

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: JAN 06 2015

OFFICE: ATLANTA

IN RE:

Applicant:
AKA:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to 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 waiver application was denied by the Field Office Director, Atlanta, Georgia. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and our prior decision is affirmed.

The applicant, a native and citizen of China, 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 attempting to procure admission into the United States through fraud or misrepresentation. The applicant's spouse and three children are U.S. citizens. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his family.

The Field Office Director found that the applicant did not demonstrate that his spouse would experience extreme hardship and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated January 31, 2013. We found that the applicant failed to establish that his spouse would experience extreme hardship, specifically if she remained in the United States; we dismissed the appeal. *Decision of the AAO*, dated September 15, 2014.

On motion, counsel asserts that we failed to properly and fully apply the facts to the law and that the applicant's spouse would experience extreme hardship if she remained in the United States without the applicant. *Brief in Support of Motion*, dated October 16, 2014.

A motion to reopen must state the 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, the requirements of a motion to reopen have been met. The requirements of a motion to reconsider have not been met.

The record includes but is not limited to, briefs from counsel; statements from the applicant's spouse; biographical information for the applicant, his spouse, and their three children; medical records for the applicant's spouse, including updated records accompanying the motion; financial documentation; a letter from the applicant's spouse's parents; documentation of home ownership and medical-insurance coverage; and documentation of the applicant's immigration history. 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 on April 25, 1994, the applicant presented a photo-switched Taiwanese passport bearing another individual's name and a counterfeit U.S. nonimmigrant visa while seeking admission to the United States. As such, he is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States through fraud or misrepresentation. The applicant does not contest this finding on motion.

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.

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 children can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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).

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).

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 1292, 1293 (9th Cir. 1993) (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.

As we previously found that the applicant's spouse would experience extreme hardship if she relocated to China, and nothing in the record supports revisiting the issue of hardship related to relocation, we will not disturb this finding on motion. We will only address evidence of hardship to her upon remaining in the United States.

The applicant's spouse, in her letter accompanying the instant motion, states that she cannot live without the applicant; he loves and supports her in every aspect of her life; he assists her with her

psychological well-being; they have three U.S. citizen children, who would “be devastated” without the applicant; and their children love and depend on the applicant. She describes how the applicant assists her with the children’s morning routine when she goes to work. The record indicates that the applicant and his spouse have three children, ages 10, 9, and 2.

The applicant’s spouse states that she and the applicant have two restaurants, two home mortgages, and also owe money for three cars. She states that she will not be able to pay her expenses without the applicant, and she does not want to turn to the government for assistance. She also states that she fears that she would be at risk of losing her job. The record indicates that the applicant’s spouse has been employed by [REDACTED] as an accounts payable specialist since March 25, 2002. On the Form I-864, Affidavit of Support, she filed on behalf of the applicant, she indicates that she earns \$32,000 per year. The joint bank account statement she submitted indicates that she has \$16,204.44 in her checking and savings accounts. She also reports having stocks and bonds in her retirement account amounting to \$37,256.93, as well as \$131,332.82 in real-estate holdings. The applicant’s spouse’s income, as reflected on a 2012 federal income tax form in the record, was \$22,352. The tax return does not include income for the applicant. The applicant’s Form G-325 notes his employment as a “restaurant owner” since April 2010. A tax transcript from 2012 reflects ownership of Toki Japanese Steak, but no profit or loss was reported from the restaurant. In addition, the 2012 tax return for the applicant and his spouse indicates rental income of \$8,525.

The applicant’s spouse states that she has diabetes; her medication levels have increased in the last year; she has yeast infections related to her diabetes; she becomes dizzy and weak when her glucose level is high and she cannot drive then; she has blurry vision due to diabetes; she also has deficiency anemia and uterine fibroids. In a letter dated February 21, 2013, the applicant’s spouse’s physician states that he has treated her since January 2013 and that she has a medical history significant for Type 2 diabetes mellitus, iron deficiency anemia and uterine fibroids. Her doctor states that he is managing the applicant’s spouse’s diabetes and anemia and that she takes four medications. The updated medical records submitted on motion corroborate the applicant’s spouse’s claims about her conditions and medications; according to one letter, “[h]er diabetes is currently very poorly controlled.”

The record reflects that the applicant and his spouse have been married for 10 years. Although the applicant’s spouse asserts it would be difficult to raise their children without the applicant, who normally assists her with their routine, the record also contains evidence that the applicant’s spouse’s parents reside with them. The record reflects, however, that she would experience emotional hardship related to the hardship their children would experience without the applicant. In addition, the record establishes that the applicant's spouse has some medical issues, but it does not indicate that her conditions could not be controlled without his assistance. The record, moreover, does not show how the applicant’s spouse relies on the applicant financially or specify the extent of financial hardship she would experience in his absence. Although we referred to the lack of evidence of the applicant’s spouse’s financial dependence in our appeal decision, the applicant does not address the matter on motion. We therefore find that the record includes insufficient documentary evidence of emotional, financial, medical or other types of hardship that,

considered in the aggregate, establishes that his qualifying relative would suffer extreme hardship upon remaining in the United States.

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 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 qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, we find that no purpose would be served in discussing whether he merits a waiver as a matter of overall 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.

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