

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

● CHEN
[REDACTED]
[REDACTED]

DATE: NOV. 2, 2017

FILE #: [REDACTED]
APPLICATION RECEIPT #: [REDACTED]
I-290B RECEIPT #: MSC [REDACTED]

IN RE: ● CHEN

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

ON BEHALF OF APPLICANT:

ALAN LEE, ESQUIRE
ALAN LEE, ATTORNEY AT LAW
408 8TH AVE STE 5A
NEW YORK NY 10001

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Please direct any further inquiries to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office



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

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

MATTER OF L-C-

DATE: NOV. 2, 2017

APPEAL OF NEW YORK, NEW YORK DISTRICT OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of China currently residing in the United States, has applied to adjust status to that of a lawful permanent resident. A foreign national seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). 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 Director of the New York, New York, District Office denied the application, finding that the Applicant had not established that denial of admission would result in extreme hardship to her spouse, the only qualifying relative. The Director also determined that the Applicant did not merit a favorable exercise of discretion.

On appeal, the Applicant contends that she has established that her spouse's hardship would be extreme and that a favorable exercise of discretion is warranted.

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

I. LAW

Any foreign national 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 the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act.

There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national. If the foreign national demonstrates the existence of the required hardship, then he or she must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

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 issues on appeal are whether the Applicant has established extreme hardship to a qualifying relative and, if so, that she merits a favorable exercise of discretion. The Applicant does not contest inadmissibility for fraud or misrepresentation, a determination supported by the record.¹

With the appeal the Applicant submits a statement, information about country condition in China, a copy of her spouse’s Hong Kong birth certificate, and financial documentation. With the waiver application the Applicant submitted statements from herself and her spouse, mental and medical documentation pertaining to her spouse, a letter from her daughter, academic documentation pertaining to her daughter, financial documentation, documentation establishing her spouse’s business ownership, family photographs, and evidence of her charitable contributions.

The totality of the evidence, including the additional evidence submitted on appeal, establishes that the Applicant’s spouse would experience extreme hardship if admission is denied. The record also demonstrates that the Applicant merits a favorable exercise of discretion.

¹ The record establishes that the Applicant misrepresented her true identity when she applied for nonimmigrant entry to the United States and during secondary inspection in March 2003.

A. Hardship

For purposes of obtaining a waiver pursuant to section 212(i) of the Act, for fraud or willful misrepresentation, the Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, in this case, her U.S. citizen spouse.

The Applicant's spouse maintains that he will experience emotional and financial hardship were the Applicant to relocate abroad while he remains in the United States. The Applicant's spouse states that he and his wife married in 2007 and had a child in 2008 and long-term separation from his wife would cause him and his child emotional hardship. He explains that his wife is the primary caretaker for their daughter and, with a full-time job, he does not believe he will be able to take care of his daughter on his own. He also contends that the thought of his wife relocating abroad is causing him to worry. He states that he is having trouble sleeping and is seeking psychotherapy for his ongoing distress, anxiety, and depression. The Applicant's spouse further contends that although he is employed as a barber, he needs his wife to remain in the United States and continue working at their fashion store. Were she to relocate abroad, he asserts that he would have to close the store and his income alone would not suffice to support the family.

The record establishes that although the Applicant's spouse is employed, the Applicant contributes almost half of the household income. The Applicant has also submitted evidence of their financial obligations, including a mortgage. The record also establishes that the Applicant's spouse works six days a week and 10 to 12 hours a day and thus relies on his spouse to care for their young child. The Applicant has also submitted documentation establishing that he is receiving psychotherapy for depression and anxiety as a result of his wife's possible relocation abroad.

Regarding relocating abroad with the Applicant, the Applicant's spouse maintains that he was born in Hong Kong and is unfamiliar with the language, culture, and customs in China. He also states that he came to the United States in 1998 and were he to relocate abroad, he would experience hardship due to separation from his employment, his business, his sibling, his community, and his home. The Applicant's spouse also states that he suffers from asthma and takes numerous medications to treat the condition but were he to relocate to China, he fears that he would experience medical hardship due to pollution there. The Applicant also maintains that China does not recognize dual citizenship and were her spouse to relocate abroad, he and their child would likely need to renounce their U.S. citizenship.

The record establishes that the Applicant's spouse was born and raised in Hong Kong and has no ties to mainland China. The Applicant has also established that her spouse has been residing in the United States for nearly two decades. The Applicant has also submitted documentation establishing her spouse's gainful employment and business ownership. The record also contains documentation establishing that the Applicant's spouse is taking medications for asthma. The Applicant has also submitted articles establishing the existence of air pollution in China. The U.S. Department of State details that air pollution is a significant problem in many areas in China.

The record, reviewed in its entirety, supports a finding that the Applicant's spouse will face extreme hardship if the Applicant is unable to reside in the United States.

B. Discretion

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996). We must "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). In evaluating whether to favorably exercise 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, recency 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).

Id. at 301 (citations omitted). We must also consider "[t]he underlying significance of the adverse and favorable factors." *Id.* at 302. For example, we assess the "quality" of relationships to family, and "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed]." *Id.* (citation omitted).

The positive factors in this case are the hardships the Applicant's spouse and child would face if the Applicant is unable to reside in the United States, the Applicant's community ties in the United States, the Applicant's apparent lack of a criminal record, the Applicant's gainful employment and the payment of taxes, the Applicant's charitable sponsorships, home ownership, and the passage of more than a decade since her fraud or willful misrepresentation when she procured entry to the United States. The negative factors in this case are the Applicant's fraud or willful misrepresentation in 2003 as detailed above, her periods of unlawful presence and employment in the United States, and her placement in removal proceedings. We find that the positive factors outweigh the negative factors in this case, and a favorable exercise of discretion is warranted.

Matter of L-C-

ORDER: The appeal is sustained.

Cite as *Matter of L-C-*, ID# 553828 (AAO Nov. 2, 2017)