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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: FEB 05 2014

Office: NEW YORK, NY

FILE: [Redacted]

IN RE:

Applicant: [Redacted]

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:

[Redacted]

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, New York, New York, 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 the daughter and spouse of lawful permanent residents and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her mother and husband in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends that the district director failed to understand the severity the applicant's mother's medical problems. Counsel submits additional documentation on appeal. In addition, counsel contends the applicant recently remarried her husband who is a lawful permanent resident. According to counsel, the applicant's husband will also suffer extreme hardship if the applicant's waiver application were denied, particularly considering he has gastric and liver cancer, and has serious mental and psychological issues.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on May 16, 2013; an affidavit from the applicant; a letter from Mr. [REDACTED]'s physician; a psychological evaluation for Mr. [REDACTED]; affidavits from the applicant's mother, Ms. [REDACTED]; letters from Ms. [REDACTED]'s physicians and copies of her medical records; a psychological evaluation for Ms. [REDACTED]; an affidavit from the applicant's brother and copies of his medical records; an affidavit from the applicant's sister; copies of tax records; decisions from an immigration judge and the Board of Immigration Appeals; a copy of the U.S. Department of State's report on conditions in China; copies of photographs of the applicant and her 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 lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and counsel does not contest, that the applicant entered the United States in April 1993 using a fraudulent 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 mother, Ms. [REDACTED] states that she is an elderly woman who depends on her daughter to help with her daily needs. According to Ms. [REDACTED] she has been diagnosed with Meniere Disease which is incurable and causes unpredictable attacks. During an attack, Ms. [REDACTED] states she feels dizzy to the extent she falls on chairs, ear pressure which leads to hearing loss, and blurry vision or eye jerking that disable her. She states she also experiences mental disturbance, feeling anxious and fearful that she is dying. In addition to Meniere Disease, Ms. [REDACTED] claims she also suffers from other medical problems, including but not limited to: vertigo, Chronic Fatigue Syndrome, rhinitis, proteinuria, lumbago, osteoarthritis, hypertension, and atrial fibrillation with arrhythmia. She contends she has a home attendant who cares for her from 10:00 am until 3:00 pm every day and that her daughter cares for her every day after the home attendant leaves. According to Ms. [REDACTED] although she has two other children, her son has his own health problems, including diabetes and cholesteremia, had surgery for a stomach tumor, and cannot help care for her. She states her other daughter is in tremendous pain and is very depressed having recently lost her husband. Ms. [REDACTED] asserts she cannot lead a normal life without her daughter, the applicant. In addition, Ms. [REDACTED] states that all of her relatives now live in the United States and that she is too old to return to China where she no longer has any relatives or friends. She contends she would not be able to survive without the proper medical care she has been receiving from her physicians in the United States.

After a careful review of the entire record, the AAO finds that if the applicant's mother decides to remain in the United States without her daughter, she would suffer extreme hardship. The record shows that Ms. [REDACTED] is currently ninety years old. Letters from her physicians corroborate her contentions that she has numerous, serious medical problems, including: chronic renal disease, hypertension, gout, coronary heart disease, osteoarthritis, osteoporosis, atrial fibrillation with arrhythmia, and memory problems. The record shows she has been prescribed twenty-three different medications and according to her physician, she requires the assistance of family members. The record also shows Ms. [REDACTED] is authorized for five hours of personal care services, seven days per week. In addition, a psychological evaluation in the record states that Ms. [REDACTED] has poor vision and hearing to the extent she cannot identify who is standing in front of her, frequently falls, gets confused, and only sleeps approximately two hours per night. The psychologist diagnosed Ms. [REDACTED] with Major Depressive Disorder and Mood Disorder. Moreover, the record contains letters from the applicant's brother and sister, both of whom contend that the applicant spends most of her time taking care of their mother and that the applicant is irreplaceable in terms of caring for their mother.

The record further indicates that Ms. [REDACTED] is a widow. The record therefore establishes Ms. [REDACTED] strong attachment to, and reliance on, her daughter, the applicant. Considering these unique circumstances cumulatively, the record establishes that the hardship the applicant's mother would experience if she remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if the applicant's mother returned to China to be with her daughter, she would experience extreme hardship. As stated above, the record shows the applicant's mother has been diagnosed with numerous, serious medical problems for which she requires significant assistance on a daily basis. Relocating to China would disrupt the continuity of her health care. In addition, the record indicates that the applicant's mother has been a lawful permanent resident since 1995. Mr. [REDACTED] would need to readjust to living in China after having lived in the United States for the past eighteen years, a difficult situation made more complicated considering her advanced age and medical problems. Furthermore, the applicant has submitted documentation addressing country conditions in China and the U.S. Department of State recognizes that the standards of medical care in China are not equivalent to those in the United States. *U.S. Department of State, Country Specific Information, People's Republic of China*, dated December 17, 2013. Considering all of these factors cumulatively, the record establishes that the hardship Ms. [REDACTED] would experience if she returned to China to be with her daughter is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.¹

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. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her mother, husband, two children, and two siblings; the extreme hardship to the applicant's entire family if she were refused admission; 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.

¹ Because the applicant has established extreme hardship to her U.S. citizen mother, the AAO need not determine whether the applicant also established extreme hardship to her lawful permanent resident husband, a second qualifying relative under the Act.