



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

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

MATTER OF X-C-

DATE: OCT. 23, 2015

APPEAL OF NEW YORK DISTRICT 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, 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative and seeks a waiver of inadmissibility to remain in the United States with his U.S. citizen spouse.

The Director concluded that the Applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 accordingly.

On appeal the Applicant asserts that the Director failed to consider all the relevant factors and consider hardships in the aggregate. With the appeal the Applicant submits a brief, medical documentation for the spouse's first husband, financial documentation, letters of support, and an article about mental health issues in China. 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 that:

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 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 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 reflects that on February 25, 2001, the Applicant attempted to enter the United States by presenting a photo-substituted Chinese passport and U.S. visa issued in the name of another person. On appeal the Applicant maintains that he was not aware that the passport was fraudulent. Documentation in the record indicates that in a sworn statement given during secondary inspection the Applicant stated that he had purchased the passport and visa for \$15,000 from a businessman whom he had met in a bar. We concur with the Director that the Applicant is inadmissible for fraud or misrepresentation.

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 spouse is the only qualifying relative in this case. Hardship to the Applicant, his step-son, or his wife's former husband, 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. *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.

In their affidavits the Applicant and his spouse contend that the Applicant helps his spouse care for her son who suffers obesity by having him exercise and eat properly. The Applicant and his spouse also maintain that the Applicant helps his spouse care for her former husband, the father of her son, whom she contends has health problems, lives alone, and cannot care for himself. The Applicant's spouse further states that she works two jobs while the Applicant works part-time so has no spare time to care for her son or her ex-husband, and that the Applicant does house work, prepares meals, guides her son with his homework, and helps her relax.

With respect to the emotional hardship referenced, while we acknowledge the statements in the record from the Applicant, his spouse, and a psychologist who evaluated the Applicant's spouse in August 2014, that the Applicant's spouse will experience emotional hardship were she to remain in the United States while the Applicant relocates abroad, the record does not establish the severity of this hardship or the effects on her daily life. Nor has the Applicant established that his absence will cause his wife's ex-husband, and by extension, his spouse, the only qualifying relative, extreme hardship. Nor has any medical documentation been submitted on appeal to establish the Applicant's

son's current medical situation, the short and long-term treatment plan, and what specific hardships he, and by extension his mother, will experience were the Applicant specifically to relocate abroad. Further, we note that the Applicant's spouse's cousin states that the Applicant's spouse lives with her. The Applicant has not established that his spouse's cousin is unable to help with the care of the Applicant's spouse's ex-husband, or the child, should the need arise.

As for the financial hardship referenced, the documentation does not establish the current income, expenses, assets and liabilities of the Applicant's household, to establish that the Applicant's spouse will be unable to meet her financial obligations were her husband to relocate abroad. The Form I-864, Affidavit of Support, from 2014 indicates that the Applicant's spouse earned almost \$40,000 per year. Nor has it been established that the Applicant is unable to obtain gainful employment abroad that would allow him to assist his spouse should the need arise. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record shows that the Applicant's spouse would endure hardship as the result of separation from the Applicant, but the record does not establish based on a totality of the circumstances that the hardships she would face rise to the level of "extreme."

In regard to relocating abroad to reside with the Applicant as a result of his inadmissibility, the Applicant and his spouse state that it would be difficult for them to find jobs in China. In addition, the Applicant maintains that his spouse would be unable to find proper mental health care in China. The Applicant and his spouse also reference that in China their son could not go to school because he is a U.S. citizen and that they cannot afford tuition for an international school, so he would lose his dream of becoming a doctor. Finally, the Applicant's spouse asserts that by relocating to China she would abandon her ex-husband.

To begin, the record contains no supporting documentation to establish that the Applicant and his spouse would be unable to support themselves in China. Nor does the newspaper article submitted on appeal establish that the Applicant's spouse specifically would not be able to obtain medical or mental care as needed. As for the Applicant's child's academics in China, no documentation has been provided to establish that he would experience hardship abroad which would in turn cause hardship to the Applicant's spouse, the only qualifying relative in this case. Finally, the record does not establish that the Applicant's spouse's former husband would not be able to support himself in the United States, or alternatively, accompany the Applicant and his spouse abroad. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. We thus find that the record does not establish that the Applicant's spouse, born and raised in China, and residing there until she was in her mid-30s, would experience extreme hardship if she were to return to China to reside with the Applicant.

The record, reviewed in its entirety, does not support a finding that the Applicant's U.S. citizen spouse will face extreme hardship if the Applicant is unable to reside in the United States. Rather,

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the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the Applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although we are not insensitive to the Applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law.

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 X-C-*, ID# 13770 (AAO Oct. 23, 2015)