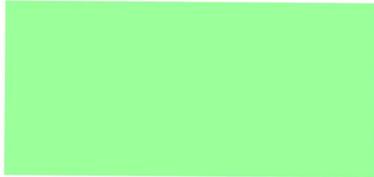


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U.S. Citizenship  
and Immigration  
Services



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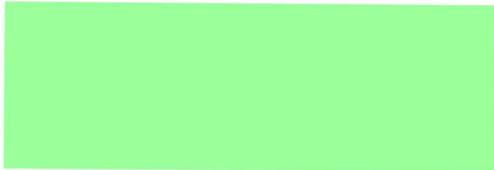
OFFICE: RENO

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. 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 Field Office Director, Reno, Nevada denied the waiver application and the matter 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 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 attempting to procure an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The Acting Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative upon denial of the applicant's waiver application and denied the application accordingly. *See Decision of the Acting Field Office Director*, dated June 19, 2014.

On appeal, counsel for the applicant asserts that the denial of the applicant's waiver application misapprehends well-settled case law, misinterprets facts and is not based on a substantive consideration of the record in its entirety.

In support of the waiver application and appeal, the applicant submitted identity documents, an affidavit, an affidavit from the applicant's spouse, legal documents, letters of support, employment letters for the applicant and his spouse, a psychological report, financial and loan documents 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...

The applicant, on or about February 26, 1995, boarded a flight to the United States by presenting a photo-substituted passport bearing the name of another individual and a counterfeit United States nonimmigrant visa. Upon questioning in secondary inspection, the applicant admitted that he received the passport and visa from a smuggler, in return for a promised payment of thirty five thousand dollars.

The applicant asserts that he does not believe that he committed fraud and willfully misrepresented a material fact to gain admission to the United States, as he was the unwitting victim of a smuggler's scheme. However, the applicant states that he knowingly presented a passport that did not contain his own photo or name in order to gain entry into the United States. Further, the applicant acknowledges that he sought these documents from a smuggler to seek employment in the United States.

The burden is on the applicant to demonstrate by a preponderance of the evidence that he did not willfully misrepresent his identity to gain entry into the United States. *See* Section 291 of the Act, 8 U.S.C. § 1361. The evidence is insufficient to find that the applicant did not willfully misrepresent a material fact to procure a benefit under the Act. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking an immigration benefit through fraud or 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 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 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.

The record reflects that the applicant is a 39-year-old native and citizen of China. The applicant's spouse is a 32-year-old native of China and citizen of the United States. The applicant is currently residing with his spouse and child in ██████████ Nevada.

The applicant's spouse asserts that she will suffer extreme emotional, physical and financial hardship upon separation from the applicant. The applicant's spouse contends that she and the applicant have never been apart since they met in 2001 and that their family relies upon him to make decisions about family affairs and participate in their routines. The applicant's spouse further contends that she will lose a husband while their daughter will lose a father. It is noted that

the applicant's child is not a qualifying relative in the context of this application so that any hardship she would face will be considered only insofar as it affects the applicant's spouse.

The applicant's spouse asserts that she experienced severe depression when the applicant was detained for immigration purposes, unable to function or provide proper care to their daughter. The record contains a psychological evaluation stating that the applicant's spouse, when raising their daughter on her own, felt lonely, uncomfortable and shaky, sometimes even fearing that she would be unable to care for herself and her daughter on her own. The applicant's spouse's emotions are acknowledged, but it is noted that the evaluation does not indicate that she was suffering from depression or unable to provide care in the absence of the applicant.

The psychological evaluation stated that the applicant's spouse suffers from adjustment disorder with mixed anxiety and depressed mood, which will intensify if separated from the applicant. The evaluation does not indicate any follow up or treatment for the applicant's spouse's diagnosis. The evaluation further states that the applicant's daughter is at high risk of developing separation anxiety disorder if separated from the applicant. There is no indication that the evaluator spoke with or met with the applicant's daughter at any time.

The applicant's spouse asserts that she depends upon the applicant to work full-time, but also to share the tasks that are a part of raising a daughter. The applicant's spouse contends that in the absence of the applicant, she would be forced to care for their daughter and earn money for her support on her own, an impossible and devastating task.

The record contains contradictory evidence concerning the applicant and the applicant's financial interests in [REDACTED]. The record contains a letter from [REDACTED] indicating that the applicant's spouse has been employed by the restaurant as a full-time employee since December 2007, at an hourly rate of ten dollars before tax. The record also contains a letter from the same restaurant indicating that the applicant has been employed as a full-time employee from the same date, at an hourly rate of eight dollars and twenty five cents before tax. However, the record also contains a letter from the applicant's spouse, dated September 15, 2011, stating that [REDACTED] is their family's restaurant business, primarily managed by the applicant. A letter from the applicant's child's school, dated September 13, 2011, identifies the applicant as a business owner. Yet, 2011 tax records for the applicant and his spouse state their professions as chef and waitress, accordingly. As such, the applicant's and his spouse's financial interests in [REDACTED] restaurant are unclear.

The record contains some financial documentation for the applicant and his spouse, but there is no financial accounting of household expenses, with supporting documentation. The record does contain documentation indicating that the applicant's spouse is the owner of their home. The most recent submitted balance for the applicant and his spouse's checking account also totals over two hundred thousand dollars. Counsel asserts that the majority of the funds in the couple's checking account are accounted for as a home loan from the applicant's spouse's aunt. The record contains a lending slip from the applicant's spouse's aunt, stating that she is lending the applicant and his spouse one hundred fifty thousand dollars. Counsel asserts that submitted checking account records serve to identify three transfers made from the applicant's spouse's aunt's bank account to

that of the applicant and his spouse. It is noted that the checking account records identify the originator of the funds as three different sources, none of which bear the name of the applicant's spouse's aunt. The record is insufficient to determine that the applicant's spouse would suffer financial hardship upon separation from the applicant. 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)).

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would suffer hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

The applicant's spouse asserts that she has resided in the United States for seventeen years and would have to leave behind her family members if she relocated to China to reside with the applicant. The applicant's spouse contends that her family is accustomed to the American way of life and would face a dramatic change upon relocation to China. It is noted that the applicant's spouse is a native of China so that she has years of familiarity with the language and culture of that country.

The applicant's spouse asserts that her parents, younger brother and other extended family members reside in the United States and that she maintains weekly contact with her immediate family. It is noted that the record contains letters of support submitted on behalf of the applicant, but aside from the submitted loan document, do not contain any letters from family members of the applicant's spouse. It is also noted that the loan document indicates that the applicant's spouse has a relationship with a family member in China who is willing to provide her with financial assistance, in the form of a home loan.

The applicant's spouse asserts that their daughter would have serious difficulties in adjusting to China's way of life, including its restrictions and environmental challenges. The applicant's spouse also asserts that their daughter does not read or write Chinese so that she would lose opportunities upon departing from the United States and receive discriminatory treatment due to her foreign status. The applicant's spouse further contends that she and her daughter may encounter difficulty in obtaining permission to reside in China on a long-term basis. As noted previously, the applicant's daughter is not a qualifying relative in the context of this application so that any hardship she would experience will be considered insofar as it affects the applicant's spouse.

The record reflects that the applicant's spouse sent her daughter to reside with her grandmother in China, from birth until she was two and a half years old. The psychological evaluation indicates that the applicant's spouse asserted that her daughter was often ill in China. The record does not contain supporting medical documentation and, as such, there is no medical explanation for any illnesses suffered by the applicant's daughter. The Department of State has not issued any travel warnings for U.S. citizens travelling to China and the record does not contain any background country conditions for China. As such, there is no supporting documentation to indicate that the

applicant's spouse and child would be unable to obtain permanent residence in China, as the spouse and daughter of a Chinese national, or face discriminatory treatment based upon their U.S. citizenship.

The applicant's spouse asserts that the applicant did not finish high school so that it would be impossible to secure jobs in China, as his skill is cooking Chinese food for Americans. The applicant's spouse contends that even if he could find a job, the pay would be lower and it would be difficult to find a comparable position in China. As noted, the applicant's spouse stated that the applicant worked as a restaurant manager and chef. Though the cuisine may differ, there is no indication that the applicant's spouse would be unable capitalize on his food background experience, including managerial, in China. It is also noted that the applicant has siblings residing in China and there is no information concerning the extent to which they could or would assist the applicant's family in relocation. Further, there is no indication that the applicant's spouse would be unable to secure employment in China.

There is insufficient evidence in the record to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if she relocated to China.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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.