



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

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

MATTER OF C-S-C-

DATE: DEC. 23, 2015

APPEAL OF ST. PAUL 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 Field Office Director, St. Paul, Minnesota, denied the application. The matter is now before us on appeal. The appeal will be sustained.

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

In a decision dated March 12, 2015, the Director found that the Applicant had not established that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

On appeal the Applicant contends that extreme hardship to his spouse has been established. With the appeal the Applicant submits a brief, mental health information for his spouse, financial documentation, academic information for his children, a letter from his spouse's daughter from a previous marriage, and country information for China. 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.

The record reflects that on November 22, 1998, the Applicant attempted to procure entry to the United States with a fraudulent passport. Based on this information the Director found the Applicant inadmissible for fraud or misrepresentation. The Applicant does not dispute this 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. The Applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant or the children can be considered only insofar as it results in hardship to a qualifying relative. 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-Moralez*, 21 I&N Dec. 296, 301 (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. . . [,] and while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts." *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). 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). 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).

The Applicant asserts that his spouse will experience extreme hardship were she to remain in the United States while he relocates abroad as a result of his inadmissibility. The Applicant maintains that his spouse's mental illness affects her ability to work, engage in social activities, and enjoy time with family, and that the hardships she would face in his absence are augmented by the abandonment and despair she suffered in her first marriage. The Applicant contends that without him his spouse

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would witness the hardship of her sons being without their father, that she would struggle to care for them alone, and that her difficulty caring for her daughter after having been abandoned by her first husband has worsened her depression and caused suicidal ideation.

The Applicant further maintains that he is vital to the success of their restaurant and that without his daily presence, the business will suffer. In affidavits submitted with the waiver application the Applicant's spouse stated that the Applicant gets the children ready for school, helps them with homework, and teaches them activities. She also asserted that the Applicant takes their employees to work, prepares sauces, and repairs equipment, and that because their business is in an isolated area, it is difficult to find employees so the Applicant plays an integral part in operating the business.

A mental health evaluation from visits on April 27 and 30, 2015, diagnosed the Applicant's spouse with Major Depressive Disorder, recurrent, severe, and Other Specified Trauma- and Stressor-Related Disorder. The evaluation indicates that the spouse has severe debilitating anxiety over the Applicant's immigration situation, and observes that she is functioning poorly with almost debilitating depression. It states that the spouse reports having panic attacks, nightmares, crying, and passive suicidal ideation, and identifies symptoms including weight loss, insomnia, feelings of worthlessness, indecisiveness, and diminished ability to concentrate. The evaluation indicates that the spouse has a history of anxiety and had serious suicidal ideation when her first husband abandoned her and her daughter. The evaluation refers to publications from organizations indicating that Asian-Americans have a stigma and shame associated with seeking help for personal problems, and notes that due to language and cultural barriers to getting help the spouse depends exclusively on the Applicant for support. The evaluation summarizes that the Applicant's spouse needs the support of a therapist and a medication assessment by her physician. Pharmacy records dated June 22, 2015, show that the Applicant's spouse was prescribed antidepressant medication. Documentation establishing the Applicant's and his spouse's ownership of a restaurant has also been submitted.

Having reviewed the preceding evidence, we find it to establish that the Applicant's spouse would experience extreme hardship as a consequence of separation from the Applicant. In reaching this conclusion, we note the spouse's mental health condition, her emotional and financial dependence on the Applicant, and the likely hardship she would face caring for her sons, born in [REDACTED] and [REDACTED] and operating the family business in the Applicant's absence.

We also find the record to establish that the Applicant's spouse would experience extreme hardship if she were to relocate to China to reside with the Applicant due to his inadmissibility. The Applicant states that by relocating to China his spouse would have leave her family in the United States, including her daughter and siblings, and the business they have operated since 2007. The Applicant also contends that in China his spouse would be unable to get care for her mental health needs. The Applicant also maintains that by relocating his spouse would face obstacles to employment in China, where the Applicant cites submitted news articles about older, uneducated workers facing discrimination. He further asserts that his spouse would have no pension or retirement savings to fall back on, and would be unable to send money to her children if they remain in United States, adding to her emotional hardship of abandoning her children. The Applicant

further asserts that it would be an emotional hardship for their sons to relocate to China and enter a new school system.

The Applicant submits news accounts about corruption, bribes, and other shortcomings in the education system, and indicates that he fears political indoctrination in Chinese schools. The Applicant also submits letters from his sons' teachers, certificates of achievement, and school records. A letter from the spouse's daughter states that her father had abandoned her and that although she now lives with relatives her mother always takes time to visit her and helps with her school supplies. New articles indicating that mental illness is stigmatized and that there are shortages of qualified psychiatrists and that training is inadequate in China have also been submitted.

The record establishes that the Applicant's children are fully integrated into the United States lifestyle and educational system. The Board of Immigration Appeals found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). We find *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the Applicant's children at this stage of their education and social development and relocate to China would constitute extreme hardship to them. Furthermore, the record establishes that the Applicant's spouse has been living in the United States for over 17 years. Were she to relocate to China, she would have to leave her family, her community, her home, the mental health professionals familiar with her diagnosis and treatment plan, and her business. She would be concerned about her financial well-being and access to adequate mental health care in China. The Applicant has thus established that his spouse would suffer extreme hardship were she to relocate abroad to reside with the Applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that his U.S. citizen spouse would suffer extreme hardship were the Applicant unable to reside in the United States. Accordingly, we find that the circumstances presented in this application rise to the level of extreme hardship. We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (citations omitted). In evaluating whether to favorably exercise discretion,

the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The

favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

Id. at 301 (citations omitted). We must also consider “[t]he underlying significance of the adverse and favorable factors.” *Id.* at 302. For example, we assess the “quality” of relationships to family, and “the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed].” *Id.* (citation omitted).

The favorable factors in this matter are the hardship to the Applicant's spouse and children, whether they remained in the United States or relocated abroad to reside with the Applicant, the Applicant's presence in the United States since 1998, home and business ownership, payment of taxes, and the Applicant's apparent lack of a criminal record. The negative factors are the Applicant's attempted entry to the United States by fraud or misrepresentation, periods of unlawful presence and employment in the United States, and the Applicant's placement in removal proceedings. Although the Applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of C-S-C-*, ID# 14698 (AAO Dec. 23, 2015)