



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

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

MATTER OF Q-G-G-

DATE: OCT. 21, 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 District Director, Long Island City, New York, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) 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 willfully misrepresenting a material fact to procure admission into the United States. He is the spouse of a U.S. citizen. The Applicant is seeking a waiver under section 212(i) of the Act in order to reside in the United States with his family.

In an August 18, 2014, decision, the Director concluded that the Applicant had not established that the bar to his admission would impose extreme hardship on his qualifying relative. The Director denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant asserts that he is not inadmissible under section 212(a)(6)(C) because he timely retracted and recanted his fraud. The Applicant states that, in the alternative, if we affirm the inadmissibility finding, the hardship warranting the grant of a waiver in this case has been documented. In particular, the Applicant indicates that the spouse suffers from medical hardships, namely chronic pulmonary disease and osteoporosis.

The record contains, but is not limited to: a brief written on behalf of the Applicant; affidavits from the Applicant and spouse; a report from a social worker; medical documentation regarding the spouse; financial documentation for the Applicant and spouse; and identification documents for the Applicant and spouse. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (i) In general. 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.

On or about June 5, 1991, the Applicant presented a fraudulent passport with a counterfeit visa in order to procure admission into the United States. On appeal, the Applicant concedes that he presented the fraudulent document. However, the Applicant, through counsel, asserts that he immediately told the truth to immigration officers when he was provided with a Chinese translator, and therefore he timely recanted any false statements.

A timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for section 212(a)(6)(C)(i) ineligibility. 9 FAM 40.63 N4.6. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* The doctrine of timely recantation is of long standing and ameliorates what would otherwise be an unduly harsh result for some individuals, who, despite a momentary lapse, simply have humanity's usual failings, but are being truthful for all practical purposes. See *Llanos-Senarillos v. United States*, 177 F.2d 164, 165-66 (9th Cir.1949). The Board of Immigration Appeals (the Board) has recognized the virtue of applying that principle when an alien "voluntarily and prior to any exposure of the attempted fraud corrected his testimony that he was an alien lawfully residing in the United States." *Matter of M-*, 9 I. & N. Dec. 118, 119 (BIA 1960); see also *Matter of R-R-*, 3 I. & N. Dec. 823, 827 (BIA 1949). In addition, the Board has found "recantation must be voluntary and without delay." *Matter of Namio*, 14 I. & N. Dec. 412, 414 (BIA 1973). And, when the so-called retraction "was not made until it appeared that the disclosure of the falsity of the statements was imminent [, it] is evident that the recantation was neither voluntary nor timely." *Id.*

Counsel asserts that the Applicant's affidavit supports his timely retraction. Counsel explains that, as soon as a translator was provided to the Applicant and he had an opportunity to speak, the Applicant admitted that the passport did not belong to him. These assertions, however, are not supported by the Applicant's affidavit. The Applicant, in his affidavit, indicates that, as he was going through customs, an immigration officer asked him questions in English that he did not understand, and as a result, the officer found an interpreter, who asked him for his "general information." The Applicant then states that he was taken to an office by another officer. In that office, he was questioned for a couple of hours by the officer and the same interpreter, who assisted him initially. He asserts that he "did his best to answer the questions." The Applicant's affidavit does not indicate that he made a retraction at any point, much less either at first or secondary inspection. Therefore, the Applicant's affidavit does not provide support for the assertions of counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, the record contradicts assertions that the Applicant recanted during his initial or secondary inspection. On June 5, 1991, Form I-215W, Record of Sworn Statement in Affidavit Form, was

signed by the Applicant and a witness with an interpreter present. Form I-215W indicates that the Applicant “refused to give any statement” and would “not cooperate.”

As the Applicant has not demonstrated that he made a timely retraction, he is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General [now 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 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 [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’s qualifying relative for a waiver of inadmissibility is his U.S. citizen spouse. 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 child can be considered only insofar as it results in hardship to a qualifying relative. The Applicant’s spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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*, 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 spouse asserts in her affidavit that she suffers from a multitude of health problems, including severe respiratory issues, spinal problems, arthritis, a slow heartbeat, a liver tumor and a stomach ulcer. She further indicates that her father died in his fifties from respiratory problems, her brother is unable to work due to similar issues and she fears she may “die at any time.” She claims that she takes medication, and that the Applicant reminds her to take them. In addition, she states that he cooks for her, does the housework, cares for her and does anything with which she requires help. Furthermore, the Applicant, through counsel, indicates that the Director erroneously found “no clear medical diagnosis,” and asserts that the record includes significant evidence documenting the spouse’s condition. The record contains copies of medical records for the spouse from 2010 to 2014, including hand-written progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals, or are otherwise illegible or indiscernible, and do not contain a clear explanation of the current medical condition of the Applicant's spouse. Absent an explanation in

plain language from a treating medical services provider indicating the nature and extent of the spouse's current conditions, details regarding the necessary treatment, or an explanation of family assistance needed, we are not in the position to reach conclusions concerning the severity of a medical condition, or the degree of medical hardship the spouse would experience without the Applicant present.

Although the Applicant provides some of his and his spouse's financial documentation, he does not specifically assert whether his spouse would experience any financial hardships as a result of her separation from him. In addition, documentation of record does not indicate that the spouse would experience such hardship. The social worker confirmed that the Applicant is unemployed, and the record does not indicate that he is providing any financial support. The record also reflects that the Applicant and his spouse may have diminished living expenses as they live with their two children and four grandchildren. Lastly, the Applicant also has not demonstrated that he would be unable to provide financial support from China. As such, without more, we cannot conclude that the Applicant's spouse would experience financial difficulties without the Applicant present.

We note that the Applicant's spouse would experience some difficulties in the event she is separated from the Applicant. However, based on the record before us, we are unable to find that separation from the Applicant would result in extreme hardship for his spouse.

The Applicant's assertions with respect to his spouse's hardships upon relocation to China are not supported by sufficient evidence of record. Concerning these hardships, the spouse, a native of China, indicates in her affidavit that she would be unable to make the long trip to China due to her health. In addition, she asserts that, even if she was able to travel to China, she would be unable to obtain the same medical care and treatment that she requires, and consequently her health would decline. In her report, the social worker also asserts that the spouse's respiratory condition could be exacerbated by poor air quality in China, and cites an article regarding air pollution in China. Lastly, the spouse claims she and the Applicant would be unable to find employment there due to their age. However, the record does not contain any documentation to corroborate assertions regarding the spouse's inability to travel to China. Furthermore, as we stated above, the Applicant has not supported assertions regarding his spouse's respiratory condition, and therefore we are unable to ascertain the extent of her condition, the necessity for treatment and/or the potential of air quality in China to affect her health. Similarly, the Applicant submits no documentation to support the assertions regarding the unavailability of suitable healthcare in China, or on inability to find employment there. The Applicant also provides no evidence addressing the extent of any family ties to China. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *In re Soffici*, 22 I&N Dec. 158, 165 (Reg'l Comm'r 1998); see *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'r Comm'r 1972).

We acknowledge that the spouse may face difficulties in China and such difficulties represent a hardship; however, the Applicant has not provided sufficient evidence describing his spouse's specific hardships or demonstrating that her cumulative hardships upon relocation would be extreme.

*Matter of Q-G-G-*

In this case, 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 not demonstrated extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act. 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.

Cite as *Matter of Q-G-G-*, ID# 12291 (AAO Oct. 21, 2015)