requires a waiver under section 212(i) of the Act.

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

- (1) The Attorney General [the Secretary of Homeland Security (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 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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant, her children, and her in-laws can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only demonstrated qualifying relative in this case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 of Immigration Appeals (the BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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. at 246-47; *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 BIA 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. at 383 (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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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 support of the applicant's appeal, counsel asserts the AAO has found extreme hardship in other decisions where an applicant's U.S. citizen spouse has suffered various levels of emotional and financial difficulties and taken care of U.S. citizen children without an applicant's assistance. Counsel includes copies of unpublished AAO decisions with the appeal to support his position. Only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c), however, are binding on USCIS officers. The decisions submitted by counsel are unpublished and not designated as precedent decisions. The findings made in the other AAO decisions, therefore, have no binding precedential value for purposes of the applicant's case.

Counsel also asserts USCIS failed to consider evidence of hardship to the applicant's spouse in the aggregate. Specifically, the evidence shows he has a pre-existing mental illness due to his older

brother's medical problems; he has a strong relationship with his brother and their aging parents; he would be physically exhausted as a single parent caring for four young children and working full-time; his income alone would be insufficient to meet their monthly obligations, and the applicant would be unable to contribute to the support of their households due to economic and labor conditions in the PRC; without the applicant's assistance he could lose his livelihood, resulting in the loss of the family home, investments, and the need to seek entitlements including welfare; and his brother, who is in a nursing home, and his parents, who live with him, all suffer from chronic medical issues and require his support.

Counsel contends that by not considering hardships in the aggregate, USCIS "violated due process." Constitutional issues are not within the appellate jurisdiction of the AAO; therefore this assertion will not be addressed in the present decision.

Additionally, the applicant states her spouse's mental and physical health have deteriorated because of her removal order and the fear her spouse feels for their children's future and education; she does not have the necessary connections to obtain employment in the PRC; and her spouse would have to hire a replacement for her at the family restaurant. The applicant's spouse further discusses the positive impact she has on his physical, emotional, and financial well-being and how her imminent removal has caused his mental health to deteriorate, resulting in the need to take medications for depression, panic disorder, and frequent anxiety attacks; his medical conditions cause him fatigue; the applicant assists him with their children, his parents and paralyzed brother, the family restaurant, and the maintenance of their household; two of his real estate properties are "underwater," and he is unable to sell them or the restaurant, which is the family's only source of income; and he would be unable to financially support his family without the applicant.

The record includes a psychiatric report dated March 26, 2013, indicating the applicant's spouse is currently under care and treatment for major depressive disorder, panic attacks, and generalized anxiety disorder related to the applicant's removal. The record also includes a medical letter dated March 20, 2013, indicating the applicant's spouse is currently under care for chronic hepatitis B, diabetes, fatty liver, and hypertension. The record further includes billing statements and an itemized monthly expenditure report of the applicant and her spouse's household. The report shows the applicant is responsible for about half of her family's household income. Additionally, medical letters dated March 20, 2013, reflect that the applicant's father-in-law is currently under care for chronic hepatitis B and cirrhosis, he is blind in his right eye, and he has a history of retinopathy; and the applicant's mother-in-law is currently under care for chronic hepatitis B and bilateral knee arthritis. The record also includes a medical letter dated March 11, 2013, indicating the applicant's brother-in-law is currently under care at a nursing and rehabilitation center for brain and spinal injuries, he is paralyzed, and he has chronic respiratory-related conditions. The record reflects the applicant assists her spouse with the care of his family members.

The AAO finds that the evidence submitted establishes that the applicant's spouse would experience financial, physical, mental, and emotional hardship because of the applicant's inadmissibility. Considered in the aggregate, the evidence shows that the applicant's spouse's hardship upon separation from her would be extreme.

Addressing the hardship the applicant's spouse would experience if he were to relocate to the PRC, counsel asserts her spouse and children are unwilling and unable to reside there permanently; the applicant's spouse has resided in the United States for 17 years, where he has established strong family ties, a home, and a business; the PRC government does not recognize dual citizenship, so he and the children would have to renounce their U.S. citizenship and sell the family home and business; he would be subjected to the PRC's coercive family-planning program; he would be stigmatized because of his mental-health conditions, and he would not receive necessary treatment; he would not be permitted to work and thereby would be deprived of a livelihood, or in the alternative, it would be difficult for him to "restart" his business; and he would be permanently separated from his parents, as it is difficult to obtain a U.S. tourist visa.

The applicant also asserts she and her spouse are unable to reside in the PRC without the risk of being sterilized and fined by the government; Chinese tradition requires her spouse to care for his parents, and her spouse would not earn enough in the PRC to support them and his brother; and her in-laws are too elderly and sick to travel to the PRC. The applicant's spouse further asserts his family and friends are in the United States; it would be difficult for him to travel to the United States to visit his family because of his chronic fatigue related to his medical conditions; and he could not abandon his brother in the nursing home, and his brother would not receive the same care in the PRC.

The record includes evidence corroborating claims that the applicant's spouse has resided in the United States for over 17 years, where he maintains strong family, business, and community ties. Also, the U.S. Department of State's Country Specific Information about the PRC corroborates the applicant's spouse's concerns about the standards of medical care there, including the difficulty of receiving treatment for mental-health conditions. *See Country Specific Information, China*, September 5, 2013, at http://travel.state.gov/travel/cis_pa_tw/cis/cis_1089.html#medical. The record reflects that the cumulative effect of the hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant's spouse to relocate to the PRC to be with the applicant due to her inadmissibility, he would suffer extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Morales*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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) ...

Id. at 301.

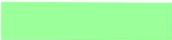
The BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen spouse, her U.S. citizen children and other familial ties, steady employment and business ties, the filing of income taxes, and the absence of a criminal record. The unfavorable factors include the applicant's misrepresentation of her identity when seeking admission to the United States and her outstanding order of removal.

Although the applicant's violations of immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

As noted previously, the applicant also is inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered removed and seeking admission within the proscribed period. The record reflects that on May 17, 2000, U.S. immigration officials placed the applicant in removal proceedings; the applicant failed to appear for her hearing; and on February 10, 2003, the immigration judge issued an order of removal *in absentia*. The applicant's motion to reopen and rescind the order of removal was denied on August 10, 2005. The applicant appealed the decision, and the BIA dismissed the appeal on January 27, 2006.

The record also reflects U.S. immigration officials apprehended the applicant at her workplace and she was placed under supervision in October 2008. Subsequently, the applicant filed a motion to reopen with the BIA, and the BIA dismissed the applicant's motion as untimely on May 29, 2009.



The applicant also had filed a petition with the U.S. Second Circuit Court of Appeals, which was dismissed on March 10, 2008.

The record further reflects the applicant has remained in the United States to date. Because the applicant's removal order renders her inadmissible under section 212(a)(9)(A)(i) of the Act, upon her departure from the United States, she will require permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. She may apply for conditional approval of *Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal* (Form I-212) under 8 C.F.R. § 212.2(j) before departing the United States, and the approval of the Form I-212 under these circumstances is conditioned upon the applicant's departure from the United States.

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 been met.

ORDER: The appeal is sustained.