



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 10 2015**

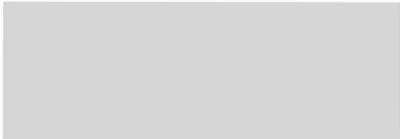
FILE:

APPLICATION RECEIPT:

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 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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

The district director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the District Director* dated August 6, 2014.

On appeal the applicant contends in the Notice of Appeal (Form I-290B) that the decision that his spouse will not be subject to extreme hardship if he is removed to China is erroneous. With the appeal the applicant submits a statement, an updated psychological evaluation for his spouse, an affidavit from his spouse, and prescription documentation for his spouse. The record contains previously-submitted documentation in support of the waiver application 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, Form I-601, and an Application for Asylum and Withholding of Removal (Form I-589).¹ 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.

¹ The record shows the applicant's asylum application was withdrawn and a removal order issued by an immigration judge on December 21, 2000, but proceedings were later reopened and terminated on May, 30, 2012.

The record reflects that on July 3, 1999, the applicant attempted to enter the United States by presenting a photo-substituted passport issued in the name of another person and containing an I-551 lawful residence stamp. Based on this information the district director found the applicant inadmissible for fraud or misrepresentation. The applicant has not contested the finding of inadmissibility.

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. Hardship to the applicant 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. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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. *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 asserts that his spouse would experience financial and psychological hardship without him. He asserts that when his adjustment of status application was denied in 2013, his spouse fell into deep depression and sought psychological counseling and medical help.

The applicant’s spouse states that she receives psychological counseling and has been prescribed Trazodone and Fluoxetine for emotional issues. In her affidavits she states that her father came to the United States when she was eight years old and her mother when she was 14 years old, so she was raised mainly by her grandmother. The spouse states that her emotional issues began when she came to the United States in 2005 to live with her parents but was shocked to see them in constant and sometimes violent arguments, and that her father’s gambling caused financial problems, so she wanted to escape. She states that when she met the applicant in 2006 and married things got better, but when she learned of the applicant’s removal order she felt that her world collapsed. She states she began to feel chest pains that she suspected were heart problems rather than emotional problems, but doctors found no heart problems. The spouse states that after the [REDACTED] birth of her son she learned she had a growing tumor in her vagina that needed surgery. The spouse states that she feared being unable to care for her son if her surgery went badly, and she sent him to China to be with her in-laws. Her mother-in-law later insisted he remain there until he was old enough to go to

school, and she states she agreed because culturally it would be a problem if she had argued with elders. She states that separation from her son and worry about the applicant's immigration status caused her to have worsening chest pains and suicidal thoughts in 2011. She further states that the applicant has been emotionally supportive and she cannot imagine managing without him.

An updated psychological evaluation, dated August 29, 2014, which references the spouse's visits on April 23, 2013, June 18, 2013, and April 3, 2014, indicates that the applicant's spouse is diagnosed with Major Depressive Disorder, Recurrent, Severe without Psychotic Features, and states that her depression has worsened. The evaluations state that the spouse reports having insomnia, loss of pleasure, sadness, disappointment, and poor concentration. The evaluations further state that at times the spouse finds life tiring and without meaning and she feels like an inadequate mother because her son is "oppositional" and often sick. The evaluations note that the spouse began having a mood disturbance in 2005 when she arrived in the United States to join her parents and found that they were fighting with each other, but that she then improved until learning of the applicant's removal order and becoming concerned about a vaginal tumor after the birth of her son in [REDACTED]. The updated evaluation states that the spouse's current stressors are the applicant's immigration status and her son's behavioral problems. It states that the spouse is dependent on the applicant for emotional support, recommends continued psychotherapy and medication, and surmises that the risk of suicide will increase with worsening depression if the spouse loses the applicant's continued support. It also states that her son would be at risk of neglect if her depression worsens.

The applicant's spouse states that she is not working and that she depends on the applicant for financial support. The record contains 2012 and 2013 income tax returns submitted in support of the current application to adjust status and banking statements submitted with a previous application to adjust status, but no documentation has been submitted establishing the spouse's current expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States, the applicant's spouse will experience financial hardship. There is also no indication that the spouse is unable to work.

The applicant's spouse states that she had a vaginal tumor removed and was told by doctors it may return, and the psychological evaluations indicate that the spouse states she is concerned about her health. The record contains medical documentation, dated September 29, 2008, and April 2, 2009, that appear to show post-operative follow up medical visits by the applicant's spouse. The documents provide no detail about her current condition and there is no explanation from a treating physician of the spouse's prognosis or any necessary treatment.

However, given the severity of the spouse's psychological condition we find that the applicant's spouse would experience extreme hardship due to separation from the applicant. In reaching this conclusion, we note the spouse's emotional condition as evidenced by the spouse's statements and the psychological evaluations over a period of more than one year that describe a history of psychiatric problems for the spouse and her dependence on the applicant for emotional support.

We find, however, that the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate to China to reside with the applicant. The applicant and his

spouse assert that if they were to relocate to China their son would be without household registration, so he could not attend public schools as they could not afford the penalties and fees, and they could also not afford private schools. The applicant also asserts that they are unlikely to find employment in China and the spouse states that they would only find employment in Chinese cities, where the environment is horrible. She further states that she worries about the health effects of pollution in China, where medical treatment is not equal to the United States, and that her son has allergies she suspects he acquired from growing up in China during the first years of his life. She further states that she would experience stress and sadness because in China they would live in poverty and ill health so her son would be condemned to a life of hardship without the benefit of money transferred from the United States.

The psychological evaluations state that it is unlikely the applicant's spouse could receive psychological treatment and social support in China as mental illness is stigmatized and care is poor and often inappropriate.

Evidence on record does not support these hardships. The record does not contain any country condition information or other documentary evidence that the applicant and his spouse would be unable to obtain employment or adequate medical care, or that their son would be unable to attend school and would experience health issues due to the environment. Without documentary evidence to support the claim, the assertions will not satisfy the petitioner's burden of proof. The unsupported assertions do not constitute evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *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)). The record also indicates that the applicant's parents live in China and, according to the psychological evaluations, the spouse's mother has returned to China, and there is no indication they could not offer support for the applicant's spouse if she were to relocate. The record therefore fails to establish that the health and economic concerns regarding returning to China would rise to the level of extreme hardship for the applicant's spouse, or that hardship to their son would cause extreme hardship to the applicant's spouse.

We note that in support of a previously-filed waiver application, denied on March 27, 2013, the applicant had submitted reports on education in China that address children with disabilities, inequality between regions, gaps between the wealthy and disadvantaged, and a lack of investment. However these reports are general and do not specifically address conditions that would affect the applicant's son.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. See *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the

applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 appeal is dismissed.