

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

[REDACTED] KUNG
[REDACTED]
[REDACTED]

DATE: OCT. 31, 2017

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

IN RE: [REDACTED] KUNG

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

ON BEHALF OF APPLICANT:

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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 P-Y-K-

DATE: OCT. 31, 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 Taiwan 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 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, determining that the Applicant was inadmissible for fraud or misrepresentation and concluding that she had not established that denial of admission would result in extreme hardship to her qualifying relative.

On appeal, the Applicant contends that she has established that her qualifying relative would suffer extreme hardship if admission is denied and that she merits a favorable exercise of discretion.

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 if she is denied admission and if so, whether she merits a favorable exercise of discretion. The Applicant does not contest her inadmissibility for fraud or misrepresentation, a finding supported by the record.¹

On appeal the Applicant submits affidavits from herself, her spouse, and her children; an article about hiring practices in Taiwan; financial documentation; mental health documentation pertaining to her spouse; photographs of the family; evidence of contributions made to a charitable community organization; documentation establishing that removal proceedings against her were terminated in May 2016; and copies of previously submitted documents in support of her waiver request. With her waiver application the Applicant submitted statements from herself, her spouse, and her children; mental health documentation pertaining to her spouse; a letter in support; employment and financial documentation; immigration and biographic documents; and a police report confirming that the Applicant has no criminal record in New York. We have considered all the evidence in the record.

The totality of the evidence, including the additional evidence submitted on appeal, demonstrates that the Applicant’s spouse would experience extreme hardship if admission is denied. Additionally, the evidence shows that the Applicant merits a waiver of inadmissibility as a matter of discretion.

¹ The record establishes that the Applicant admitted that she misrepresented her employment on her nonimmigrant visa application in 1982.

A. Hardship

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case her lawful permanent resident spouse. The Applicant's spouse asserts that if he remained in the United States without the Applicant, he would experience emotional and financial hardship. He states that he and his wife have been together since 1982 and he would be devastated if he were to remain in the United States without her. He further contends that he and the Applicant are life partners and complement each other and were she to relocate abroad, he would not be able to properly care for himself. The Applicant's spouse also states that the Applicant was diagnosed with colon cancer in September 2016 and had surgery and chemotherapy and as a result, she is suffering from numerous serious side effects, including severe nausea and general discomfort. Were she to relocate abroad, he contends that he would be worried about her care and well-being at all times. He asserts that they do not own anything in Taiwan, such as property, and have not been back in three decades. He worries that the Applicant would not be able to survive alone in Taiwan. The Applicant's spouse also states that his wife works and contributes to the finances of the household.

The Applicant's spouse also claims that he would experience extreme emotional and financial hardship if he relocated to Taiwan with the Applicant. He states that he has been living in the United States since 1982 and has extensive community, employment, and family ties in the United States. He contends that at the age of 59, he and his spouse would not be able to obtain gainful employment abroad to support themselves. The Applicant's spouse also contends that were they to relocate abroad, they would lose their home of nearly 27 years as they would not be able to make the mortgage payments. The Applicant's spouse also contends that he is very close to his adult children and long-term separation from them would cause him hardship.

The record establishes that the Applicant and her spouse, both in their late 50s, have been married for 35 years and they have two U.S. citizen children together. The record also establishes that the Applicant's spouse has resided in the United States for more than three decades and is currently a lawful permanent resident of the United States. The Applicant also submits a letter establishing that she was diagnosed with cancer in September 2016, had surgery in October 2016 and learned that the cancer had spread to her lymph nodes, and started chemotherapy in November 2016. The Applicant has also submitted documentation establishing that her spouse has been diagnosed with depression and anxiety and is receiving care from a psychologist. The Applicant has also submitted letters from her children explaining the hardships they and their father will experience were the Applicant denied a waiver. Tax documentation in the record establishes that the Applicant contributed almost half of the household income in 2015. The record also contains an article that states that employers in Taiwan may require that their employees retire at the age of 60.

The evidence, considered both individually and cumulatively, establishes that the Applicant's spouse would experience extreme hardship if the Applicant is denied admission, whether he relocates to Taiwan or remains in the United States without her.

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-Morales*, 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 to the Applicant’s spouse and children if the Applicant is unable to reside in the United States, the Applicant’s periods of employment in the United States and the payment of taxes, the Applicant’s 35-year marriage to her spouse, the Applicant’s 34-year residence in the United States, the Applicant’s apparent lack of a criminal record, home ownership, community ties, letters in support of the Applicant, financial contributions made by the Applicant to a charitable community organization, her son’s service in this country’s Armed Forces, the Applicant’s expressions of remorse for her fraud or misrepresentation, and the passage of over three decades since the Applicant’s fraud or misrepresentation. The negative factors in this case are the Applicant’s fraud or misrepresentation when procuring a nonimmigrant visa and subsequent entry into the United States, her failure to depart pursuant to a voluntary departure order in 1987, her deportation order in 1993, and periods of unlawful presence and employment in the United States. We find that the positive factors outweigh the negative factors in this case, and a favorable exercise of discretion is warranted.

Matter of P-Y-K-

ORDER: The appeal is sustained.

Cite as *Matter of P-Y-K-*, ID# 639671 (AAO Oct. 31, 2017)