



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JUN 22 2015**

FILE: [Redacted]

APPLICATION RECEIPT: [Redacted]

IN RE: Applicant: [Redacted]

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:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Philadelphia, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for misrepresenting a material fact to gain admission into the United States. The applicant is married to a U.S. citizen, who filed a Form I-130, Petition for Alien Relative, on her behalf. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her family.

The Field Office Director concluded that the applicant failed to establish that her qualifying spouse would suffer extreme hardship and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of Field Office Director*, dated August 15, 2014.

On appeal, the applicant submits additional evidence to show that her spouse would experience extreme hardship if her waiver application were denied. *Letter and documents accompanying Form I-290B, Notice of Appeal or Motion*, filed September 11, 2014.

The record contains medical records for the applicant's spouse, daughter, and father-in-law; a statement from her spouse; identity and relationship documents; school records; financial documents; and a report describing conditions in 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:

- (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.

In the present case, the applicant asserts that she was admitted into the United States on April 1, 2001 using fraudulent documents, specifically a Taiwanese passport.¹ The applicant is therefore inadmissible under section 212(a)(6)(C) of the Act for procuring admission to the United States through willful misrepresentation of a material fact. The applicant does not contest her inadmissibility.

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 applicant's U.S. citizen spouse is her qualifying relative.

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).

¹ The record reflects the Field Office Director questioned whether the applicant is eligible to adjust her status, given her limited evidence regarding her admission; however, she adjudicated the Form I-601 on the merits, stating that the applicant claimed to have entered using fraudulent documents, and found her inadmissible under section 212(a)(6)(C) of the Act. Similarly, the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, was denied in part because of her having procured admission by fraud or misrepresentation, making her inadmissible under section 212(a)(6)(C) of the Act.

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 contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant’s spouse is her only qualifying relative, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

We will first address hardship to the applicant’s spouse if he relocates to China to be with the applicant. The applicant asserts that if her husband relocated with her to China, he would suffer emotional hardship because of his physical separation from his parents, who are divorced and reside separately in the United States. The applicant’s spouse says that he cannot leave his 67 year-old father, who has stomach cancer and resides with him and the applicant. To corroborate these claims, the applicant submits her father-in-law’s medical records, indicating that in 2010 he was diagnosed with gastric adenocarcinoma and had a near-total gastrectomy. The applicant’s spouse also states his father recently was fitted with a pacemaker. In addition, the applicant’s spouse, who has lived in the United States since 1996, claims that he has no family remaining in China, other than the applicant’s mother, who is in ill health. The applicant’s spouse also expresses concern about the emotional impact of separation on their daughters, particularly how they will adjust to a new culture, school, and social environment, when they had difficulty changing elementary schools in the United States.

The applicant's spouse also claims to fear persecution on account of his father's activities in China and because his father received asylum in this country. He states that the Chinese government has detained returning asylees. The applicant provides a copy of her father-in-law's naturalization certificate but no other evidence regarding his immigration history and his activities in China.

With respect to medical hardship he may experience upon relocation to China, the applicant's spouse states that he was diagnosed with H. Pylori bacteria, a condition that has weakened his stomach lining and requires him to be careful about his diet. He is concerned that health-care standards are lower in China than they are here. He says that commonly prescribed prescriptions are not all readily available in China and if they are available, they may not be identical to drugs sold here. The applicant submits copies of her husband's medical records to corroborate his claims, showing that after his diagnosis in June 2014, he was prescribed one topical and two oral medications. To support his claim that the Chinese health-care standards fall below those of the United States, she submits a U.S. Department of State country information report, dated June 6, 2014, which says that "[t]he standards of medical care in China are not equivalent to those in the United States."² It further states that "[m]any commonly-used U.S. drugs and medications are not available in China and some that bear names that are the same as or similar to those prescription medications from the United States may not contain the same ingredients or may be counterfeit."

The applicant's spouse also is concerned about the financial hardships caused by relocating to China. He says that the cost of living in China is very high and that even if he and the applicant were able to find employment, they would not earn enough to support their family of five. The record reflects that the applicant's spouse is employed as a driver. According to the family's federal income tax forms in the record, in 2010 he earned \$18,000; in 2013 he earned \$25,649.

The evidence establishes that the applicant's father-in-law, who became a U.S. citizen in 2002, underwent surgery in 2010 to excise cancer and remove the majority of his stomach. The records also indicate that the applicant's father-in-law did not require chemotherapy or radiation. The records do not reflect cardiovascular conditions for her father-in-law or corroborate her spouse's claims that his father now has a pacemaker. The medical records, while five years old, also indicate the applicant's father-in-law still worked as a "warehouse maintenance worker" at the time, reflecting some degree of mobility and independence. In addition, the evidence shows that in June 2014, the applicant's husband was treated for H. pylori gastritis. The record, however, does not show whether this health condition is chronic, requiring indefinite treatment with prescription medications that he could not receive in China. Moreover, the record does not include a copy of the applicant's father-in-law's asylum application, and she does not submit country reports concerning the Chinese government's persecution of family members of asylees. The record does not contain objective evidence to support her husband's concern about being persecuted by the Chinese government on account of his relationship to his father. Going on record without supporting

² This travel report subsequently was updated December 3, 2014, but the warnings concerning prescription medications have not changed. See <http://travel.state.gov/content/passports/english/country/china.html>.

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)). Similarly, the applicant provides no evidence regarding employment prospects and the cost of living in China. Therefore, considering the evidence cumulatively, we conclude the applicant has not established that relocation would cause her spouse extreme hardship.

The applicant asserts that if her husband stays in the United States without her, he will experience extreme hardship based on the emotional impact of their separation. The applicant's spouse states that the applicant stays at home to help care for their three daughters and his father, and that if she returns to China, he will be unable to care for the children and his father alone while also working full-time. The applicant's spouse expresses concern that if they are separated, he may have to place his father into a nursing home, which he had promised him he would never do.

The applicant indicates that if she returns to China, their daughters would remain with her spouse in the United States. The applicant's spouse asserts that he is extremely concerned about the impact of the applicant's departure on their daughters, who at ages 11, 9, and 20 months, respectively, are too young to be separated from her. He states that it would not be enough to merely visit the applicant in China. After describing his concerns about the emotional hardship their daughters would experience and the hardship the applicant herself is experiencing, he adds that he has asked his family doctor for something strong to calm his nerves.

The record includes no evidence regarding her spouse's claimed need for medication to alleviate his stress. As noted above, the record includes the applicant's father-in-law's medical records. The applicant also submits medical records of their middle daughter, who contracted Lyme's disease in 2012.

The evidence establishes that the applicant's spouse would suffer emotional and, it is reasonable to conclude, physical hardship if all childcare responsibilities fell upon him alone while he maintains full-time employment. He would be required to assume the applicant's responsibilities of caring for his father and three young children, including one infant, while working as a driver. The applicant has also shown that in addition to her spouse's own emotional hardship resulting from their separation, he would suffer emotionally out of concern for their young daughters' ability to adjust to their separation and their ensuing emotional hardship. Taking into account their daughter's ages, their relationship with the applicant, and the limited evidence of the family's financial circumstances, the applicant has established that the hardship her husband would endure if he remained in the United States, considered in the aggregate, rises beyond the common results of removal or inadmissibility to extreme hardship.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of

the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. 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.

ORDER: The appeal is dismissed.