



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

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

MATTER OF W-Y-Y-

DATE: NOV. 18, 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 Acting District Director, New York, New York, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure an immigration benefit in the United States through fraud or material misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her U.S. citizen father. 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 her U.S. citizen father and lawful permanent resident mother.

In a January 10, 2014, decision, the Director concluded that the Applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant claims that her misrepresentations in filing her Form I-589, Request for Asylum in the United States, are the result of an immigration scam, and that the evidence in the record establishes that her parents will certainly and definitely suffer extreme hardship in the event that she cannot stay in the United States.

The record includes, but is not limited to: statements from the Applicant, her parents, and her sister; medical documentation for the Applicant's parents; a psychiatric evaluation report for the Applicant's parents; and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) states:

- (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 the Applicant was admitted to the United States on January 27, 1992, as a visitor for pleasure, and she was authorized to remain until July 26, 1992. The Applicant did not leave the United States, but rather on February 22, 1994, she submitted a Form I-589, Request for Asylum in the United States, claiming that she was persecuted by the Chinese government. During an interview with a U.S. Citizenship and Immigration Services (USCIS) officer on January 18, 2012, the Applicant stated under oath that the claims made on her Form I-589 were not true.

On appeal, the Applicant contends her misrepresentations in filing her Form I-589 are the result of an immigration scam, and that she completed the form in order to obtain work authorization in the United States. Specifically, she indicates that she went to an immigration services company, was told to pay a certain amount of dollars, provide her information, and sign a few blank forms and papers, which she did. The Applicant concludes she did not intentionally misrepresent herself to obtain a visa, admission into the United States, or a benefit under the Act.

The requirement that the misrepresentation is made willfully is satisfied by a finding that the misrepresentation was deliberate and voluntary. *Espinoza-Espinoza v. INS*, 554 F.2d 921, 925 (9th Cir.1977). Knowledge of the falsity of a representation is sufficient. *Id.*, citing *Matter of Hui*, 15 I&N Dec. 288 (BIA 1975). An alien who acts on the advice of another is considered to be exercising the faculty of conscious and deliberate will in accepting or rejecting such advice. It is no defense for an alien to say that the misrepresentation was made because someone else advised the action unless it is found that the alien lacked the capacity to exercise judgment. *See DOS Foreign Affairs Manual*, § 40.63 N5.2. Although we are not bound by the Foreign Affairs Manual, we find its analysis in these situations to be persuasive.

In the matter at hand, the record reflects that the Applicant submitted a Form I-589, and a Form G-325A, Biographic Information, which contained her information, including her date and place of birth, as well as information on her spouse and child. The Applicant signed the Form I-589, and in doing so, declared under penalty of perjury that all the statements and accompanying documents were true and correct to the best of her knowledge and belief. However, in her January 18, 2012, sworn statement, the Applicant acknowledged that many of the statements made on her Form I-589 were false. Specifically, the Applicant admitted that she did not enter the United States without inspection on January 26, 1992, she was not persecuted by the Chinese government, she did not help Chinese students get out of China, and she was never arrested or charged with any crimes in China. Therefore, the record reflects that she knew the representations made on her Form I-589 were false. Furthermore, there is no indication that the Applicant lacked the capacity to exercise judgment. The Applicant chose to use the immigration services company, and she chose to sign and submit the forms. As such, we conclude that the record reflects the Applicant made willful misrepresentations, and she remains inadmissible under section 212(a)(6)(C)(i) of the Act for having attempting to procure an immigration benefit in the United States through fraud or material misrepresentation.

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

- (1) The Attorney General [now the Secretary of the Department 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.

The Applicant is eligible to apply for a waiver of inadmissibility pursuant to section 212(i) of the Act. In order to qualify for this waiver, she must first establish that the refusal of her admission to the United States would cause extreme hardship to a qualifying relative. The Applicant's qualifying relatives are her U.S. citizen father and her lawful permanent resident mother. Hardship to the Applicant and her child will not be separately considered, except as it is shown to affect the Applicant's parents. 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 deportation, 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, 885 (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).

(b)(6)

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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 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.

On appeal, the Applicant contends that she is the only care-giver to her parents, and that her parents depend on her for emotional and physical support. The Applicant states that her parents are now separated. We note that the record indicates that the parents of the Applicant have two other daughters residing in the United States, one in [REDACTED] New York, and the other in [REDACTED] Pennsylvania.

The Applicant states that her father is suffering from medical hardship, including hypertension, diabetes mellitus, hypercholesterolemia, and benign prostate hypertrophy, and submits documentation for her father’s medical conditions. She also states that her mother is diabetic, has hepatitis B, experiences problems walking, and had surgery in 2013 due to an accident.

The Applicant further states that her parents will suffer financial hardship if the waiver application is not approved. She explains that her father owns three homes and lives off the rent payments he receives and social security benefits. She states that her father rents out part of his home, and that she sometimes has to pay his utility bills. The Applicant states that her mother lives with her.

In addition, the Applicant contends that her parents will suffer emotional hardship if the waiver application is not approved, and submits a psychiatric evaluation report which indicates that both parents suffer from major depressive disorder, chronic, severe with high distress anxiety.

The record includes a statement from the Applicant's sister residing in Pennsylvania in which she states that she is a divorced single mother and that she is unable to take care of her parents while they are living in New York. The Applicant indicates that her sister living in New York is separated from her husband, who lives in Hong Kong with their daughter, while their unemployed son lives with her in New York. The Applicant contends that neither of her sisters is able to provide the support and care that their parents require. However, other than the statements submitted, there is no evidence in the record that the Applicant's siblings would be unable to care for her parents in her absence. Moreover, the Applicant's claims of financial hardship are also not supported by evidence of record. Although these assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

We acknowledge that the Applicant's parents will endure hardship as a result of separation from the Applicant. However, the evidence of record does not indicate that the hardship they will experience rises to the level of extreme hardship.

The Applicant contends that her parents will encounter difficulties if they relocate to China due to their medical conditions. However, the Applicant does not submit any evidence regarding the inability of her parents to obtain medical services in China. Nor is there documentation demonstrating that her parents will be unable to benefit from other government services due to her father's U.S. citizenship or her mother's lawful permanent resident status. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

Based on the evidence in the record, the Applicant has not established that her parents would suffer hardship beyond the common results of removal if they were to relocate to China to reside with the Applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the Applicant's parents will face extreme hardship if the Applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate but expected difficulties arising whenever a loved one is removed from the United States. Although we are not insensitive to the situation of the Applicant's parents, the record does not establish that the hardship they face rises to the level of extreme, as contemplated by statute and case law.

Moreover, as the Applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether she merits a waiver as a matter of discretion.

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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.

Cite as *Matter of W-Y-Y-*, ID# 12800 (AAO Nov. 18, 2015)