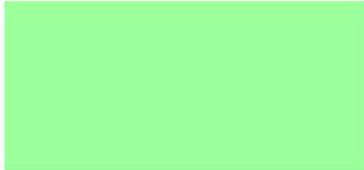


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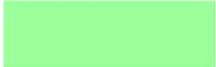


U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



DATE: JUN 18 2014

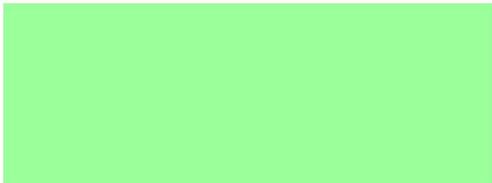
Office: LAS VEGAS

File: 

IN RE: Applicant: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 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,


A small handwritten mark, possibly initials, is visible to the left of the signature.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Las Vegas, Nevada, 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 a citizen of China who was found to be inadmissible to the United States under 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 or attempting to procure an immigration benefit by fraud or misrepresentation. The applicant contests the inadmissibility finding, but alternatively seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her husband.

The field office director found that the applicant failed to establish that the bar to her admission would result in extreme hardship to her U.S. citizen husband and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, December 20, 2013.

On appeal, counsel for the applicant contends that USCIS erred in finding the applicant inadmissible and in determining that her qualifying relative would not experience extreme hardship as a result of the applicant's inadmissibility if she is unable to remain in the United States. In support of the appeal, the applicant submits a brief and exhibits, including: hardship statements, supportive statements, and financial statements; identity documents; a psychological evaluation and medical records; country condition information; and photographs. The record also includes, but is not limited to: the waiver application and a brief in support the waiver application (with many of the same exhibits that are resubmitted on appeal); copies of other applications and petitions, such as a spousal immigrant petition and an asylum application, and related documentation; and copies of a passport bearing an F1 student visa and documentation relating to the student visa. The entire record was reviewed and considered in rendering this decision.

Counsel asserts that the inadmissibility finding was erroneous because the applicant was granted admission using an F1 visa issued by a Beijing consular officer upon examining the applicant and documentation regarding her intended course of study. The record reflects that on February 8, 2010 the applicant was issued a one-year, multiple entry, F1 nonimmigrant visa (NIV) annotated to reflect [REDACTED] as the education provider. The applicant was admitted at the Las Vegas port of entry on February 19, 2010 and was due to report to the school no later than February 28, 2010, but never traveled to the city or state of the school or initiated studies there. Rather, according to the record, she remained in Las Vegas, retained counsel and filed for asylum on March 9, 2010, began working there that same month, and started English language studies at a [REDACTED] in May 2010.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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)(1) of the Act provides:

The [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 [...].

In processing the applicant's asylum application, USCIS determined after an April 19, 2010 interview that the applicant's testimony was not credible, due to lack of detail and internal inconsistencies, concluded she was ineligible for asylum, and on May 3, 2010 referred her to immigration court for removal proceedings. As a result of the applicant's marriage to a U.S. citizen, the Immigration Judge terminated proceedings without prejudice on March 25, 2013 to permit the applicant to pursue her pending adjustment of status application, which USCIS denied on December 20, 2013 along with her waiver application.

Counsel claims that the applicant is not inadmissible, asserts she never misrepresented her intent to study in the United States, and states that it was only changed circumstances regarding her parents' willingness to finance her education that caused her not to register or take classes at the university named on her visa. Further, counsel asserts that, although the applicant and her parents had a disagreement before her departure from China in which they threatened to withhold funding, she believed they would relent and fund her education once she arrived here. We note that Section 291 of the Act places upon the applicant the burden to establish entitlement to the nonimmigrant status claimed.

The record reflects that the university which issued the Form I-20 (eligibility for student status document) on which the visa was based is located in [REDACTED] Rhode Island, yet there is no evidence the applicant ever attempted to register for classes there or even intended to travel to the school. Nothing on record explains why the applicant stopped at or remained in Las Vegas. There is no indication she ever had an onward ticket to the [REDACTED] campus to which she had been accepted, and no showing she ever contacted the school to explain her failure to appear or attempted to transfer to another school. Further, there is no evidence to support the applicant's claim about a disagreement with her parents causing them to withdraw their financial backing. The record reflects that the applicant arrived in Las Vegas with \$10,000, hired counsel near Los Angeles about two weeks later to file her asylum application, and started working at a Las Vegas casino in March 2010. Absent objective evidence the applicant ever intended to attend the classes for which she received an F1 visa, we have no basis to disturb the conclusion that she misrepresented her immigrant intent first to the consular officer who issued her visa, then to the immigration inspector who admitted her, and is thus inadmissible. She therefore requires a waiver of this inadmissibility in order to remain her with her husband.

A waiver of inadmissibility under section 212(i)(1) 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 U.S. citizen 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-Moralez*, 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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

speaking the language of the country to which they would relocate). For example, although 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that her husband would suffer extreme hardship by relocating to China, counsel claims that the qualifying relative's U.S. ties include being the eldest of three siblings born and raised here, presence of his parents and extended family, and ownership interest in an HVAC business and a poultry supply business. Documentation establishes his family contacts, extensive community involvement, and active management of his businesses. He states he would have difficulty adjusting to life in China due to lack of language fluency and contacts there, lack of employment prospects, and lack of medical insurance to cover an existing medical condition. The record supports these claims. Medical records establish he underwent a surgical procedure 10 years ago for hyperhidrosis, a condition involving uncontrollable sweating, and now suffers from a related condition that causes him both embarrassment and physical discomfort. The evidence supports his claim that, whereas the dry, desert climate of Las Vegas minimizes the impact of his symptoms, environmental factors (e.g., pollution) common to developed areas of China and typical local cuisine are potential triggers for his condition. We conclude that these circumstances demonstrate that moving to China would entail hardship that rises to the level of extreme.

Regarding the claim of emotional hardship due to separation, the record reflects that the applicant and her husband married in 2012, about two years after being introduced. His parents, siblings, and friends confirm that the applicant and her husband are devoted to each other. There is evidence that prior to meeting his future wife, the qualifying relative focused all his energy on work, but that their relationship brought stability and happiness to his life. In late 2013, according to the record, the qualifying relative's primary care doctor referred him to a psychologist for evaluation after noting rapid weight loss he attributed to stress. A February 10, 2014 psychological evaluation and psychotherapy treatment report diagnoses him with anxiety and depression characterized by insomnia, weight loss, and migraines dating to 2013 and stemming from worry about his wife's immigration status, and states a prognosis of likely deterioration of his mental health if the applicant departs the country. The psychologist notes that stress aggravates hyperhidrosis. After four sessions, he recommends ongoing psychotherapy, along with medication for anxiety and depression, to supplement the prescription sleep aid and OTC headache medication previously prescribed.

Regarding financial hardship, the record shows that both spouses work and contribute to household maintenance. Although the applicant's husband appears the primary wage earner, their relative incomes are uncertain due to his earnings also involving returns on business investments. The record shows that the applicant has worked since shortly after her arrival, and had nearly \$28,000 in

gross wages for 2013, but that her husband was unable to fulfill the financial requirements to have his Affidavit of Support (Form I-864) for the applicant's immigrant petition approved. Although the record indicates the qualifying relative works long hours as an owner of two businesses, his psychologist notes that he fears having to work even more to be able to maintain his current household and be able to support his wife overseas. The record reflects that she arrived here at the age of 21 without evidence of employment history in China. The record thus shows the applicant's absence will impair her husband's economic situation, while indicating her presence will lessen his financial burden. Her departure will both remove his wife's financial contribution and add her separate living costs as a financial burden. The evidence suggests that visiting his wife overseas will be difficult due to his limited financial resources and the demands of being a small business owner.

For all these reasons, the cumulative effect of the emotional and financial hardships the applicant's husband will experience due to his wife's inadmissibility rises to the level of extreme. We conclude based on the evidence provided that, were her husband to remain in the United States without the applicant due to her inadmissibility, he would suffer extreme hardship that is beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957):

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996).

We must then “balance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant’s husband will face if the applicant returns to China, regardless of whether he joins the applicant there or remains here; supportive statements; the applicant’s lack of any criminal record; her history of gainful employment and community involvement; and statements regarding her good character. The unfavorable factors in this matter concern the applicant’s failure to fulfill the terms of her admission as an F1 student and attempt to circumvent U.S. immigration procedures.

Although the applicant’s violations of the immigration laws are serious, the positive factors in this case outweigh the negative factors. Given the equities involved, we find 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.