



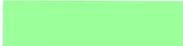
U.S. Citizenship
and Immigration
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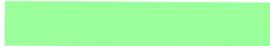
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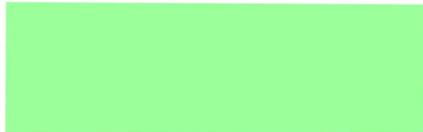
OFFICE: NEW YORK

FILE: 

IN RE: 

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting District Director, New York, New York denied the waiver application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO) and a motion to reopen was rejected. This matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the prior decision of the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of China who was found to be inadmissible 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. 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 with his U.S. citizen spouse.

The Acting District Director determined that the applicant had failed to demonstrate that a qualifying relative would experience extreme hardship upon denial of his waiver application and denied the application accordingly. *See Decision of Acting District Director*, dated September 3, 2013. On appeal, the AAO also determined that the applicant had failed to demonstrate extreme hardship to a qualifying relative upon denial of his waiver application and dismissed the appeal accordingly. *See Decision of the AAO*, dated May 8, 2014. On motion, the AAO determined that the applicant had untimely filed and rejected the motion. *See Decision of the AAO*, dated October 1, 2014.

On a motion to reopen and reconsider, the applicant submitted proof of mailing, affidavits from the applicant's children, background information concerning mental illness and country conditions in China, an updated psychological evaluation for the applicant's spouse, a list of prescriptions for the applicant's spouse and background information concerning medications. The entire record was reviewed and considered in rendering this decision.

Counsel asserts that the applicant timely filed his motion to reopen and requests a filing fee refund as the late filing was the fault of the Service. The record contains documentation indicating that the applicant initially filed his Form I-290B on June 8, 2014. However, the Form I-290B submitted was an old version no longer in use and was rejected. It was eventually filed on June 23, 2014, 46 days after issuance of the AAO dismissal of the appeal. The cover letter to the AAO dismissal instructs applicants to refer to the USCIS website for the most current information on the Form I-290B. Had the applicant referred to that site he would have been instructed on the proper version of the form. Therefore, use of the incorrect version of the form cannot be found to be the result of Service error.

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 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 the applicant attempted to enter the United States on November 29, 1990 by presenting a passport containing a fraudulent visa. Accordingly, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) 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 the applicant. Hardship to the applicant or his child 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*, 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 reflects that the applicant is a 58-year-old native and citizen of China. The applicant’s spouse is a 52-year-old native of China and lawful permanent resident of the United States. The applicant is currently residing with his spouse in [REDACTED] New York.

Counsel for the applicant asserts that the applicant’s spouse would suffer emotional hardship upon separation from the applicant, as she has been separated from her husband and children for years prior to her recent reconciliation with the applicant. Counsel contends that to again break up the applicant’s spouse’s family would be devastating. The applicant’s spouse asserts that she remained in China when the applicant entered the United States on December 3, 1990. The applicant’s spouse continued to remain in China, separated from the applicant, and they divorced

in 2000. Subsequently, the applicant's spouse entered the United States in January 2012 to reunite with her children, then re-registered for marriage to the applicant on [REDACTED]

The applicant's spouse asserts that she suffered from depression in 1996, when she suspected that the applicant was cheating on her. After her divorce from the applicant, the applicant's spouse asserts that she was lonely and, in her worst moments, contemplated suicide. The applicant's spouse asserts that she is again experiencing depression because she is worried about the applicant's immigration status and a possible separation.

The record contains a psychological evaluation of the applicant's spouse, dated October 12, 2012, diagnosing the applicant's spouse with major depressive disorder, recurrent, severe without psychotic features and a total score of 43 on the Beck Depression Inventory. The applicant's spouse was recommended ongoing psychotherapy and antidepressant medication. The record also contains an updated psychological evaluation of the applicant's spouse, dated November 5, 2013, stating that the applicant's spouse was seen for psychotherapy on two dates in the intervening year between the first and second evaluation, on October 15, 2013 and October 22, 2013. The applicant's Beck Depression Inventory score fell from 43 to 39 in the second evaluation.¹ The evaluation recommended that the applicant's spouse continue psychotherapy and medication, as she needs more time to benefit from treatment. The record does not contain any more recent information concerning the applicant's spouse's psychological state.

Counsel for the applicant asserts that the applicant's spouse previously suffered from a tumor that required a hysterectomy. The applicant's spouse asserts that her medical conditions require her to attend regular checkups and take prescription medication. The applicant's spouse's children submitted affidavits asserting that their mother suffers from high blood pressure. The applicant's spouse contends that it is the applicant who accompanies her to medical appointments and ensures that she has and takes her medication. The record contains a list of prescriptions for the applicant's spouse, but does not contain any further medical documentation. There is no information from the applicant's spouse's physician concerning the extent to which she requires further treatment or assistance from others.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would suffer hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to China because she would leave behind her children. The applicant's spouse asserts that she cannot return to China, as it is a place that previously caused her unhappiness, and she needs to remain in the United States with her children. It is not clear from the record what the applicant's spouse refers to when she asserts that China caused her unhappiness in the past. The applicant's spouse is a native of

¹ The psychological evaluation identifies the Beck Depression Inventory range of scores as follows: 14-19 indicates mild depression, 20-28 indicates moderate depression and 29-63 indicates severe depression.

China and the record reflects that she entered the United States in 2012. The record also reflects that the applicant's spouse's adult children reside in the United States, two of them residing with the applicant and the applicant's spouse. The record contains affidavits of support from the applicant's three children. The applicant's spouse asserts that she entered the United States in 2012 to reunite with her children. The psychological evaluation of the applicant's spouse states that the applicant's spouse, while residing in China, was able to overcome her depression with the support, in addition to her children, of both relatives and friends. Accordingly, the record indicates that the applicant's spouse also left behind ties in China when she relocated to the United States.

Counsel for the applicant asserts that the applicant's spouse would suffer financial hardship and a lesser quality of life and health if she relocated to China to reside with the applicant. The applicant's spouse asserts that she would be unable to receive proper psychological treatment in China. The record does not contain any 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. The applicant submitted an article concerning the employment prospects of native Chinese persons who study abroad and return to China. There is no indication that the applicant's spouse, whose W-2 forms indicate that she works in a restaurant, entered the United States to study abroad or would be unable to pursue similar employment in China.

The record contains background information concerning mental health treatment in China, including articles addressing the stigma and treatment difficulties associates with mental health ailments, the most recent from 2011. The applicant's spouse's psychologist also asserts that there is evidence that mental illness is stigmatized in China, and treatment poor and often inappropriate. As noted, the applicant's spouse's psychological evaluation states that the applicant's spouse was able to overcome depression without professional treatment while residing in China. There is no information concerning whether the applicant's spouse attempted to seek psychological treatment in China. Further, in May 2013, China implemented the Mental Health Law, expected to ensure that individuals with mental disorders wouldn't be left untreated and citizens not suffering from mental disease would not be treated compulsorily. *See U.S. Library of Congress, China: Mental Health Law Takes Effect on May 1. Issued April 19, 2013. (Global Legal Monitor). Available at http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403562_text; Accessed 1/20/15.*

There is insufficient evidence in the record to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if she relocated to China.

Although the depth of concern over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that a waiver of inadmissibility is available only under limited circumstances. 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 failed to establish 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 prior AAO decision is affirmed.

ORDER: The motion is granted and the prior AAO decision dismissing the appeal is affirmed.