



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

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

MATTER OF Z-L-

DATE: NOV. 4, 2015

APPEAL OF NEW YORK DISTRICT 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 Director of the New York, New York District Office denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the country by fraud or willful misrepresentation of a material fact. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his U.S. citizen son. He filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, under section 212(i) of the Act, in order to reside in the United States with his spouse and family.

The Director determined, in a decision dated October 18, 2014, that the Applicant did not establish that his U.S. lawful permanent resident spouse would suffer extreme hardship if the Applicant were denied admission and she remained in the United States, or relocated to China. The Form I-601 was denied accordingly.

On appeal, the Applicant asserts that the cumulative evidence in the record demonstrates that his spouse would experience extreme emotional, physical, and financial hardship if he is denied admission into the country. In support of these assertions, the record includes, but is not limited to, an appeal brief, statements from the Applicant and his spouse, medical and financial evidence, a psychological evaluation, and country conditions information.

The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act states, in pertinent part that:

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 chapter is inadmissible.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation, and states:

(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.

Evidence in the record reflects that on February 19, 1992, the Applicant attempted to gain admission into the United States by presenting a passport that was not his. Because the Applicant attempted to procure admission into the country by willful misrepresentation of a material fact, he is inadmissible under section 212(a)(6)(C)(i) of the Act. The Applicant does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act.

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. Moreover, 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-Moralez*, 21 I&N Dec. 296 (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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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;

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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 BIA 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 Applicant’s qualifying relative is his U.S. lawful permanent resident spouse.¹ The Applicant asserts that his spouse will experience extreme hardship if he is denied admission into the United States and she remains here without him. He submits statements from himself and his spouse to support these assertions. He also submits a psychological evaluation for his spouse, and medical and financial evidence.

The Applicant asserts in a statement dated November 12, 2014, that he and his spouse married in China in 1970, and that they have four children together. He states that he came to the United States in 1992; however, his spouse and children remained in China, and he lived apart from his spouse for over 20 years. The Applicant states that he and his spouse were reunited after their daughter filed an immigration petition on his spouse’s behalf, and they now live with their son and his family. The Applicant indicates that he has a construction business and that he supports his spouse financially with

¹ The Applicant’s spouse became a U.S. lawful permanent resident on November 6, 2011.

the salary from his business. He also states that his spouse has medical problems and that he takes her to doctor appointments and makes sure that she gets her medicine.²

The Applicant's spouse reiterates statements made by the Applicant. In addition, she states that being apart from the Applicant for decades made her "sad and lonely," and that she feels a "sense of relief" now that they are together again. The Applicant's spouse states that she loves the Applicant and that she depends on him to care for her daily needs. She states further that she does not think that she would "be able to handle the pain of being without him again." She also states that she suffers from significant medical problems and that she is under a physician's care and takes medication.

Medical records reflect that the Applicant's spouse suffers from hypertension, hypothyroidism, and hyperlipidemia requiring medical care and assistance. The records do not, however, clarify the severity of the Applicant's spouse's medical conditions or the level of care required. The record also does not indicate that the Applicant's spouse is dependent upon the Applicant to obtain her medical treatment and care.

The record contains a psychological evaluation reflecting that the Applicant's spouse was interviewed by a licensed psychologist on October 27, 2014. The psychologist notes the Applicant's spouse's statements that the thought of separation from the Applicant causes sadness and anxiety and that she has trouble sleeping, difficulty concentrating, and a poor appetite and she experiences crying spells. The psychologist notes further that the Applicant's spouse stated on one of the psychological tests that she "would like to kill herself." Based on the interview and psychological tests administered during the interview, the psychologist diagnosed the Applicant's spouse with adjustment disorder with mixed anxiety and depressed mood, and he advised her to discuss her symptoms and statements with her physician. There is no indication that the Applicant's spouse followed up on recommendations to discuss her symptoms with her physician or sought therapy.

While we acknowledge that the Applicant's spouse would experience emotional hardship upon separation from the Applicant, the psychological evaluation and other evidence on the record does not provide sufficient detail to establish the severity of this hardship or the effects on her daily life. The Applicant has not established that his spouse would experience emotional hardship that rises above the common results of removal or inadmissibility if he is denied admission into the country and his spouse remains in the United States.

Financial evidence includes the Applicant's and his spouse's Form 1040, U.S. Individual Income Tax Returns and Form W-2, Wage and Tax Statements. The documents reflect that in 2012, the Applicant earned \$14,400, and his spouse earned \$1600, and in 2013, the Applicant earned \$11,400, and his spouse earned \$4000. This evidence does not demonstrate that the Applicant's spouse is financially dependent on the Applicant, in that the income evidence reflects limited earnings by the Applicant. We

² The record contains a second statement from the Applicant, dated September 23, 2013; however, the Applicant discusses only hardship that he would suffer if denied admission. He does not discuss hardship that his spouse would experience.

note that the Applicant and his spouse reside with their son, who also submitted an Affidavit of Support for the Applicant as the Petitioner for his Form I-130, and it therefore appears that he provides some financial support to the Applicant and his spouse.

Upon review, the cumulative evidence in the record is insufficient to demonstrate that the Applicant's spouse is dependent on the Applicant for her medical treatment or care, or that she would suffer from health or emotional conditions that would cause her to experience extreme hardship if she remained in the United States without the Applicant. The record also does not demonstrate that the Applicant's spouse is financially dependent upon the Applicant. Considering the evidence in the aggregate, the record does not establish that the Applicant's spouse would experience extreme hardship if the Applicant is denied admission into the country and she remains in the United States.

The evidence in the record is also insufficient to establish that the Applicant's spouse would experience extreme hardship if she relocated to China with the Applicant. The Applicant indicates in his November 12, 2014, statement that he would lose his business if he were denied admission and that this would cause his spouse financial hardship. He also states that his spouse would have no choice but to go with him to China if he were denied admission, that neither of them would be able to find work there due to their age, and that life in China would be difficult for both of them. The Applicant's spouse adds that she would be unable to receive the same level of healthcare in China because she would not have health insurance and would be unable to afford to pay for a private physician. The record also contains an article on health care access in China.

Overall, considering the evidence in the aggregate, the record does not establish that the Applicant's spouse would experience hardship in China that would rise above the common results of removal or inadmissibility to the level of extreme hardship. The record reflects that the Applicant's spouse is a native of China, that she is familiar with the language and culture of the country, and that she lived in China for her entire life until 2011. The health care article contained in the record provides general information and does not demonstrate that the Applicant's spouse would be unable to obtain medical care for her health conditions if she relocated with the Applicant to China. The record also lacks evidence to corroborate assertions that the Applicant and his spouse would be unable to find work in China or that his spouse would experience financial hardship in China.

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. The Applicant has therefore not established extreme hardship to a qualifying relative, as required under section 212(i) of the Act. Having found the Applicant ineligible for relief, we find no purpose would be served in discussing 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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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ORDER: The appeal is dismissed.

Cite as *Matter of Z-L-*, ID# 12806 (AAO Nov. 4, 2015)