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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: **AUG 05 2015**



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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, New York, New York, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of China and citizen of Canada 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 attempting 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 to remain in the United States with her U.S. citizen spouse.

The district director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the District Director* dated June 19, 2014.

On appeal, dated June 24, 2014, and received by the AAO on January 6, 2015, the applicant contends that the finding her spouse would not suffer extreme hardship as a consequence of her inadmissibility is in error. With the appeal the applicant submits a statement, psychological evaluations for her spouse, a note from her spouse's physician, letters of support from coworkers, a letter from the applicant's daughter, and financial documentation. The record contains affidavits from the applicant and her spouse, financial and other documentation concerning businesses operated by the applicant and her spouse, and other evidence submitted in conjunction with the current Application to Adjust Status (Form I-485) as well as a previously-filed Form I-485 and Form I-601 waiver application. 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 when applying for an E-2 Treaty Investor visa the applicant indicated on Form DS-156, signed March 7, 2005, that she had never been refused a U.S. visa, had never been

refused admission to the United States, and a had only been in the United States from 2000 to 2005. The record reflects that the applicant had been refused a B1 visa by the U.S. consulate in [REDACTED] Canada, on March 4, 1996, and on March 19, 1996, and that on March 20, 2000, she was refused admission. The record further reflects that the applicant had entered the United States as a non-immigrant F-1 student on December 24, 1991, and later entered the United States several times with a B1/B2 border crossing card that was issued on March 24, 1997. Based on this information the district director found the applicant inadmissible for fraud or misrepresentation.

On appeal and in a June 24, 2014, affidavit the applicant contends that her attorney answered the questions on her E-2 visa application without her knowledge and that she does not know how he represented her in past applications, thus any misrepresentations were not done willfully or knowingly. A letter from the applicant's daughter asserts that she had trusted the same attorney and later learned that he had also put false information on the daughter's application to adjust status. The applicant also states that she had gone to the consulate in [REDACTED] in 2000, not for herself but because she had wanted her parents visiting from China to take a trip to the United States. She further states that she had had no trouble entering the United States and was admitted shortly thereafter.<sup>1</sup>

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

Here we find that the misrepresentations on the applicant's visa application would tend to shut of a line of inquiry relevant to her eligibility for a nonimmigrant visa, as she did not disclose prior visa and admission refusals and her previous visits and activities in the United States. The issue then becomes whether the applicant's actions constitute a willful misrepresentation of a material fact that would render her inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant claims she

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<sup>1</sup> Although the applicant states she has no trouble entering the United States in 2000, we note that before her entry in 2000 with an E-2 visa, she was refused admission in March 2000, as a B2 visitor because she was found to be an intending immigrant.

was unaware of how her attorney answered questions on the application, but the application contains the signatures of both the attorney and the applicant. Although the applicant asserts that she does not know what her attorney indicated on the application form, the applicant is nonetheless responsible for information contained in the application and she has submitted no objective evidence to overcome the finding of the district director that she is inadmissible for misrepresentation. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Here we find that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

On appeal the applicant states that her spouse has received psychiatric treatment since April 7, 2013; that he suffers from poor memory, insomnia, depression, and anxiety; and that his worries that they may be separated cause him more suffering. The applicant states that without her he will have to take on more responsibilities between their [REDACTED] and [REDACTED] business facilities, and the stress would be a huge burden considering his health following a [REDACTED] kidney transplant.

Psychological evaluations of the applicant’s spouse from April 7, 2013, through July 1, 2014, state that the spouse is diagnosed with Major Depression, Mood Disorder resulting from family stress, poor memory, and poor sleep; he had a kidney transplant; and he desperately needs the applicant to maintain the company and to provide emotional support. The evaluations indicate that the spouse reports that he feels weak, is losing mental and physical strength, and is sad about losing his ability at self-management, and that his physical weakness makes it impossible for him to work as efficiently as before. The evaluations also indicate that the applicant spends half a month in [REDACTED] with her spouse and the other time in [REDACTED] taking care of the business, and that her spouse feels lonely when the applicant is not with him.

An April 12, 2014, psychological evaluation states that the spouse’s main stressors are the applicant’s unsettled immigration status and his weak physical condition. It states that the spouse attributes their business success to the applicant and that it “would have been impossible for him to be a multimillionaire if he had not got help from his wife.” The evaluation states that the spouse

reports that he was strong and confident, but now is partially disabled and blames a friend's betrayal in business for causing him to struggle, become overworked, and ruin his health. The evaluation summarizes that the spouse's response suggests a tendency toward self-deprecation and an exaggeration of emotional problems and that he may report more psychological symptoms than objectively exist.

While psychological documents indicate that the applicant's spouse suffers from Major Depression, Mood Disorder, there is little detail in the reports or the statements by the applicant and her spouse about his condition and its severity or the effects on his daily life other than the operation of their businesses. The applicant's spouse states that the applicant supports him emotionally, but we note that the record indicates they spend half of their time separated due to their business operations in two different states. Nor has it been established that the applicant's spouse would be unable to visit the applicant if she were residing in Canada or China, as the record indicates that the applicant's spouse often travels internationally for business. The record does not establish that the emotional hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible.

In their affidavits dated April 3, 2014, the applicant and her spouse state that the spouse is not in good health since his kidney transplant, which on appeal the applicant clarifies was in [REDACTED] following his hospitalization in 2002, and that he cannot work in excess of six hours a day. They state that the applicant is responsible for the daily management of vendors, customers, human resources, and finances, while her spouse is in charge of production. The spouse states that he has no expertise in the applicant's fields and his health does not allow him to work long hours, so he fears the business would face severe problems without the applicant. The applicant asserts that her spouse cannot run the company alone due to the heavy work load and his health condition, and their business partners state that the applicant plays an important role in the running of the business and her spouse would be unable to carry out these duties because of his health problems.

A handwritten note from the spouse's physician, dated July 8, 2014, states that the spouse has been a patient since June 2006 and has multiple medical disorders, including renal failure with a kidney transplant, prostate problems, and Cholecystectomy, and that he takes CellCept and Prograf for the kidney transplant and Prilosec for gastritis. Letters from co-workers state that the applicant's spouse is not in good health nor involved in day-to-day business operations. The applicant states that despite her spouse's health problems he is able to travel internationally because flights do not cause much stress for him and that while on business trips he can schedule meetings and visits in a relaxed way, and thus the trips are not a burden and help him recuperate. In his affidavit the applicant's spouse states that his health situation is not severe enough to require daily care. No additional explanation from a physician or medical documentation has been submitted to the record to establish the severity of the spouse's current health condition or any resulting limitations. Here we find that the record does not support the claim that because of the applicant's spouse's current medical condition, he would be physically unable to continue operating their business in the absence of the applicant, or that the status of his health or any treatments require the applicant's physical presence.

The applicant states that they have accumulated a network of business resources from their experience, and denial of her admission would thus result in extreme financial hardship because she could not participate in daily business operations. She states that it would be emotionally and financially difficult to give up the business. The applicant's spouse states that they cannot sell the company and risk being unemployed at their ages and with the current job market. He states that the applicant knows the business well and they trust each other unconditionally, and asserts that he would have to hire five people to replace her and pay five times the salary.

Though we recognize that the applicant is important to the business operations, the record does not establish that the applicant is so integral to the business that it would fail without her presence and result in extreme hardship to her spouse. Further, although the applicant asserts that her spouse would experience extreme financial hardship without her, there is no indication that she could not find employment or start a business if she relocates to Canada and thus continue to provide financial support to her spouse. Further, the Affidavit of Support (Form I-864) from the applicant's spouse shows a savings and checking balance of \$364,713 and real estate with a cash value of \$4,289,297. No documentation has been submitted to establish that without the applicant's physical presence in the United States, the applicant's spouse will experience personal financial hardship.

We recognize that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of his separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

We also find the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate abroad to reside with the applicant due to her inadmissibility. On appeal this criterion has not been addressed. Neither the applicant nor her spouse has made an assertion of hardship upon relocation and no documentation has been submitted to establish that the applicant's spouse would experience extreme hardship due to relocation either to Canada, where the applicant is a citizen, or to China, the native country of the applicant and her spouse.<sup>2</sup>

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to her 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.

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<sup>2</sup> Although the applicant's spouse was granted asylum from China by an immigration judge in 1997, the record reflects that the spouse has made return visits to China and in his March 8, 2011, affidavit states that he had his kidney transplant surgery performed in China in [REDACTED] and had follow up treatment there.

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 appeal is dismissed.