



U.S. Citizenship  
and Immigration  
Services

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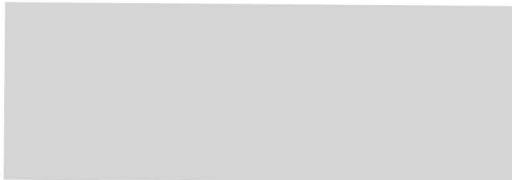
DATE: **AUG 25 2015**

FILE: [REDACTED]  
APPLICATION RECEIPT: [REDACTED]

IN RE: Applicant: [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:



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 that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, New York District, 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 pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for presenting false documents to gain admission into the United States. The applicant, a beneficiary of Form I-130, Petition for Alien Relative, that his U.S. citizen wife filed on his behalf, seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The District Director concluded that the applicant did not establish that his wife would suffer extreme hardship if the Form I-601, Application for Waiver of Grounds of Inadmissibility, was not granted and denied the application accordingly. *Decision of District Director*, dated August 7, 2014.

On appeal the applicant, through counsel, asserts that the applicant's wife needs the applicant because of her emotional and physical health conditions, which limit her ability to work. *Brief accompanying Form I-290B, Notice of Appeal or Motion*, dated September 2, 2014.

The record includes, but is not limited to, briefs; identity and relationship documents; a psychiatric evaluation; medical records; financial records; statements from the applicant, his wife and her relatives; and photographs. 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:

- (1) The Attorney General [now 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.

In the present case, the record reflects that the applicant was paroled into the United States at [redacted] International Airport on [redacted] 2004, after he presented a fraudulent public-benefit parole document that he later admitted he bought for \$30,000. The applicant is therefore inadmissible

under section 212(a)(6)(C) of the Act for procuring entry into the United States through fraud and misrepresentation. The applicant does not contest the finding of inadmissibility on appeal.

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. The applicant's qualifying relative is his U.S. citizen spouse. 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-Morales*, 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 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. 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.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

The applicant asserts that leaving his wife and son in the United States would "be a tragedy and an extreme hardship for [his] family." On appeal, the applicant, through counsel, asserts that his wife's physical and mental health conditions limit her ability to work. To support his assertions of extreme hardship in the event he is separated from his wife, the applicant submits statements from his wife and himself and their family members. He also submits a psychological evaluation, medical records, and financial records.

Concerning the emotional hardship she would experience upon separation from the applicant, his spouse states that he is her "spiritual support" and if he is repatriated, she would lose him and their child would lose his father. She states that when the instant application was denied, she "mentally broke down." She also explains that although she has suffered from depression since their son was born, she did not seek treatment until the applicant's counsel suggested it because of the stigma her culture places on individuals with mental-health conditions. She further states that if the applicant left her, the blow to her life and spirit "would be fatal." She asserts that given her mental and physical health history, she needs the applicant. She says that their son would have no father and that would be unfair to him.

The psychiatrist who evaluated the applicant's wife, in a report dated August 23, 2014, corroborates her claims that a cultural stigma attaches to individuals seeking help for mental-health conditions. The psychiatrist finds that the applicant's spouse meets the diagnostic criteria for severe, chronic major depressive disorder with high distress anxiety. He further states that she is scared by thoughts

of life as a single mother; has suffered severe headaches; reports multiple body aches and pains; eats and sleeps poorly; cries frequently; and has had memory loss, dizziness, and “passive suicidal thoughts.” The applicant also reported to the psychiatrist that his spouse is more restless and more withdrawn. The psychiatrist states that “forced separation” from the applicant will cause his spouse extreme hardship, given the “devastating impact” on her mental and physical health.

In addition, the applicant’s spouse asserts she would experience emotional hardship because of the effect the applicant’s absence would have on their son. The psychiatrist who evaluated her notes that their child is very attached to both parents and if the applicant was forced to leave them, the child would lose his father figure during his early childhood, thereby putting him at an increased risk of developing psychological difficulties.

Concerning the financial hardship she would experience if she remained in the United States without the applicant, the applicant’s wife states that she cannot imagine having sole responsibility to provide for her son and family, should the applicant return to China. The applicant, through counsel, asserts that he has supported his family financially and that his wife’s heart murmurs prevent her from doing much work. To support his claims, the applicant submits tax returns and bank statements. According to his wife’s 2010 tax returns, filed as a single individual, she earned \$8,396 that year. In 2011, the applicant and his wife filed a joint tax return, indicating that the applicant’s wife alone earned the household’s income of \$27,367. In 2012, the applicant’s wife earned wages in the amount of \$30,000 and the applicant earned \$5,500. The applicant does not provide a list of living expenses, but the evidence he submits supports concluding that his wife, until 2012, was the family’s primary breadwinner.

With respect to his spouse’s medical hardship, the applicant provides a patient questionnaire she completed, copies of two drug prescriptions, a 2010 radiology report, and medical notes dated between 2010 and 2014. The medical records show that the applicant’s spouse had a gastrointestinal infection and has mitral valve regurgitation. The applicant’s wife, moreover, states in her affidavit that the applicant cared for her while she was ill with gastritis and depression. She submits prescriptions for medications to treat panic attacks and major depressive disorders. In addition, another report provides that the applicant’s wife suffered from a groin lymphadenopathy in August 2013. Other notes state that the applicant’s wife had complained of headaches and lower back pain.

The record reflects that the applicant’s wife will experience a degree of emotional hardship if she were separated from the applicant. The record does not establish, however, that the applicant’s wife would experience financial hardship, as she has been the primary breadwinner in their household. The evidence does not show that her medical and emotional conditions restrict her capacity and options for employment. The record, therefore, contains insufficient evidence of emotional, financial, medical or other types of hardship that, considered in the aggregate, establishes that the applicant’s wife would suffer extreme hardship upon separation from the applicant either directly or indirectly.

We will next address hardship to the applicant's wife if she relocates to China. The applicant's wife states that she suffered past persecution on account of her religion and political opinion in China. She asserts that if she returned to China, her life would be threatened.

The record indicates that the applicant's wife came to the United States in April 2005. She was placed in removal proceedings and was granted asylum. She became a U.S. citizen in 2012. According to their Forms G-325A, Biographic Information, submitted with the applicant's application to adjust status to lawful permanent resident, both the applicant's wife's parents and the applicant's parents reside in the same area of China. The applicant, moreover, indicates that they have sent their son to visit his grandparents there.

Although the record reflects that the applicant's wife has close family ties to China and has visited China herself, as an asylee she was found to have a well-founded fear of future persecution there. Given her asylum status, granted on account of her religion and political opinion, in addition to the usual hardships faced when relocating and separating from immediate family members, it is reasonable to conclude that she would suffer extreme hardship if she relocated to China.

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 separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The evidence in the record is insufficient to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, no purpose would be served in discussing whether he merits a waiver as a matter of overall 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.