



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

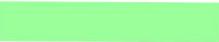
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Date: **JAN 06 2015**

Office: ST. ALBANS, VERMONT

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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 Field Office Director, St. Albans, Vermont, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed an appeal. The AAO granted two subsequent motions, but each time affirmed its prior decision. The matter is now before the AAO on a third motion. The motion will be granted and the decision of the AAO dismissing the appeal will be affirmed.

The record reflects that 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant seeks a waiver of inadmissibility in order to adjust status and reside in the United States as the beneficiary of an approved immigrant petition.

The field office director concluded the applicant had failed to establish extreme hardship to a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director*, September 30, 2011. On appeal, the AAO agreed the record evidence did not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility. *Decision of the AAO*, December 19, 2012. On motion, the AAO found that the applicant met her burden of showing her husband would experience extreme hardship by relocating to China, but found she did not show he would suffer extreme hardship by remaining in the United States without her. *Decisions of the AAO*, July 17, 2013 and April 23, 2014.

On a third motion, counsel continues to assert that the applicant has shown her absence would cause extreme hardship to her husband. Counsel submits a brief, an updated hardship statement, and new psychological evidence to supplement evidence previously submitted. The record includes the supporting documents submitted with various immigrant petitions and applications and in support of the waiver application and appeal. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part,

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)(1) of the Act provides:

The [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 field office director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. Specifically, the record shows the applicant submitted fraudulent documentation in support of a February 23, 2005 application for adjustment of status based on a concurrently filed Immigrant Petition for Alien Worker (Form I-140). Although the applicant previously contested this finding, we found on appeal and both previous motions that she was inadmissible for fraud in pursuit of an immigration benefit. On the current motion, the applicant does not dispute the inadmissibility finding but addresses only the claim of extreme hardship to her husband.

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.

To begin, we will not revisit our previous determination that there was sufficient evidence to conclude the applicant’s husband would suffer extreme hardship by relocating to China with his wife. However, we also concluded after reconsidering all the evidence that remaining in the United States without the applicant had not been shown to present the required hardship to the applicant’s husband. Documentation of psychological and medical issues, including findings of depression/anxiety, worsening pain from previous injuries and physical conditions, and increasing need for medication and assistance at home, was deemed insufficient to establish hardship that rises to the level of extreme. Although the applicant submits supplemental documentation, the new evidence fails to show that living here without his wife will cause her husband hardship beyond the common or typical result of family separation.

The record reflects that the applicant’s nearly 65-year-old husband is a naturalized citizen who immigrated from China about 30 years ago. Medical records support his claim that he has lower back problems and associated leg pain, takes thyroid hormone replacement medication, and has experienced painful recovery from 2013 hernia surgery. His primary care physician attributes his back pain, sciatica, and leg numbness to MRI-confirmed lumbar disc herniation and notes his past diagnoses of hypothyroidism, gout, and hypertension. A psychologist diagnoses him with depression and anxiety based on symptoms including insomnia, poor concentration, memory problems, and fatigue. Regarding the impact of his medical conditions, the doctor states that “he will perhaps experience better improvement” and “it will be helpful” if someone lives with him and provides daily assistance. There is no indication how the applicant’s husband managed his health conditions prior to marrying the applicant in 2008 or after marrying but continuing to live apart from her, nor is there documentation or explanation of the “respiratory pause” which he claims to experience while asleep. Regarding his emotional health, a psychologist notes the applicant’s role in her husband’s wellbeing. The record

reflects that the applicant's husband has two adult sons living here, with whom he maintained a close relationship while they were growing up and remains in contact, and several grandchildren. He currently works as a card dealer in a casino and has been so employed since 1992. Claims that the employer has tried to pressure him to retire because of his limited mobility and health conditions are unsubstantiated, and we note that post-hernia surgery reports indicate that after a recovery period he was able to walk without any pain.

Although sensitive that the applicant's husband will experience some hardship from his wife's absence, we are unable to conclude based on all the record evidence that his situation differs from that normally experienced by those separated from a family member. The May 18, 2014 medical evaluation letter prepared by his primary care physician restates that he suffers from several conditions for which it would be helpful to have another person's help. As we observed on prior motions, medical professionals do not otherwise address the prognosis or severity of his conditions or indicate that he is unable to care for himself. Specifically, the operative, pre-operative, and post-operative notes regarding his hernia surgery and notes regarding an MRI of his lumbar spine comprise reports by medical professionals for medical professionals. They do not provide a clear explanation that would allow us to reach conclusions about the nature and severity of the qualifying relative's medical conditions. We noted in previous decisions the lack of evidence of a medical condition requiring the applicant's need for his wife's care, and nothing new has been presented to establish her husband's need for assistance since he has recovered from surgery. Further, there is no report of any cognitive impairment at work to support the claim of memory problems and the claim that memory lapses nearly caused a fire at home is unsubstantiated. Without more detailed information, we are not able to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

We note the psychologist states his opinion that it will cause the applicant's husband extreme hardship if the applicant has to relocate to China. Further, while noting that depression sufferers can resort to suicide, the psychologist's report fails to state the applicant's husband displayed any suicidal ideation or tendencies and there is no indication the psychologist viewed him as a suicide risk. To treat his patient's depression, he recommended psychotherapy; if psychotherapy alone did not improve the condition, he suggested adding an anti-depressant medication; and he noted that the applicant's emotional support would also help. The psychological evaluation does not establish that any emotional or psychological issues the applicant's husband may experience are beyond those normally experienced by others in the same situation.

Although on motion counsel makes no assertion that spousal separation will cause financial hardship, the qualifying relative's updated statement claims he will be unable to afford his home mortgage due to limited income. We note that no new financial evidence is provided on motion and that previous record evidence failed to indicate the applicant's husband would be unable to meet his financial obligations without his wife's contribution.<sup>1</sup> The record contains an agreement regarding

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<sup>1</sup> Prior evidence reflects that the applicant's husband is gainfully employed now. His 2012 Social Security Benefits Statement indicates he will be entitled to receive a full benefit of nearly \$1,500 if he retires upon turning 66, in November 2015, and is currently entitled to about \$1,400 were he to become disabled.

the couple's home purchase, but no mortgage documents from which we may draw conclusions about their ability to make payments currently or if the applicant moves overseas.

For all these reasons, we affirm our prior decision finding that the cumulative effect of the emotional and financial hardships the applicant's husband will experience due to the applicant's inadmissibility does not rise to the level of extreme. While sensitive that the applicant's absence will impose some hardship on her husband, we conclude that staying in the United States without the applicant due to her inadmissibility would not impose hardships beyond those problems normally associated with family separation.

As noted in our decisions on prior motions, 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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. 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 applicant's husband.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden and, accordingly, the prior decision of the AAO will be affirmed.

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