

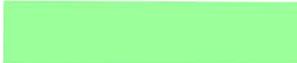


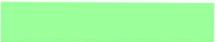
U.S. Citizenship
and Immigration
Services

(b)(6)



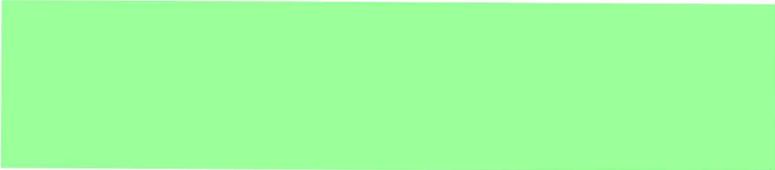
Date: **MAR 25 2014** Office: NEBRASKA SERVICE CENTER



IN RE: Applicant: 

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 waiver application was denied by the Director, Nebraska Service Center and was appealed to the Administrative Appeals Office (AAO), which summarily dismissed the appeal. The matter is now before the AAO on motion. The motion to reopen will be granted, and the prior AAO decision to dismiss the appeal is affirmed.

The record reflects that the applicant, a native and citizen of China, 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 seeking to procure admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with her U.S. citizen mother.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Service Center Director*, March 15, 2013.

On appeal, the applicant's attorney stated that a brief and additional evidence would be filed within 30 days, showing that the applicant's qualifying relative would experience extreme hardship due to the applicant's ineligibility to immigrate, and that the waiver should be granted as a matter of discretion. *Form I-290B, Notice of Appeal or Motion*, dated April 16, 2013. However, the AAO received no brief or additional documents from the applicant's attorney. The AAO summarily dismissed the appeal. *Decision of the AAO*, dated September 25, 2013.

On motion, counsel contends that the AAO did not review "material new facts and supporting documents" on appeal. As noted in the AAO's decision dismissing the appeal, the AAO did not receive supporting documentation with the applicant's appeal or at any time before September 25, 2013, the date of the AAO's initial decision. Counsel now submits a brief and additional evidence of hardship to the applicant's mother if the applicant's waiver application is not approved.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. As counsel has submitted new documentary evidence to the applicant's claim, a motion to reopen will be granted.

The record contains, but is not limited to, the following documentation: a brief by the applicant's attorney, statements from the applicant and her mother, medical and psychological documentation for the applicant's mother, financial documentation, and a 2013 newspaper article about rural pensions in China. The entire record was reviewed and considered in rendering a decision on the motion.

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.

The record reflects that the applicant was interviewed at the U.S. Consulate in Guangzhou, China, on September 12, 2007, as the beneficiary of a Form I-129F, Petition for Alien Fiancé(e) (Form I-129F). The U.S. consular official determined that the applicant and the petitioner failed to establish that they had a bona fide relationship and concluded that they were involved in a fraudulent relationship for immigration purposes. The Form I-129F was administratively closed on June 22, 2009.

The applicant was again interviewed at the U.S. Consulate in Guangzhou, China, on April 17, 2012 as the beneficiary of a Form I-130, Petition for Alien Relative, filed by her U.S. citizen mother. The U.S. consular officer determined that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for seeking to procure admission to the United States through fraud or misrepresentation, referring to the previous Form I-129F filed on her behalf. The applicant does not appear to contest this finding of inadmissibility in her motion, though the record includes earlier statements asserting that she was an innocent victim of the Form I-129F petitioner.

Section 291 of the Act, 8 U.S.C. § 1361, states that whenever any person makes an application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible under any provision of this Act. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. Section 291 of the Act; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). In this particular case, the applicant has failed to meet her burden of showing that she is not inadmissible for willfully misrepresenting a material fact, the nature of her relationship with her purported fiancé, in her application for the fiancée visa. The AAO concurs with the Director's finding that the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Act.

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

The Attorney General [now the Secretary of Homeland Security (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.

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. The applicant's U.S. citizen mother 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 (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.

Counsel contends that the applicant's mother will suffer financial hardship if the applicant's waiver application is not approved and she remains in the United States without the applicant. To support this contention, counsel submits evidence that in 2012, the applicant's mother earned an adjusted gross income of \$7,200. Previous copies of federal income tax returns from 2009 to 2011 indicate that the applicant's qualifying relative has maintained a similar level of income for the past several years. The applicant's mother states that she is employed at a restaurant, that the restaurant owner provides her with free room and board, and that she receives free medical care in the United States. The applicant's mother also states that she supports the applicant; however, the applicant provides no details or evidence to corroborate this claim. The record reflects that the applicant's mother has resided in the United States for ten years and became a U.S. citizen in 2010. Despite evidence of her low income, it appears that the applicant's mother has supported herself in the United States without family assistance. No evidence in the record permits concluding that she is unable to meet her financial obligations in the applicant's absence.

Counsel further contends that the applicant's mother will suffer medical hardship due to her separation from the applicant. The record includes documentation showing that the applicant's mother is taking medications for diabetes and hypertension. A doctor writes that the applicant's mother cannot tolerate flying long distances and thus is unable to visit the applicant in China. The applicant's mother also states that she often experiences myasthenia of the limbs and cannot take care of herself; however, no other evidence in the record addresses this assertion. Moreover, the applicant's mother states that all of her siblings reside in the United States, but she provides no evidence regarding her current relationships to them or the support that they may provide for her.

Counsel also contends that the applicant's mother is suffering psychological hardship due to her separation from the applicant. A psychologist at the clinic where the applicant's mother receives medical treatment indicates that she has symptoms consistent with major depressive disorder. However, the psychologist's statement lacks details concerning the recommended treatment for the applicant's mother and her response to any counseling or medical treatments she may have received. The applicant's mother states that she has regularly experienced insomnia, nightmares, and a loss of appetite. She also states that she needs treatment for her depression, but there is no indication in the record that she has sought such treatment. Although the AAO is sympathetic to the family's circumstances and recognizes that the input of any health professional is respected and valuable, the record does not show that the applicant's mother's hardship and the symptoms she has experienced are extreme, atypical, or unique compared to others separated from a child. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant. However, the record lacks sufficient evidence demonstrating that the psychological, financial, and other impacts of separation on the applicant's mother, considered in the aggregate, are

above and beyond the hardships normally experienced, such that the applicant's mother would experience extreme hardship if the applicant's waiver application is denied.

Counsel also contends that the applicant's mother cannot relocate to China to be with the applicant due to her age and illnesses and states that if the applicant's mother relocates to China, she will not be able to live on her own. The applicant's mother states that, should she move to China, she will lose the medical benefits available to her in the United States, and because she has no social or medical benefits in China, she would not be able to afford medical fees there. She also would not be able to find a job due to her health and age. The applicant's mother also states that all her family resides in the United States.

Counsel submits a 2013 article from the [REDACTED] as support for the assertion that most Chinese women retire at age 50. The article, however, concerns the author's perception of China's ability to sustain promised retirement benefits under an enacted program of rural pensions, rather than specific facts related to older persons residing in China. Counsel does not explain how this program specifically would affect the applicant's qualifying relative.

The applicant's mother was born in China and thus is familiar with the language, customs, and culture of that country. Moreover, she resided in China for most of her life. Although the applicant's mother claims she financially supports the applicant and her grandson, no evidence in the record corroborates her claim or shows that the applicant would be unable to care for her mother if she were to relocate to China.

Considering the evidence of hardship in the record in the aggregate, the AAO finds that the applicant has not established that her mother would suffer extreme hardship if she were to relocate to China in order to reside with her. The evidence of hardship, considered in its cumulative effect, does not establish that the applicant's mother would experience extreme hardship were she to move to China to be with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate but expected disruptions and difficulties arising whenever a child is refused admission to the United States. Although the AAO is not insensitive to the applicant's mother's situation, the record does not establish that the hardship she would face rises to the level of extreme as contemplated by statute and case law.

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 motion is granted, and the prior AAO decision to dismiss the appeal is affirmed.