



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

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

MATTER OF W-Y-

DATE: MAY 31, 2016

APPEAL OF LOS ANGELES COUNTY, CALIFORNIA FIELD 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 for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Field Office Director, Los Angeles County, California, denied the application. The Director found the Applicant inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having misrepresented material facts to a consular officer in order to obtain a visa and submitting a false document in relation to an asylum application. The Director concluded that the Applicant had not established that a qualifying relative would experience extreme hardship due to his inadmissibility.

The matter is now before us on appeal. In the appeal, the Applicant resubmits evidence and claims that the Director did not consider all the relevant factors in determining extreme hardship and points to the hardship of permanent separation imposed by inadmissibility under section 212(a)(6)(C)(i) of the Act and the threat against him if he were to return to China because of the Applicant's prior arrest there. The Applicant also explains that his spouse would experience financial hardship if he were denied admission.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for fraud or misrepresentation, specifically, for having misrepresented material facts to a consular officer in order to qualify for an F-1 visa to enter the United States and having submitted a false document in support of an asylum application after he entered the United States.

Section 212(a)(6)(C)(i) of the Act states:

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, 8 U.S.C. § 1182(i), provides, in pertinent part:

(1) The Attorney General may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury." *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was "no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects"). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); but see *Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

II. ANALYSIS

The issue on appeal is whether the Applicant has established extreme hardship to a qualifying relative. The Applicant claims that the Director failed to consider all of the factors that would result in extreme hardship to his spouse, the qualifying relative in this case. The Applicant states that the evidence submitted concerning his arrest in China demonstrates he and his spouse would be returning to a country where he had been persecuted for his religious beliefs. The Applicant's spouse states in a letter to USCIS that she is the only one who has a full-time job and that they are struggling to meet their financial needs. She claims that, if the Applicant were granted permanent resident status, he would be able to get a better job to help support their family.

The Applicant submits copies of previously submitted evidence, including documents pertaining to the Applicant's residential registration in China, a notice of correction of deficiency from the province in China where the Applicant resided, a bail receipt from China and a statement from the Applicant's parents. The record also contains copies of pages from the Applicant's passport, phone bills and other utility invoices, bank statements, property transaction documents, and court records related to the Applicant's misdemeanor conviction for disturbing the peace.

We find the record to support the Director's determination that the Applicant is inadmissible for misrepresentation of a material fact and that the Applicant has failed to establish extreme hardship to a qualifying relative. Because there is no showing of extreme hardship, we will not address whether the Applicant merits a waiver as a matter of discretion.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. Specifically, the record indicates that the Applicant applied for an F-1 student visa in 2011, and entered the United States in March of 2012. During an interview which took place in relation to a subsequently filed Form I-130, Petition for Alien Relative, he admitted that he had provided false information to the consular officer in China so that he would qualify for a student visa and that he never registered or attended the school once he entered the United States.

We find the record supports the Director's determination that the Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.¹

B. Waiver

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant's spouse. Hardship to the

¹ The Field Office Director noted in his decision that the Applicant had admitted to presenting a false document with his asylum application. On appeal the Applicant denies that he admitted to submitting a false document with his asylum application. The Director did not specify which false document the Applicant states he submitted, and we therefore cannot determine if it would have constituted a material misrepresentation. As the Applicant is otherwise inadmissible for his misrepresentation to procure a student visa, we need not address this issue here.

(b)(6)

Matter of W-Y-

Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

On appeal, the Applicant claims that the Director failed to consider all of the factors that would result in extreme hardship to a qualifying relative. The Applicant states that the evidence submitted with his asylum application demonstrates that he and his spouse would be returning to a country where he had been persecuted for his religious beliefs. The Applicant's spouse states that she is the only one who has a full-time job and that they are struggling to meet their financial needs. If the Applicant were granted permanent resident status, she states, he would be able to get a better job to help support their family.

The record contains prior filings by the Applicant, including his asylum application in which he claimed he would be in danger if he returned to China. The Applicant's asylum application was found to contain material inconsistencies and lack credibility. The Applicant has not established that he had been persecuted for his religious beliefs or would otherwise be in danger in China or that his spouse would be in any danger if she relocated there. We do not find the record to support a determination that his spouse would experience any uncommon hardship if she were to relocate to China with him.

The Applicant does not clearly articulate what other hardships, if any, his spouse would experience upon relocation. The record indicates the Applicant's spouse is a United States citizen and her family resides in [REDACTED] California, near the Applicant and his spouse. The record also contains evidence that the Applicant and his spouse have purchased a residential property in the United States. While this evidence establishes that the Applicant's spouse would have to sever family and community ties if she relocated to China with the Applicant, it does not demonstrate that these hardships rise above the common hardships of relocation. Even when the hardships upon relocation are considered in the aggregate, we find they do not rise to the level of extreme hardship.

With regard to hardship upon separation, the Applicant's spouse claims that if the Applicant cannot obtain permanent resident status he will not be able to find a good job in the future and she will continue struggling to support their family on her income alone. The Applicant has claimed that if he is removed, his spouse will be left to raise their children alone in the United States knowing her children's father could be suffering at the hands of Chinese authorities.

As discussed above, the Applicant's claim of being persecuted in China has been found to lack credibility. The record does not support the Applicant's assertion that his spouse would have to fear that he would be suffering at the hands of Chinese authorities.

With regard to the financial hardship the Applicant's spouse would experience upon separation, the record of proceedings contains some bank statements, utility bills and closing documents for a residential property purchase. However, these documents do not demonstrate a financial hardship on the Applicant's spouse if he were removed because they do not establish she would be unable to meet her financial obligations in his absence. As noted by the Applicant's spouse in her letter, she is

Matter of W-Y-

the primary source of income for their family, and as such, the record does not support a determination that his absence would lead to a financial hardship to his spouse. We do not find the record to establish that the Applicant's spouse would experience extreme hardship if the Applicant were removed.

C. Discretion

As the Applicant has not demonstrated extreme hardship to a qualifying relative or qualifying relatives, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of W-Y-*, ID# 16220 (AAO May 31, 2016)