



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 12 2014

OFFICE: SAN FRANCISCO

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, San Francisco, California 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 procuring a visa and admission to the United States 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.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated May 16, 2013.

On appeal, counsel for the applicant asserts that the applicant is innocent of any fraud or misrepresentation. Counsel contends that another individual filled out the applicant's nonimmigrant visa application and the applicant was unaware that the application contained misrepresentations concerning his criminal history.

In support of the waiver application and appeal, the applicant submitted declarations, declarations from his spouse, documents concerning his criminal history, identity documents, medical documentation concerning his spouse, and financial documentation. 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 record reflects that a DS-156, Nonimmigrant Visa Application, was submitted by the applicant on August 25, 2008. In response to the application question asking whether the applicant had ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty or other similar legal action, the applicant's DS-156 indicates, "No." The applicant subsequently submitted a Form I-485, Application to Register Permanent Residence or Adjust Status, received February 12, 2010, in which he again indicated that he had not been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations. The record reflects that in an interview, on July 28, 2011, the applicant asserted that he had actually been incarcerated in China for seven years and eight months following a conviction for Loan Fraud and Tax Evasion.¹

Counsel for the applicant asserts that the applicant is innocent of any misrepresentation, as he did not know English at the time of his DS-156 filing, and was unaware that the individual who filled out his application misrepresented his criminal history. As noted, the applicant made a timely retraction of his Form I-485 criminal history misrepresentation during his adjustment interview on July 28, 2011. The applicant subsequently submitted a sworn affidavit on the same date asserting that he failed to mention his arrest and imprisonment in China in his immigration applications, in part because he never committed those crimes and was falsely charged by the government. The applicant's assertion of his innocence as a justification for failure to disclose his criminal history does not support his contention that the misrepresentation on his Form DS-156 occurred without his knowledge. Further, the applicant's Form DS-156 bears his own signature underneath a statement certifying that he read and understood all the questions in the application and that the answers furnished are true and correct to the best of his knowledge and belief.

The burden is on the applicant to demonstrate by a preponderance of the evidence that he was unaware of the false representations in his application. *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 nonimmigrant visa, and the applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visa 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).

¹ The record indicates the applicant's conviction for loan fraud was vacated in 2008, but his conviction for tax evasion was sustained.

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 45-year-old native and citizen of China. The applicant's spouse is a 41-year-old native of China and citizen of the United States. The applicant is currently residing with his spouse in San Francisco, California.

The applicant's spouse asserts that she married the applicant on January 27, 2010 and that she feels bound to the applicant emotionally, physically, socially, and financially. The applicant's spouse asserts that she and the applicant want their own children so that it is necessary for them to remain together in the United States, where they can receive proper medical care for pregnancy and delivery. The applicant's spouse contends that during a surgery consultation for her uterine fibroids, she was advised that she needed to conceive before the age of 41 or pregnancy would be very difficult. The applicant's spouse asserts that she was 39 at the time and underwent three cycles of intra uterine insemination. The record indicates that the intra uterine insemination took place on February, March, and April 2012. The applicant's spouse also asserts that she returned to China twice, once in 2011 and once in 2012 for traditional Chinese fertility treatments. The record does not contain an explanation from her treating physician of her medical condition and the treatments she is undergoing or any updated supporting documentation concerning the applicant's spouse's fertility treatment. Without an explanation in plain language from her physician, the AAO is not in a position to reach conclusions concerning the nature of a medical condition and any treatment required.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would experience 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 hardship beyond the common results of removal upon separation from the applicant.

The applicant's spouse asserts that she cannot relocate to China because she has strong ties in the United States including her social networks and family ties. The applicant's spouse contends that she and her parents and three older brothers all live in the same city to maintain their relationships. The applicant's spouse further contends that as her parents age and acquire medical ailments, they will rely upon her support. It is noted that the record does not contain letters of support from the applicant's family members. The record also does not contain any medical documentation indicating any physical ailments suffered by the applicant's parents. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

The applicant's spouse asserts that she immigrated to the United States at the age of 14 and her financial situation would be in jeopardy if she relocated to China with the applicant. The applicant's spouse contends that she has been a loan agent for 18 years and has been self-employed as a senior loan consultant with [REDACTED], with established local clientele. The applicant's spouse asserts that she has also acquired rental properties in the United States and would have few employment prospects upon return to China. The record contains financial documentation for the applicant's spouse concerning her income and rental properties. The record does not contain updated financial documentation for the applicant's spouse, but contains an employment letter from January 6, 2009 stating that the applicant was receiving a monthly salary of \$10,300 as president of a company, employment that spanned from August 1996 until August 2008. There is no indication that the applicant, with his over a decade of executive experience, would be unable to secure employment in China upon return. There is also no indication that the applicant's spouse would be unable to maintain ownership of her rental properties in the United States through a property manager, upon relocation. It is acknowledged that the applicant's spouse would leave behind business contacts upon relocation to China, but it is also noted that applicant's spouse possesses years of experience in her field, and there is no indication that she would be unable to obtain a position of employment in China.

The record indicates that the applicant's father is residing in China and there is no information on the extent to which the applicant's relatives could or would provide assistance to him and his spouse upon return. It is further noted that the applicant's spouse is a native of China who indicates that she returned to China in 2011 and 2012 to pursue traditional fertility treatments. 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. The AAO therefore finds 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.