



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF X-Y-C-

DATE: DEC. 17, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of China, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Acting District Director, New York, New York, denied the application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO) and a motion to reopen was rejected. We also denied a second motion. The matter is now before us on a third motion to reopen and reconsider. The motion will be denied.

The Applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by fraud or willful misrepresentation. In a decision dated September 3, 2013, the Director determined that the Applicant had failed to demonstrate that a qualifying relative would experience extreme hardship as a result of his waiver application being denied. The application was denied accordingly. On appeal, we also determined that the Applicant had not demonstrated extreme hardship to a qualifying relative upon denial of his waiver application and dismissed the appeal accordingly. On motion, we initially found that the Applicant had filed untimely and rejected the motion, but after reviewing a second motion, we found this finding to be in error and reviewed the motion on the merits. We then found again that the Applicant had not shown his qualifying relative would suffer extreme hardship as a result of his inadmissibility. The motion was dismissed.

The Applicant now submits a third motion, dated March 9, 2015, and states that he has shown that his lawful permanent resident wife will suffer extreme hardship as a result of his inadmissibility because she suffers from mental health issues and the mental health care she would receive in China is extremely poor. The Applicant submits an updated psychological evaluation and articles concerning treatment for people with mental health problems in China.

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) 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 U.S. Citizenship and Immigration Services (USCIS) policy; and (2) 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).

Based on the updated documentation provided, which includes new facts in an updated psychological evaluation, the requirements of a motion to reopen have been met. The requirements of a motion to reconsider have not been met.

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 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.

The record reflects that the Applicant attempted to enter the United States on November 29, 1990, by presenting a passport containing a fraudulent U.S. visa. Accordingly, the Applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, for seeking to procure admission to the United States by willfully misrepresenting a material fact. The Applicant does not dispute this ground of inadmissibility on motion.

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 an applicant. Hardship to the Applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. 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-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. *See Salcido-Salcido v. INS*, 138 F.3d 1292 (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.

(b)(6)

Matter of X-Y-C-

The record reflects that the Applicant is a [REDACTED] year-old native and citizen of China. The Applicant's spouse is a [REDACTED] year-old native of China and lawful permanent resident of the United States. The record indicates that the Applicant and his spouse were married in 1980 and are the parents of three adult children who now live in the United States. The record also indicates that the Applicant and his spouse experienced a 22-year separation after the Applicant came to the United States in 1990. The couple divorced in 2000, then reunited and remarried in the United States in 2012 after the Applicant's spouse arrived from China in January 2012.

The Applicant states that his wife will suffer extreme emotional hardship as a result of his inadmissibility. The Applicant's spouse asserts that she suffered from depression in 1996, when she suspected that the Applicant was unfaithful. After her divorce from the Applicant, the Applicant's spouse asserted that she was lonely and, in her worst moments, contemplated suicide. The Applicant's spouse asserted that she is again experiencing depression because she is worried about the Applicant's immigration status and a possible separation.

The record contains three psychological evaluations of the Applicant's spouse over a three-year period. She consistently has been diagnosed with major depressive disorder, recurrent, severe without psychotic features. Psychological evaluations from 2013 and 2015 indicate that the Applicant's spouse pursued some treatment, as recommended by her psychologist, in the form of three therapy sessions in 2013. The Applicant's spouse has reported suicidal ideations, anxiety, irritability, insomnia, severe headaches, high blood pressure, and fatigue. Her psychologist indicates that her depression is worse than ever and is directly linked to the Applicant's immigration case. The psychologist recommends she continue treatment and antidepressant medications.

The Applicant previously asserted that his spouse cannot relocate to China because she would leave behind their children and she was unhappy in China. On motion, the Applicant submits evidence of the problems associated with seeking mental health treatment in China. The documentation indicates that China has inadequate health care for the mentally ill and that stigma and discrimination of the mental ill is widespread in China, even in a healthcare setting. However, this information does not overcome statements the Applicant's spouse made during a psychological evaluation indicating that she was able to overcome her depression while in China without seeking professional treatment and that she had a support network of family and friends to help her in China. As stated previously, there is no information concerning whether the Applicant's spouse attempted to seek professional psychological treatment in China. The record does not include any additional information concerning the Applicant's spouse's life while living in China.

The Applicant asserted that his spouse would suffer financial hardship and a lesser quality of life and health if she relocated to China to reside with the Applicant. As stated previously the record does not support the statements that the Applicant's spouse would be unable to support herself in China or that she would not have support from other family members in China. The record does not contain information concerning whether the Applicant's spouse was employed in China and the extent to which family members are willing and able to assist in her relocation. On motion, the Applicant submits no additional evidence regarding financial hardship to his spouse.

The Applicant's spouse indicates that the extreme hardship she will suffer as a result of the Applicant's inadmissibility is primarily a result of her mental health problems, which have been caused by being separated from her family, both while in China and now the possibility of it happening in the United States. However, the record does not establish that she suffered hardship while being separated from the Applicant for 22 years, nor does it show many details of her previous life in China.

Given the Applicant's spouse's voluntary separation, recent reunification, and recent relocation to the United States, the record does not show that separation from the Applicant or relocation to China with the Applicant would cause her extreme hardship. There is insufficient evidence in the record to show that the hardships faced by the Applicant's spouse, in the aggregate, rise to the level of extreme hardship.

While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, a waiver of inadmissibility is available only in cases of extreme hardship and not in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 not established extreme hardship to his lawful permanent resident 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. Accordingly, the motion is denied.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of X-Y-C-*, ID# 13329 (AAO Dec. 17, 2015)