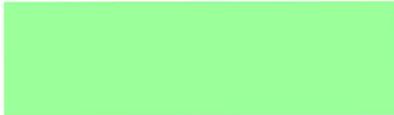




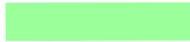
U.S. Citizenship  
and Immigration  
Services

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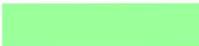


Date: OCT 07 2014

Office: WASHINGTON FIELD OFFICE

FILE: 

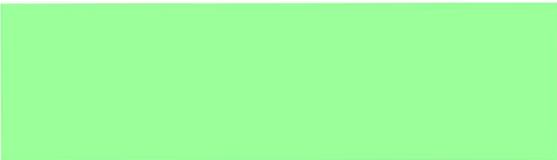
IN RE:

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

Thank you,

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Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Washington Field Office Director denied the waiver application and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before us on motion. The motion is granted, the prior AAO decision is withdrawn, and the underlying appeal is sustained.

The applicant is a native and 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 admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated April 17, 2013.

On appeal we found that the record had established that the applicant's U.S. citizen spouse would experience extreme hardship if he were to relocate to China to reside with the applicant, but found that the record failed to establish that the applicant's spouse would suffer extreme hardship if he remained in the United States while the applicant resided abroad. The appeal was subsequently dismissed. *See Decision of the AAO* dated March 24, 2014.

On motion counsel for the applicant contends that new facts supported by affidavits and documentary evidence establish the applicant's eligibility for the underlying application. With the motion counsel submits updated statements from the applicant, her spouse, the spouse's medical doctor, and the spouse's psychiatrist; updated financial and employment documentation; letters of support from the spouse's employees; and copies of previously-submitted evidence including school and medical records and letters of support from family and the community. The entire record was reviewed and considered in rendering a decision on the appeal.

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 that:

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 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 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 the applicant entered the United States in 1998 using a passport and visa with the name and date of birth of another person, for which the field office director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation. On appeal counsel contested the finding, asserting that the applicant had not intentionally sought to conceal a material fact at the time of her entry because an adult provided the passports for the minors to immigration inspectors, that the applicant was never questioned about the passport or her name, and that the I-94 card was completed for her by an adult. We determined that in using a passport with another identity and presenting herself as a student traveling to the United States, both of which the applicant had stated she knew were false, she had in fact procured admission through willful misrepresentation of a material fact. On motion counsel has not contested this finding.

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 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 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. *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)); 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.

As noted above, on appeal we found that the record establishes that the applicant’s spouse would experience extreme hardship if he were to relocate to China to reside with the applicant. As such this criterion will not be addressed on motion.

In the same decision we determined that the record failed to establish that the applicant’s spouse would experience extreme hardship due to separation from the applicant. We noted, in part, that a 2013 psychiatric evaluation of the applicant’s spouse stated that he had been distressed since 2007, but a 2012 assessment stated that there was no evidence of depression in the spouse’s past and that he had been under stress for two years over the applicant’s immigration situation. We noted that the evaluations described the spouse as depressed and worrying about the applicant, their children, his father, and his restaurant, and that the 2013 evaluation indicated that the applicant’s spouse was prescribed medication for anxiety and depression, but we found that the reports did not establish that the hardships the applicant’s spouse would experience are beyond the hardships normally occurring when a spouse is found to be inadmissible.

In our previous decision we noted that the applicant’s spouse stated his health problems were aggravated by his job and that he needs the applicant’s help to run the restaurant and to assist with

his medication and his medical appointments. We found that the medical documentation submitted to the record did not contain a clear explanation from the treating physician of the spouse's current condition such that we were in a position to reach conclusions concerning the severity of the spouse's medical condition or the treatment needed.

We noted that the applicant's spouse stated that it would be hard to continue operating his business without the applicant so the business would decline, that he supports a parent and provides child support for his son from his previous marriage, and that he needs the applicant's income to help with expenses. We found that the tax documents and a statement from a manager submitted to the record lacked detail and supporting documentation of the business operation and that the record did not demonstrate that the applicant's presence is necessary for the operation of the business or that her absence would adversely affect the business and result in a reduction of income to her spouse. We found that other than a mortgage statement, no documentation had been submitted establishing the spouse's current expenses, assets, and liabilities or his overall financial situation to establish that without the applicant's physical presence in the United States, the applicant's spouse will experience financial hardship.

On motion counsel asserts that the first psychiatric evaluation failed to mention the spouse's history of mental distress because the spouse was very guarded, but disclosed more as his relationship with the psychiatrist progressed. Counsel states that the applicant has now provided financial documents, including the restaurant lease for 2012 to 2017 listing the applicant and her spouse as the owners, business insurance confirmation, and letters from the company accountant verifying ownership and incomes. Counsel asserts that the applicant's job exceeds a typical cashier because as a wife no person is more trusted with the financial well-being of the restaurant, and because she performs many duties, including lifting, due to her spouse's medical problems. Counsel states that a personal financial statement lists the income, expenditures, assets, and liabilities of the applicant and her spouse. Counsel asserts that without the applicant's income her spouse would be unable to support himself, the applicant, and their children, and that the spouse would be unable to support two households if the applicant were in China.

In her updated statement the applicant asserts that an earlier psychiatric evaluation did not mention her spouse's long history with depression because in the Chinese community psychiatry is looked down upon and that the community has seen many abuses at mental health facilities, thus it took her spouse time to open up to a psychiatrist. The applicant states that her spouse grew up in a household ruined by his mother's gambling and abuse, so he needs comfort and stability. She states that her spouse has several stress factors, including her, the restaurant, and maintaining relations with his son from his first marriage, and that she is important to his mental health because she is supportive of him seeking psychiatric assistance. The applicant further states that she and her spouse work seven days a week and she lists her duties as taking orders, explaining orders to chefs, bookkeeping, providing financial documentation, lifting supplies over 10 pounds, and cooking. She asserts that her spouse cannot run the restaurant without her and that he needs both their incomes to pay their bills. The applicant also states that she speaks English better than her spouse, so she attends pediatrician appointments for their children.

In his updated statement the applicant's spouse states the applicant provides important emotional support in his day to day life. He states that psychotherapy was a new experience for him and that he should have done it earlier as it took time to open up to a doctor. He states that after his parents divorced his father took him to the United States and that he never had good relations with his mother because she was abusive and put gambling ahead of family. He states that he does not want his children to endure the same pain because a mother is very important and that the applicant is the primary caretaker of their children. He states that as a single parent he would be unable to work as many hours, which would affect his income, and that he cannot support a second household if the applicant were in China.

An updated letter from the spouse's physician states that the spouse has a history of depression, headaches, neck pain than radiates to his right arm with numbness and weakness, and lower back pain with numbness and weakness in his right leg. The letter states that the spouse complains of frequent exacerbation of headaches, neck pain, and lower back pain, and it recommends he attend a physical therapy program two or three times per week.

An updated psychiatric evaluation states that the applicant's spouse was diagnosed with major depressive disorder with high anxiety and that his condition remains unimproved. It states that the applicant's spouse has depressed mood, feelings of helplessness and hopelessness, poor sleep, fatigue, poor appetite, excessive worry, and poor concentration. It also states that he suffers severe headaches, dizziness, and nausea due to a cervical disc disorder. The evaluation states that when the applicant's spouse was seen in 2012 he was guarded and nervous, but gradually built trust and shared about his childhood. The evaluation recommends that the applicant's spouse see a psychiatrist twice a month, prescribes medication, and asserts that the emotional support from the applicant is critical.

Financial documents submitted on motion include the lease to the applicant and her spouse, letters from the company accountant indicating their salaries, and statements detailing the financial liabilities of the applicant and her spouse. Letters from employees of the applicant and her spouse describe the applicant's importance to the business, as she helps her spouse with lifting as well as bookkeeping, organizing receipts and completing invoices, and note that she is able to have fluent conversations with customers.

On motion we find that the evidence submitted to the record, considered in the aggregate, establishes that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied. In reaching this conclusion we note the applicant's spouse's medical and emotional condition and his financial status. Statements from the applicant and her spouse indicate that cultural stigma affected the spouse's ability to seek professional psychological assistance, for which he now needs the applicant's support to continue. Evidence in the record also establishes the applicant's financial contribution and that she is an integral part of the spouse's business because of the many duties she performs as well as her assistance to her spouse due to his ongoing health problems, such that in her absence the spouse would suffer extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this case include extreme hardship to the applicant's U.S citizen spouse and children; support from her spouse, family, coworkers and the community; her steady employment and payment of taxes; her apparent lack of a criminal record; and the passage of time since the applicant entered the United States with a fraudulent passport and visa in 1998. The unfavorable factors are the applicant's use of fraudulent documents to enter the United States and her unlawful presence and employment.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

(b)(6)

*NON-PRECEDENT DECISION*

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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 motion is granted. The prior decision of the AAO is withdrawn, and the underlying appeal is sustained.