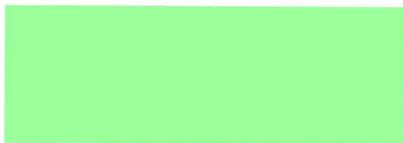


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Avenue, NW, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: MAY 29 2014

Office: COLUMBUS, OH

FILE:



IN RE:

Applicant:



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:



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 Field Office Director, Columbus, Ohio, 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 married to a U.S. citizen and is the son of lawful permanent residents. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife, children, and parents in the United States.

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

On appeal, counsel contends the applicant is not inadmissible because he did not make a willful misrepresentation and, even if he did, he made a timely retraction of any misrepresentation. Alternatively, counsel contends the applicant established extreme hardship to his wife, particularly considering she suffers from extreme depression and anxiety.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on June 18, 2007; psychological evaluations; copies of prescription medications; a letter from the applicant's mother's physician; copies of medical records; a letter from Ms. [REDACTED]'s uncle; a letter from Ms. [REDACTED]'s cousin; a copy of the U.S. Department of State's Country Specific Information for China and articles addressing mental health care in China; copies of tax returns, bills, and other financial documents; pictures of the applicant and his 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 that on May 7, 1997, the applicant attempted to enter the United States using a passport that did not belong to him. The applicant was sent to secondary inspection where the applicant admitted that it was not his passport. Counsel contends the applicant simply handed the border patrol agents the passport he had been given by the travel agency he hired in China. According to counsel, the applicant trusted the travel agency and was as surprised as the border patrol agents to learn that the passport was illegitimate. Counsel further contends that as soon as the applicant realized the passport did not contain his true name, he immediately told the border patrol agents his true name, thus making a timely retraction of any misrepresentation.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 (“Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . .”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

A timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for section 212(a)(6)(C)(i) ineligibility. 9 FAM 40.63 N4.6. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.* The Board of Immigration Appeals has found that “recantation must be voluntary and without delay.” *Matter of Namio*, 14 I. & N. Dec. 412, 414 (BIA 1973).

A careful review of the record establishes that the applicant has not met his burden of proving he is admissible to the United States. The record contains a copy of the passport the applicant used to enter the United States. The passport lists the name of “[REDACTED]” a date of birth of [REDACTED] 1975, and place of birth as Shandong. According to the applicant’s May 7, 1997 sworn statement, the applicant conceded the passport did not contain his true name, date of birth, or place of birth. The sworn statement continues:

Q. Was this passport legally issued to you by a proper passport issuing office of your country?

A. No, I got it in Beijing. Someone told me that if I wanted to leave the country they could help me. They said that I can pay within three years \$15,000 USD, so I met them at the [REDACTED] in Beijing and they gave me the passport. I saw them at the airport and I told them I was afraid. They told me that I would have to pay them \$5,000 since they already made the arrangements. . . .

Therefore, contrary to counsel’s contention, the record shows the applicant knew that the passport was not legally issued to him. There is no evidence that the applicant was as surprised as the border patrol

agents to learn that the passport, which contained the wrong name, birth date, and place of birth, was fraudulent as counsel contends. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, the applicant did not make a timely retraction of his misrepresentation. As counsel concedes, the applicant presented his fraudulent passport to immigration officials and did not reveal his true identity until after he was sent to secondary inspection. This case is therefore distinguished from cases in which aliens used fraudulent documents only *en route* and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. See, e.g., *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); cf. *Matter of Shirdel*, 18 I&N 33 (BIA 1984). Therefore, the applicant did not make a timely retraction and 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 wife, Ms. [REDACTED] states that she and her husband have two children together who are seven and four years old and have behavioral problems. She states that they are a very close family and that if her husband's waiver application was denied, she would be unable to manage the family restaurant and also take care of their children, as well as her elderly parents-in-law, by herself. She claims she has seen a psychiatrist due to psychological problems and feels like a failure as a mother and inadequate as a wife. She states that her depression has become worse when thinking about her husband's immigration problem and that it causes her physical pains and stomach aches. She also contends she fears that her husband would be detained and placed in a labor re-education camp upon returning to China. Furthermore, Ms. [REDACTED] contends she cannot return to China, where she was born. She states she would be unable to receive proper mental health treatment there and because she and her children do not have household registration in China, she would be unable to find employment and her children would be unable to attend public schools in China.

After a careful review of the evidence, the record establishes that if the applicant's wife, Ms. [REDACTED] remains in the United States without her husband, she would suffer extreme hardship. The record shows that Ms. [REDACTED] was recently admitted to a hospital as a psychiatric inpatient after a suicide attempt. Documentation from the hospital shows that her husband reported she had attempted suicide two weeks prior to her hospitalization as well. Hospital records show Ms. [REDACTED] was diagnosed with Major Depression, recurrent and severe, and that she remained hospitalized for three days. In addition, the record shows Ms. [REDACTED] has seen a psychologist about her mental health issues and has been prescribed an anti-depressant. Furthermore, the record contains evidence corroborating Ms. [REDACTED]'s contention that she and her husband own a restaurant and copies of the children's birth certificates show they are currently five and eight years old. The record therefore establishes that if Ms. [REDACTED] remains in the United States without her husband, she would be a single parent to two young children while running a business and dealing with severe and on-going mental health problems. Moreover, the record contains documentation showing that Ms. [REDACTED] is an asylee from China and the record therefore shows that her fears regarding her husband's return to the country from which she was granted asylum is not unfounded. Considering the unique circumstances in this matter cumulatively,

the record establishes that the hardship the applicant's wife would experience if she remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The record also establishes that if Ms. [REDACTED] returned to China to avoid the hardship of separation, she would suffer extreme hardship. As stated above, Ms. [REDACTED] suffers from severe and recurrent depression. The applicant has submitted articles addressing China's lack of mental health services and the AAO takes administrative notice that the U.S. Department of State advises that mental health facilities and medications are not widely available in China. *U.S. Department of State, Country Specific Information, China*, dated December 17, 2013. In addition, the record shows Ms. [REDACTED] entered the United States when she was a minor. Therefore, Ms. [REDACTED]'s return to China would mean readjusting to living in China after having lived her entire adult life in the United States. Moreover, returning to China would entail returning to the country from which Ms. [REDACTED] was granted asylum and would mean losing the family business. Considering these unique factors cumulatively, the record establishes that the hardship Ms. [REDACTED] would experience if she relocated to China to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.<sup>1</sup>

The record also establishes 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 factor in the present case includes 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 his U.S. citizen wife, two U.S. citizen children, and his lawful permanent resident parents; the extreme hardship to the applicant's entire family if he were refused admission; and the applicant's lack of any arrests or criminal convictions.

Although the applicant's immigration violation is serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.

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<sup>1</sup> Because the applicant has established extreme hardship to his wife, the applicant does not need to establish extreme hardship to his parents, who are also qualifying relatives under the Act.