



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **SEP 30 2014**

OFFICE: GUANGZHOU

FILE: [REDACTED]

IN RE: [REDACTED]

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:  
[REDACTED]

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Officer in Charge, Guangzhou, denied the waiver application. The applicant, through counsel, appealed the Acting Officer in Charge's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on motion. The motion is granted, and we affirm our previous decision.

The applicant is a native and citizen of the People's Republic of China (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 seeking to procure a visa through willful misrepresentation. The Acting Officer in Charge concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative and denied her Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. We dismissed the applicant's appeal and affirmed the Acting Officer in Charge's decision.

On motion dated November 26, 2001 and received by us on February 28, 2014, counsel asserts that the applicant's spouse will suffer extreme hardship because of the applicant's inadmissibility as: he has resided in the United States since age 12; he resides with his mother, siblings, and maternal aunt; he does not have immediate family ties outside the United States except to the applicant; it is "highly unlikely" that he would be able to obtain appropriate treatment for his emotional and psychological conditions in China; the financial impact "would be tremendous" if he relocated to China, because he "would be forced to find new housing and new employment"; and he would be unaccustomed to societal and cultural differences and restrictions in China. *See Affirmation in Support of Motion*, dated November 26, 2001.

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant submitted new documentary evidence to support her claim in 2001, we will grant the applicant's motion as a motion to reopen.

The record includes, but is not limited to: a brief, motion, and correspondence; affidavits by the applicant and her spouse; letters of support; documents establishing identity and relationships; financial, psychological, and residential documents; a police clearance letter; and a document about conditions in China. We sent the applicant and counsel separate copies of a request for evidence on May 9, 2014, due to the prolonged delay in our receipt of the applicant's motion from the U.S. Citizenship and Immigration Services (USCIS) office in Guangzhou. One copy of our request was returned as undeliverable. The record therefore is considered complete as of the date of this decision. The entire record was reviewed and considered in rendering a decision on this motion.

Section 212(a)(6) of the Act provides, in relevant part:

(C) Misrepresentation.-

(i) 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.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The record reflects the applicant sought to procure an immigrant visa in 1997 by claiming to be the daughter of a U.S. citizen. The record reflects the petitioner who claimed to be her parent was in fact her aunt. The applicant therefore is inadmissible under section 212(a)(6)(C)(i) of the Act. She does not contest this finding of inadmissibility.

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

- (1) The Attorney General [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant and her mother-in-law 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. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 v. INS*, 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.

The record shows that during her immigrant-visa interview, the applicant indicated her spouse is suffering hardship because of her inadmissibility as they are unable to have children and live with

one another, and he is experiencing “serious mental stress.” In his affidavit dated January 4, 2001, the applicant’s spouse indicates he and the applicant “had great plans to try to start a family as soon as possible”; his depression after her waiver application was denied caused him to leave his job as a garment cutter in October 2000, and between October 2000 and January 2001 he was unable return to work; and his depression weakens him physically, “causing other symptoms” for which he apprehensively takes medication, fearing he could become addicted. He adds that the “only true cure for [his] depression is for [the applicant] to come to America to live with [him]”; he and his mother worry about the possibility that he and the applicant may not have a child, and he is “the only eldest male child in [his] family who can continue [the] family line”; and his sadness is intensified by his mother’s concern and worry for the applicant due to her immigration matters.

The applicant’s mother-in-law is not a qualifying relative under the waiver provision of 212(i) of the Act, and the record does not sufficiently show the effect that hardship to her would have on the applicant’s only qualifying relative, her U.S. citizen spouse. Moreover, to corroborate the claims of emotional hardship to her spouse, the applicant submits a psychological evaluation dated March 23, 2001, based on a single visit over 13 years ago. The psychologist notes that the applicant’s spouse calls himself the “third born” of the children in his family. The record is unclear concerning the applicant’s spouse’s birth order, which appears to concern his emotional hardship in that he claims it is exacerbated by his being the eldest male child. Where there are inconsistencies in the record, it is incumbent upon the applicant to resolve them by independent, objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The psychologist further indicates the applicant’s spouse is suffering from adjustment disorder with depressed mood, shows many indicators of a dependent personality disorder, and likely would not respond to anti-depressant medication. He adds that psychotherapy would be of limited help due to her spouse’s level of cognitive functioning; and “culturally speaking,” finding “an appropriate therapist and form of psychotherapy” presents many problems. However, the psychologist’s report does not discuss alternative treatments. As the record lacks details concerning the severity of the applicant’s spouse’s conditions or evidence of recent treatment or assistance, we are not in the position to reach a different conclusion concerning the severity of his mental-health condition and any hardships that may be related to this condition.

To corroborate claims of financial hardship to the applicant’s spouse, the record includes pay stubs indicating her spouse grossed \$320 weekly in June 2000; and a tax return for 1999, showing her spouse’s adjusted gross income was \$13,161. However, the record lacks evidence of the applicant’s current employment, income, and expenses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’s burden of proof.

Though the applicant’s spouse may experience certain hardships in the applicant’s absence, the evidence, considered in the aggregate, does not establish the applicant’s spouse would suffer extreme hardship as a result of separation from the applicant.

As mentioned previously, counsel addresses the hardships the applicant's spouse would experience if he were to relocate to China. In support of counsel's contentions about the emotional and psychological hardship her spouse would experience in China, the applicant submits an article, stating in relevant part that "[b]ecause of historical and political reasons, there are no social worker[s] and few clinical psychologists working in the Chinese mental health system." The article also notes the low ratio of mental health professionals to the general population.

June 1999. We note the article is 15 years old, and the record does not include current information concerning the mental healthcare system in China. Moreover, as mentioned previously, the psychological evaluation of the applicant's spouse was based on a single visit over 13 years ago. The record lacks details concerning the severity of the applicant's spouse's conditions, evidence of recent treatment or assistance, and evidence of currently available treatment in China.

The record demonstrates the applicant's spouse has resided in the United States for about 15 years, and he maintains close family ties here. However, the record does not include evidence of employment or labor conditions in China, and thereby, we are not in the position to determine the effect they would have on the applicant's spouse. We thus conclude that were the applicant's spouse to relocate to China to be with the applicant due to her inadmissibility, the evidence, considered in the aggregate, does not establish the applicant's spouse would suffer extreme hardship as a result of relocation.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find the applicant has not established extreme hardship to her 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 motion is granted. The prior decision of the AAO is affirmed.