



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 11 2015**

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:
[REDACTED]

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, New York, New York (Queens Field Office), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission to the United States through willful misrepresentation of a material fact. The applicant's spouse and two children are U.S. citizens and his parents are lawful permanent residents. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Acting District Director found that the applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Acting District Director*, dated December 7, 2013.

On appeal the applicant, through counsel, asserts that his qualifying relatives, including his lawful permanent resident parents, would experience extreme hardship if his waiver application is denied. *Brief in Support of Form I-290B, Notice of Appeal or Motion*, dated January 8, 2014, and received by the AAO on January 5, 2015.

The record includes, but is not limited to, counsel's brief, statements from the applicant and his family members, financial records, medical records, a psychiatric evaluation and a psychosocial evaluation. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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:

- (1) The Attorney General [now Secretary of the Department 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.

The record reflects that the applicant presented a photo-substituted Singaporean passport with a fraudulent nonimmigrant B-1/B-2 visa under the name [REDACTED] when seeking to procure

admission to the United States on September 30, 1994. The applicant was placed into proceedings and ordered removed from the United States *in absentia* on December 8, 1994 and December 6, 1995. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure admission to the United States by willful misrepresentation of a material fact. The applicant does not contest his inadmissibility on appeal.

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, in this case the applicant's spouse and parents. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and U.S. Citizenship and Immigration Services (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 U.S. 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.

We will first address hardship to the applicant’s qualifying relatives upon relocation to China. The applicant, through counsel, states the applicant’s spouse’s entire family is in the United States, including her elderly mother; she is close to her family and cares for them and her in-laws; and she would be separated from their two children. She also states that their children would not receive healthcare, education or employment benefits; they can only stay in China as visitors. The applicant’s spouse states that she and the applicant have no immediate relatives in China; her friends are in the United States; and she is accustomed to the American culture, whereas China is a very restrictive society. The record includes a U.S. Department of State report on human rights practices in China from 2012.

The psychiatrist who evaluated the applicant’s spouse states that his spouse will become more depressed due to stressors in China, including her family being accustomed to life in America, and because of difficulties stemming from their ages, low educational levels and long absences from China. The psychiatrist states that adequate mental health treatment is unavailable in China. The social worker who evaluated the applicant's family states that the applicant and his spouse would experience serious adjustment problems, physically and emotionally, and that the applicant and his spouse expressed concerns of discrimination based on the foreign status of the spouse and their children.

The applicant’s spouse also asserts she would experience financial hardship in China, because the applicant does not have a home there; his household was revoked and his farm land confiscated; and she doubts these would be returned to him. In addition, she would not be able to find work as a seamstress due to her age and the cultural preference for hiring younger women at lower wages; the applicant also would not be able to obtain a job due to the lack of jobs, his age and his time outside of the country.

The applicant's spouse, moreover, states China does not recognize dual citizenship and as a U.S. citizen, she would not be allowed to remain in China legally for very long.

The applicant's spouse also states that she receives medical treatment in the United States. According to counsel, she would not be able to afford medical care in China. The record includes prescription notes for the applicant's spouse for an antidepressant, sedative, gastroesophageal reflux disease, and other issues.

The applicant's spouse states that their two children, now ages [redacted] and [redacted] were born and raised in the United States; they have formed long-lasting friendships; they excel in their studies and attend prestigious schools; and they would remain in the United States without her. The record includes school records and certificates for the applicant's children. The applicant's son stated to a social worker that he fears adjusting to the cultural differences in China and he would have problems speaking, reading and writing Chinese.

The applicant, through counsel, also asserts that the applicant's parents are in their seventies and cannot relocate to China. In a letter the applicant's mother states that she is a thyroid cancer survivor and takes daily medication; she also has diabetes and hypertension; she was advised by her doctors not to travel overseas; she cannot receive the same medical treatment in China; and treatment in China is not covered by her medical insurance. The applicant's mother's physician states that she has diabetes, hypertension, hypercholesterolemia, and a history of thyroid cancer. Her physician states that she takes many medications and needs regular office visits. The applicant's father's physician states that he has high glucose, hypertension and poor vision, and that he takes many medications and needs regular office visits. The record reflects that he has had three eye surgeries.

The record reflects that the applicant's spouse would experience difficulty relocating to China based on her ties to the United States, emotional issues, her lack of ties to China, and hardship their children may experience in China. However, the record does not include supporting documentary evidence that she would be unable to receive suitable medical care and medication in China; that she would experience discrimination in China; that she would experience financial hardship in China; that she and their children could only stay as visitors in China; and that she and their children could not receive benefits there. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). In addition, we note that the applicant's spouse is originally from China. Moreover, while the record reflects that the applicant's parents may experience difficulty in China due to their medical issues and ages, the record lacks supporting documentary evidence to show that they could not receive suitable medical care in China. In addition, travel records reflect that they spend significant periods of time in China. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would experience extreme hardship upon relocation to China.

Addressing the hardships the applicant's qualifying relatives would experience upon remaining in the United States without the applicant, the applicant's spouse states that she has been with the

applicant for over 16 years; he is her best friend; and he is her support system. The applicant's spouse states that the applicant is a great husband and father; and he helps with household chores and taking their children to school.

The applicant, through counsel, states that the applicant and his spouse have a loving and committed life together; his spouse has a history of medical conditions and has been prescribed antidepressant and antianxiety medication; and she also has gastrointestinal problems that are aggravated by stress, anxiety and depression. The applicant's spouse states that she has become more anxious and depressed; she has been prescribed antidepressant and antianxiety medication; and her gastrointestinal issues are aggravated by stressors for which she is taking medication. The applicant's spouse was diagnosed by a psychiatrist with adjustment disorder, mixed with anxiety and depression; and the physician states that her condition is related to the fear of losing the applicant due to his immigration issues. As mentioned, the record includes prescription notes for the applicant's spouse for an antidepressant, sedative, gastroesophageal reflux disease, and other issues.

The applicant's spouse states that the applicant is the family's sole financial provider; she could try to find work as seamstress but she will not make enough to pay the bills; she would have to pay for a babysitter; and they would have to sell his construction business, which she is not qualified to manage. The applicant, through counsel, states that the applicant's spouse would have to seek employment and she would be solely responsible for financially supporting their children, including paying their college expenses. The record includes evidence of the applicant's business from 2011 and evidence of his income from tax returns. According to a New York Department of State, Division of Corporations, database, this business was dissolved on May 9, 2014.

The applicant's spouse states that the applicant is their children's role model; their son is very close to him and looks to him for guidance; and their daughter is very close to him. She states the applicant financially supports them. The applicant, through counsel, states that the applicant's son is financially and emotionally dependent on him. The applicant's daughter told the social worker that she would be sad and would not know what to do with her life without the applicant. The social worker states that the applicant and his spouse are highly committed to their children; the applicant has done his best to provide them with unconditional physical and emotional support; and he is involved in preparing meals for them and helping with their homework. The social worker states that the applicant's children are at high risk of severe separation anxiety disorder if the applicant is removed.

The applicant, through counsel, states that the applicant's parents also are emotionally and financially dependent on him and that both parents have numerous medical conditions. The applicant's mother states that she and her spouse live with the applicant, and they rely on him for emotional and financial support.

The record reflects that the applicant's spouse would experience significant emotional and psychological hardship without the applicant. In addition, she has medical issues that are exacerbated by her psychological hardship. Moreover, because the applicant is involved in raising their children, she would experience hardship without his help and she would experience hardship due to hardship their children would experience without him. Based on the totality of the hardship factors presented, we find that the applicant's spouse would experience extreme hardship if she

remained in the United States without the applicant. The record is not clear about the level of emotional, physical and financial support that the applicant provides to his parents. The record lacks sufficient documentary evidence of emotional, financial, or other types of hardship that, in their totality, establish that his parents would experience extreme hardship upon remaining in the United States.

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 his spouse in this case.

The documentation in the record does not establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, we find that no purpose would be served in discussing whether he 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.