



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

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

MATTER OF T-L-

DATE: NOV. 5, 2015

MOTION OF ADMINISTRATIVE APPEALS 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 Field Office Director, San Jose Field Office, denied the application. A subsequent appeal was dismissed by this office. The matter is now before us on motion. The motion to reopen will be granted and the appeal will be sustained.

The Applicant 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 having attempted to procure admission to the United States 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 her U.S. citizen spouse and children.

In a decision dated June 29, 2010, the Director found that the Applicant failed to establish that a qualifying relative would experience extreme hardship and denied the waiver application accordingly. On March 28, 2011, the decision to deny the Form I-601 was affirmed on motion by the Director.

On February 27, 2013, this office remanded the matter to the Director due to an incomplete Record of Proceeding. On September 16, 2014, we received the Record of Proceeding, including all documentation relating to the Applicant's Form I-601 application. In a decision dated January 8, 2015, we dismissed the Applicant's appeal, finding that the record did not support a finding that the Applicant's spouse will face extreme hardship if the Applicant is unable to reside in the United States.

On motion the Applicant contends that the evidence considered in the aggregate demonstrates that her spouse would suffer extreme hardship if her waiver is not approved. With the motion the Applicant submits a brief; updated declarations from her spouse, her spouse's mother, and herself; an updated mental health evaluation for her spouse; updated medical records for the spouse's mother; country information for China; school information for the Applicant's oldest son; and a birth certificate for the Applicant's second child. The entire record was reviewed and considered in rendering this decision.

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 Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 establishes that the Applicant misrepresented herself when she applied for asylum in the United States. She admitted under oath that most of the events and claims listed in her asylum declaration were fabricated and were untrue. Based on this information the Applicant was found inadmissible under section 212(a)(6)(C) of the Act for attempting to procure admission to the United States by fraud or willful misrepresentation. The Applicant has not disputed the finding of inadmissibility.

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. The Applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant, her children, or her mother-in-law can be considered only insofar as it results in hardship to a qualifying relative. 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).

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 v. I.N.S.*, 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 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.

On appeal, with respect to the Applicant's spouse remaining in the United States while the Applicant relocated abroad, we found that the record did not establish the severity of the emotional hardship asserted or the effects on the spouse's daily life. We further found that the Applicant had not

submitted documentation establishing a complete financial picture and that the most recent financial documentation provided was almost two years prior to the appeal filing. We concluded that the Applicant failed to establish that her spouse would be unable to make arrangements for the child while he is working, and that while the Applicant's spouse contended that his mother was reliant on him for healthcare and daily life, the Applicant had not submitted any supporting documentation establishing the mother's current financial situation nor any documentation from the mother's treating physician establishing her medical conditions, the treatment plan, and the hardships she would experience were the Applicant to relocate abroad. We concluded that the Applicant had not established that her spouse would experience extreme hardship were he to remain in the United States while she relocated abroad as a result of her inadmissibility.

On motion, the Applicant asserts that her spouse's depression has worsened resulting in loss of sleep, loss of weight, and inability to focus or do work. The Applicant's spouse states that he is an emotional wreck with fragile nerves interfering with his job and causing disorder in his life, and that he feels destroyed by the denial letters in the Applicant's case. The spouse claims that he has been treated for depression for more than four years and takes medication, but cannot stop negative thoughts that his children will be kidnapped in China or of his mother sitting in a corner alone. The spouse states that he believes his depression is hereditary and claims that his mother has suffered severe depression. The spouse further maintains that if the Applicant returns to China their sons will go with her and will need his financial support because the Applicant has had no working experience in China for 20 years and has only her mother there. The spouse also maintains that he fears violation of the one-child policy in China may result in fines and sterilization and that he would be terrified if he is not there to protect the Applicant.

In support, the Applicant has submitted a January 25, 2015 mental health report which states that the Applicant's spouse has obtained continuous treatment for his ongoing psychiatric condition since 2010. The report diagnoses him with major depressive disorder, describes his symptoms, identifies his prescribed medication, and observes that the severity of his depression causes impairment in occupational and social function. The report notes that the spouse's condition has become more severe since he learned the potential reality of the Applicant's removal from the United States and uprooting of the family. The report also surmises that the Applicant's spouse has a predisposition for the recurrence of depression and vulnerability.

In addition, on motion the Applicant has submitted medical documentation for the spouse's mother indicating she had surgery for a pelvic organ prolapse and lists a medical history that includes hypothyroid, hypertension, coronary artery disease, rheumatoid arthritis, hyperlipidemia, and knee replacements. A report from 2003 indicates that the spouse's mother was identified with extreme anxiety and depression for which she was hospitalized. In her own statement dated February 5, 2015, the spouse's mother describes her bouts with depression in the past. She maintains that the Applicant and her spouse do things for her such as taking to her to see her doctor and to get groceries, as well as cooking and cleaning. The mother asserts that the family is close and has never been separated, so if the Applicant's family leaves her peaceful life will be destroyed.

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Based on a totality of the circumstances, we find on motion that the record establishes that the Applicant's spouse would suffer extreme hardship due to long-term separation from the Applicant.

In regard to relocating abroad to reside with the Applicant, we determined on appeal that the Applicant had failed to establish that her husband would not be able to obtain gainful employment in China. Further, the Applicant had not provided supporting documentation regarding her mother-in-law's financial and medical situation, to establish that she was unable to visit her son or relocate abroad to be with her son. Alternatively, we noted that the Applicant had not established that her spouse would be unable to visit his mother regularly and assist in whatever support she may need. Finally, we stated that no supporting documentation had been provided establishing that the Applicant's spouse would have to sell his properties at a loss and would not be able to keep up with his financial obligations were he to reside abroad.

In a declaration submitted on motion, the Applicant's spouse maintains that if he relocated abroad, he would have to leave his mother behind and such a predicament will cause him hardship. He further maintains that he does not want to take his sons to China because they were born in the United States, have opportunities and freedom in the United States, and relocating abroad would give the a restricted life.

In a previously submitted statement the Applicant's spouse stated that he came to the United States at age [redacted] and that his mother has lived with him since her husband died. He contended that the Applicant provided care for his mother, who could not handle the impact of separation from the Applicant's family, but also could not go to China due to her health as she would have no medical insurance or proper care. The record shows that the Applicant's spouse was admitted to the United States in 1986 and became a naturalized citizen on October 27, 1993, while his mother was admitted in 1980 and became a naturalized citizen on October 16, 1992.

The Applicant also maintains that her spouse would be concerned about getting proper mental health care in China. Country information submitted to the record includes reports and news accounts concerning depression and indicating that medical services are hindered by misunderstanding, improper care, social stigma, and lack of services.

We find on motion that the Applicant has established that her spouse would experience extreme hardship were he to relocate abroad due to long-term separation from his country, where he has been residing for almost thirty years, his elderly and dependent mother who suffers from numerous medical conditions that require monitoring and treatment, the practitioners familiar with his mental health treatment plan, his community, and his gainful employment. We thus conclude that were the Applicant unable to reside in the United States due to her inadmissibility, her spouse would suffer extreme hardship if he returned to China with her.

A review of the documentation in the record, when considered in its totality, reflects that on motion the Applicant has established that her U.S. citizen spouse would suffer extreme hardship were the

Applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). This office must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the Applicant's U.S. citizen spouse and children and mother-in-law would face if the Applicant were to relocate to the China, regardless of whether they accompanied the Applicant or stayed in the United States; the Applicant's community ties; the apparent lack of a criminal record; the payment of taxes; gainful employment in the United States; and the passage of time since her immigration violation. The unfavorable factors in this matter are the Applicant's fraud or willful misrepresentation as detailed above and periods of unlawful presence and employment in the United States. Although the Applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

The burden of establishing eligibility for the waiver rests entirely with the Applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the Applicant has met her burden.

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ORDER: The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of T-L-*, ID# 14343 (AAO Nov. 5, 2015)