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

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

MATTER OF D-S-

DATE: DEC. 17, 2015

APPEAL OF QUEENS FIELD 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 Director, Queens Field Office, denied the application. The Applicant filed a motion to reopen and reconsider the denial decision, and the Director denied the motion. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided by the Act by fraud or willful misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his U.S. citizen spouse. The Applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his U.S. citizen spouse.

The Director concluded that the Applicant had not established that the bar to his admission would impose extreme hardship on his U.S. citizen spouse and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. Although the Applicant submitted additional evidence with the subsequent motion to reopen and reconsider, the Director denied the motion upon determining the new evidence was insufficient to overcome the previous finding of lack of extreme hardship.

On appeal, the Applicant asserts that he did not engage in fraud and that his former attorney is solely responsible for any misrepresentations that resulted in the Applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act. The Applicant claims, in the alternative, that the Director misinterpreted the legal standard for evaluating extreme hardship and did not give proper weight to the evidence of his spouse's medical condition and the impact that relocation or separation would have on her condition.

The record contains, but is not limited to: an appeal brief; affidavits from the Applicant, his spouse, nephew, and the Applicant's clients; the Applicant's spouse's medical records; financial records, articles describing poor air quality in [REDACTED] China; a copy of the legal service agreement between the Applicant and his former attorney; and copies of complaints the Applicant filed against

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his former attorney. 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.

The record reflects that the Applicant was admitted to the United States on October 8, 2006, as a nonimmigrant visitor for pleasure. On April 6, 2007, the Applicant filed Form I-140, Petition for Alien Worker, under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), for classification as an immigrant with extraordinary ability. The Applicant was determined to be ineligible, and his Form I-140 was denied. The Applicant appealed the denial. On appeal, we discovered that some of the evidence the Applicant submitted with his Form I-140 contained false representations regarding his expertise in the alternative medicine field. This evidence included a peer expert opinion written by [REDACTED] which misrepresented her employment and publication record, and two scientific publications, which the Applicant claimed he co-authored. We dismissed the appeal and entered a separate administrative finding of willful and material misrepresentation, rendering the Applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

With respect to our finding that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, the Applicant confirms that he did not co-author the publications submitted as evidence of his achievements in the field of alternative medicine and that the letters¹ submitted on his behalf in support of the Form I-140 petition are fraudulent. The Applicant claims, however, that his former attorney, [REDACTED] submitted the fraudulent documents without his knowledge and permission. The record includes a copy of the legal service agreement the Applicant signed on November 28, 2006, indicating that he hired the office of attorney [REDACTED] to represent him in connection with the Form I-140. The record also includes a copy of a "Grievance Committee Complaint Form," for the Supreme Court of the State of New York, Appellate Division, Second Judicial Department; and a copy of Form EOIR-44, Immigration Practitioner Complaint Form, for the Department of Justice's Executive Office for Immigration Review, both signed by the Applicant on December 3, 2014. The record contains no evidence as to the outcome of the complaints.

Finding an applicant inadmissible under section 212(a)(6)(C)(i) of the Act requires determining that he or she made a false representation of a material fact, that the misrepresentation was willfully made, and that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975). The Applicant does not dispute that the documents submitted with the Form I-140 contained

¹ In addition to [REDACTED] letter, the Applicant identifies as fraudulent the letter allegedly written by his former mentor from China.

misrepresentations or that the misrepresentations in the documents were material to his eligibility for the classification as an alien of extraordinary ability. Therefore, determining whether the Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act hinges on whether his misrepresentations were willful.

For a misrepresentation to be willful, it must be determined that the applicant was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *See generally Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. 7 I&N Dec. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we “closely scrutinize the factual basis” of a finding of inadmissibility for fraud or misrepresentation because such a finding “perpetually bars an alien from admission.” *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994); *see also Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998) and *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

The record shows that the Applicant signed the Form I-140 on April 4, 2007, certifying under penalty of perjury that the petition and the evidence submitted with it were all true and correct. The form does not include a preparer’s information to show that it was completed by someone other than the Applicant. Further, the record does not include a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, indicating that the Applicant was represented by legal counsel in connection with the Form I-140. The U.S. Postal Service Express Mail envelope, in which the Form I-140 packet was delivered to U.S. Citizenship and Immigration Services (USCIS) on April 6, 2007, shows the Applicant’s name and address in the sender section, indicating that the Applicant mailed the Form I-140 and the supporting documents himself. The initial evidence submitted in connection with the Form I-140 includes a cover letter on the Applicant’s letterhead. The letter lists the documents, which the Applicant now confirms to be fraudulent, and is signed by the Applicant. We cannot conclude, therefore, based on the evidence of the record, that when the Applicant signed the Form I-140 and submitted it to USCIS with the cover letter and supporting fraudulent documents, he did not do so voluntarily and deliberately. Although the Applicant claims that he did not know English and relied on his attorney’s assistance in preparing the Form I-140 and supporting documentation, he nevertheless had the duty and responsibility to review the Form I-140 and the attached documentation prior to submission to USCIS. Accordingly, we reaffirm our previous determination that the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section, in pertinent part, states 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 Applicant's qualifying relative for a waiver of inadmissibility is his U.S. citizen spouse. 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. 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).

The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury," *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

We first consider whether the Applicant's spouse would suffer extreme hardship if she relocated with him to China. The Applicant's spouse is a native of Malaysia and a naturalized U.S. citizen. She claims she has no relatives in the United States or Malaysia and the Applicant is her only family. In her affidavits she asserts that she has many health problems, including permanent knee damage, asthma, fibroid uterus, and a cervical condition. She suffered permanent knee damage as a result of an accident in April 2010. Despite physical therapy following her surgery, she was in constant pain and became depressed. She was introduced to the Applicant, who treated her with acupuncture. She credits the treatment and the Applicant's care with her recovery. She is now able to walk, but she may not be able to engage in more strenuous exercise, such as running, jogging, or long-distance walking. She relies on the Applicant to massage her leg when she experiences occasional pain. The Applicant's spouse also suffers from asthma and had to visit an emergency room in October 2011. In addition, she recently was diagnosed with fibroid uterus, a condition for which she claims she may need surgery in the future. She also developed a pain in her neck as a result of her sedentary job and is currently under a chiropractor's care. The record contains copies of her medical records from 2010 to 2014, including documentation pertaining to her knee surgery in 2010 and the progress reports that followed; a record of her asthma attack-related emergency room admission in October

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2011; a copy of her pelvic ultrasound report dated November 7, 2014; copies of unidentified x-ray photographs of the neck area; charts with handwritten notes dated from October to December 2014; and a letter signed by [REDACTED] confirming that the Applicant's spouse is under his care for a "cervical condition."

The record, however, contains no evidence to show that the Applicant's spouse is currently experiencing problems with her knee that require ongoing medical care. Further, the record lacks evidence, other than the 2011 record of her asthma attack, showing that the Applicant's spouse is currently being treated for asthma. Moreover, although she claims that she may need surgery for fibroid uterus, the ultrasound report submitted does not include the explanation of the severity of her condition, prognosis, or recommended treatment. While the Applicant's nephew describes her condition as "a type of [reproductive-system] cancer," the record contains no evidence to support this statement. Similarly, the documentation from the chiropractor does not clearly explain the Applicant's spouse's medical condition and its effect on her daily activities and overall well-being. Absent explanations from the medical services providers of the nature and severity of her medical conditions, and details regarding the necessary treatment, or the care and assistance needed, we are unable to determine whether the Applicant's spouse's health and well-being will be impacted upon relocation to China to such a degree as to cause her extreme hardship.

The Applicant's spouse asserts that her health issues prevent her from relocating with the Applicant to China. She also claims that China will not offer her citizenship or permanent resident status. Even if she can stay in China on a temporary basis, she asserts she would not be able to afford medical care in China, which is very expensive and of low quality. She further states that she has no medical insurance in China and the health insurance she has in the United States will not cover her medical expenses. The Applicant does not, however, submit any evidence to support those claims. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The Applicant's spouse further states that the air quality in [REDACTED] China, where the Applicant is from, is poor. The evidence submitted in support of this statement indicates that that the air pollution in [REDACTED] does, in fact, exceed the national standard, and that [REDACTED] ranks [REDACTED] among China's top polluted cities. We acknowledge that living in a polluted environment would likely worsen his spouse's respiratory problems. However, the Applicant and his spouse do not discuss, in their respective affidavits, whether relocation to another region in China would be an option for them, or whether they could relocate to the spouse's native Malaysia.

When considered in the aggregate, we find that the evidence of the record is insufficient to demonstrate that the Applicant's U.S. citizen spouse would suffer extreme hardship if she were to relocate to China with him.

We also conclude that the Applicant has not established that the impact on his spouse as a result of separation from the Applicant would rise to the level of extreme hardship. Addressing the hardships she would face without the Applicant, the Applicant's spouse asserts that she relies on the Applicant

to massage her neck and knee to relieve her discomfort. She has no other family in the United States or Malaysia that she can count on for help. While we recognize that the Applicant cares for his spouse, comforts her, and provides her with emotional and physical support, the evidence does not show that she would be unable to care for herself. She appears to currently receive professional care for her neck-related problems. Further, she had knee surgery and physical therapy in 2010, before she met the Applicant. She does not explain who took care of her during that time and whether the same individual would be able to assist her should the Applicant return to China. The Applicant's spouse credits him with her recovery after her knee surgery and states that he is well-known and respected by his patients for his skills and experience in traditional Chinese medicine. In support of this statement, the Applicant submits several letters from his patients expressing their gratitude for the treatments he provided. We acknowledge the Applicant's accomplishments and the help he was able to provide to his patients. However, the Applicant's skill in traditional Chinese treatments has no bearing on the extreme hardship analysis. Therefore, although it is clear that separation from the Applicant would cause his spouse emotional hardship, the evidence is insufficient to establish that this hardship would go beyond that which is commonly experienced by families of individuals subject to deportation from the United States.

Moreover, the record does not demonstrate that the Applicant's spouse is financially dependent upon the Applicant or that she would experience extreme financial or other hardship if she remained in the United States without him. While the record includes copies of federal tax forms the Applicant's spouse filed before they married, and copies of bank and credit card statements, neither the Applicant nor his spouse addresses the issue of possible financial hardship upon relocation or separation. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute 'extreme hardship.'" *Ramirez-Durazo v. INS*, 794 F.2d 491, 497-498 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment. . . . simply are not sufficient.") (citation omitted). The documents provided by the Applicant's spouse, including the Form G-325, Biographic Information, and her tax returns and W-2 forms, establish that she has been continuously employed as a graphic artist since June 2006. The Applicant provides no documentation on appeal reflecting his spouse's current financial situation, including her income, assets, expenses, and liabilities, to show that she would experience financial hardship without his presence in the United States.

We recognize the impact of separation on families and the emotional hardship that the Applicant's spouse would experience if he were removed to China while she remains in the United States. The evidence in the record, however, considered in the aggregate, does not establish that her hardship would be extreme as is 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.

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ORDER: The appeal is dismissed.

Cite as *Matter of D-S-*, ID# 15058 (AAO Dec. 17, 2015)