identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: MAY 16 2011 Office: LOS ANGELES FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of China, attempted to procure entry to the United States in December 1993 by presenting a photo-substituted passport containing a fraudulent U.S. nonimmigrant visa. He was thus found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry to the United States by fraud or willful misrepresentation. The applicant is applying for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his lawful permanent resident parents.

The field office director concluded that extreme hardship to a qualifying relative had not been established and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated June 2, 2009.

In support of the appeal, counsel for the applicant submits a brief, dated July 30, 2009. The entire record was reviewed and considered in rendering a decision on the appeal.

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:

> (1) 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 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 (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...

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident parents are the only qualifying relatives in this case. 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) [redacted] was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their

parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on a qualifying relative, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

Counsel contends that the applicant's lawful permanent resident parents will suffer emotional, physical and financial hardship were the applicant to relocate abroad due to his inadmissibility while they remain in the United States. To begin, counsel explains that the applicant's father, currently 72 years old, is a prostate cancer survivor and relies greatly on his son to care for him as he is unable to care for himself on his own. Further, counsel contends that the applicant's lawful permanent resident mother, currently 67 years of age, also requires her son's assistance to care for her daily needs. Counsel notes that both parents reside with the applicant and their grandchildren. Although the applicant has four siblings, counsel notes that they are unable to assist their parents, either due to their own family obligations or because they no longer have a relationship with their parents. *Brief in Support of Appeal,* dated July 30, 2009. Finally, counsel asserts that the applicant's parents rely on the applicant's financial assistance as they are too old to work and were he to relocate abroad, they would experience financial hardship. *Brief in Support of I-601 Waiver,* dated May 5, 2009.

In support, an affidavit has been provided by the applicant's lawful permanent resident parents, noting that since they are both old and weak, and in light of the applicant's father's prostate cancer diagnosis in 2005, they live with their son. The applicant's parents explain that their son takes them to their doctor's appointments, buys and picks up medicines, makes decisions for them, and cares for their every day needs. The applicant's parents conclude that their son is the only one they trust and they need him to remain in the United States to look after them. *Affidavit and Translation from* [redacted] dated April 8, 2009. Finally, counsel has submitted medical documentation pertaining to the applicant's father, confirming that he was diagnosed with prostate cancer and underwent surgery in 2006. In addition, medical documentation from March 2007 confirming that the applicant's mother has a fatty liver and a possible kidney stone has been submitted.

To begin, it has not been established that the applicant's parents will experience emotional hardship due to long-term separation from their son. Nor has it been established that the applicant's parents would be unable to travel to China, their native country, on a regular basis to visit their son. As for the applicant's parents' referenced medical conditions, the record fails to establish the current gravity of the situation, the short and long-term treatment plan, what limitations the applicant's

parents have, and what hardships they will face were the applicant specifically to relocate abroad. Specifically, counsel indicates that the applicant's father has "beaten" his cancer, and the record indicates that he underwent prostate surgery in 2006 to remove the tumor and tests indicated the cancer had not metastasized. The record contains no more recent documentation of his condition and no letter from either of his parent's physicians explaining in plain language the nature and severity of any medical condition, the prognosis for recovery, and the need for treatment and family assistance.

The AAO notes that the applicant has four siblings residing in the United States. It has not been established that the applicant's siblings are unable to assist their parents, irrespective of where they reside in the United States, should the applicant relocate abroad due to his inadmissibility. Counsel states that two of the siblings have lost touch with the family and the applicant's sisters live New York and Louisiana. There is no evidence on the record to establish that the applicant's sisters are unable or unwilling to provide their parents with any support and assistance needed or that his parents could not relocate to reside with either of these sisters. 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 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO notes further that although the applicant's parents currently reside with the applicant in California, the applicant's offer of full-time employment upon his adjustment to permanent resident status is in Colorado. *Letter from* [redacted] *Restaurant,* dated February 18, 2009. The record contains a job offer letter from the petitioner in Colorado issued in 2009 and there is no indication that that applicant has invoked labor certification portability provisions under the Act to remain in California with his parents based on an offer of employment in the same or similar occupational classification.

As for the financial hardship referenced above, no documentation has been provided that outlines the applicant's parents' current financial situation, including income, expenses, assets and liabilities, and their needs, to establish that without the applicant's continued presence in the United States, their hardship would be extreme. Further, the record contains no evidence of financial contributions made by the applicant to his parents' household specifically, to further establish that his absence would cause the applicant's mother and father extreme financial hardship. 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)). Finally, it has not been established that the applicant's siblings are unable to assist their parents financially should the need arise.

The AAO recognizes that the applicant's parents will endure hardship as a result of a long-term separation from the applicant. However, their situation if they remain in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The record fails to establish that the applicant's parents' continued care and emotional and financial survival directly correlate to the applicant's physical presence in the United States. The AAO concludes that based on the evidence provided, it has not been established that the

applicant's lawful permanent resident parents will experience extreme hardship were they to remain in the United States while the applicant relocates abroad due to his inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, counsel contends that were the applicant's parent to relocate abroad to reside with the applicant, they would be forced to leave their two other children and multiple grandchildren and that would cause them emotional hardship. In addition, counsel notes that the applicant's parents have been in the United States for over a decade and no longer have ties to China. Finally, counsel asserts that medical care in China is not up to par with the Western world. Finally, counsel notes that the applicant's parents' treating doctors are in the United States and a relocation abroad would cause them hardship as they would no longer be treated by professionals familiar with their conditions and treatment plans. *Supra* at 7.

Documentation has been provided establishing the health issues to the applicant's parents. In addition, the record establishes the applicant's parents' ties to the United States, as they have resided in the United State for more than 10 years. Moreover, the AAO notes the following regarding medical care in China, in pertinent part:

> The standards of medical care in China are not equivalent to those in the United States. If you plan on travelling outside of major Chinese cities, you should consider making special preparations.
>
> Travelers have reported difficulty passing through customs inspection upon arrival with prescription medications. If you regularly take over-the-counter or prescription medication, bring your own supply in the original container, if possible, including each drug's generic name, and carry the doctor's prescription with you. Many commonly used U.S. drugs and medications are not available in China and some that bear names that are the same as or similar to the names of prescription medications from the United States do not contain the same ingredients.
>
> In emergencies, Chinese ambulances are often slow to arrive, and most do not have sophisticated medical equipment or trained responders. Travelers usually end up taking taxis or other immediately available vehicles to the nearest major hospital rather than waiting for ambulances to arrive. Most hospitals demand cash payment or a deposit in advance for admission, procedures, or emergencies, although hospitals in major cities may accept credit cards. . . .
>
> In most rural areas, only rudimentary medical facilities are available, often with poorly trained medical personnel who have little medical equipment and medications. Rural clinics are often reluctant to accept responsibility for treating foreigners, even in emergency situations.

Country Specific Information-China, U.S. Department of State, dated August 11, 2010.

Based on the documentation provided by counsel with respect to the applicant's parents' medical conditions as well as the substandard medical care in China and the applicant's parents' age and family ties to the United States, the AAO finds that the applicant's parents would experience extreme hardship were they to relocate to China to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that his lawful permanent resident parents would suffer extreme hardship were they to relocate abroad to reside with the applicant, the record fails to establish that the applicant's lawful permanent resident parents would suffer extreme hardship were they to remain in the United States while the applicant resides abroad. The record demonstrates that the applicant's parents face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son or daughter is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.