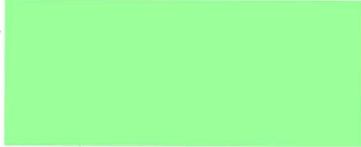




U.S. Citizenship  
and Immigration  
Services

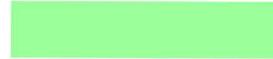
(b)(6)



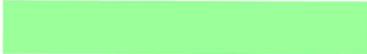
DATE:

SEP 06 2013

Office: ATLANTA, GA



IN RE:



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 (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,

Ron Rosenberg

Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Atlanta, Georgia, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and the son of lawful permanent resident parents. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and his parents 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.

On appeal, counsel contends, among other things, that the field office director failed to consider the hardship to the applicant's lawful permanent resident mother and father. Counsel submits additional evidence of hardship on appeal.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on November 12, 2002; copies of the birth certificates of the couple's two U.S. citizen children; an affidavit from the applicant; affidavits and statements from [REDACTED] an affidavit from the applicant's father, [REDACTED] an affidavit from the applicant's mother; copies of bank account statements, tax returns, and other financial documentation; a letter from a counselor; documents from the children's school; a letter of support; a copy of the U.S. Department of State's Human Rights Report for China and other background information; copies of photographs of the applicant and his family; 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 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 lawful permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant concedes, that he entered the United States in November 1996 using a photo-substituted passport. 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 father, [REDACTED] contends he has lived in the United States since 1989 when he was granted asylum. He states he is sixty-two years old and lives with his son, the applicant, whom [REDACTED] describes as his favorite son. [REDACTED] contends he works full-time as a cook at his take-out Chinese restaurant, and often has leg pain and other aches because his body is old. He also contends he has high blood pressure and high cholesterol. According to [REDACTED] his son has always been by his side, taking care of him. He states he cannot imagine his life without his son, sobbed when his son's waiver application was denied, and has not been able to eat or sleep. [REDACTED] [REDACTED] states that if his son returns to China, he would have to go with him. However, [REDACTED] states that he was granted asylum in the United States and that he could never go back to live in China because he worries he would be persecuted by the Chinese government if he returned. He further states that he fears his son would be jailed on account of [REDACTED] leaving China without permission and that his son would be sterilized due to China's one-child policy. He states he still remembers the terrible life he had in China and he is no longer familiar with living in China. He also states he would have to sell his restaurant and would risk not having any job in China considering his old age.

After a careful review of the entire record, the AAO finds that if the applicant's father, [REDACTED] decides to remain in the United States, he would suffer extreme hardship. The record shows that [REDACTED] is currently sixty-five years old and that he lives with his son and his son's family. The AAO recognizes [REDACTED] dependence on his son, particularly considering he lives with his son, his son's wife, and their two children. The AAO also recognizes the emotional hardship [REDACTED] would suffer if he were separated from his son, a difficult situation made even more complicated given his son would return to the country from which [REDACTED] received asylum. Furthermore, the AAO also finds that [REDACTED] fears concerning his son's return to China are not without basis as the applicant has submitted documents addressing country conditions in China, including documentation stating that forced sterilizations still occur in China. Considering the unique circumstances of this case cumulatively, the AAO finds that the hardship the applicant's father would experience if he remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if the applicant's father returned to China, where he was born, to be with his son, he would experience extreme hardship. As stated above, [REDACTED] obtained permanent resident status as an asylee from China. In addition, the AAO acknowledges that [REDACTED] has

lived in the United States for the past twenty-four years and that he owns his own restaurant business. Relocating to China would mean readjusting to living in China after having been granted asylum from China as well as losing his business and all of its benefits. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if he returned to China to be with his son is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.<sup>1</sup>

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit and periods of unauthorized presence and employment. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including his U.S. citizen wife, two U.S. citizen children, lawful permanent resident parents, and other relatives; the extreme hardship to the applicant's entire family if he were refused admission; a letter of support describing the applicant as a kind and gentle person, hard worker, and good husband; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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.

---

<sup>1</sup> Because the AAO finds that the applicant has established extreme hardship to his lawful permanent resident father, the AAO need not evaluate whether the applicant has also established extreme hardship to his wife and his mother, who are also qualifying relatives under the Act.