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

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: NOV 0 9 2011 OFFICE: NORFOLK, VIRGINIA 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, Norfolk, Virginia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China who 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated July 8, 2009.

The record includes, but is not limited to: Form I-290B; counsel's brief on appeal; Forms I-601, I-485, and denials of each; an affidavit from the applicant; two hardship affidavits from the applicant's wife; a psychological evaluation; tax returns and W-2s for 2005, 2006, and 2007; marriage and birth certificates; business license; Form I-130; two Forms I-589 and records of the applicant's asylum proceedings; records of the applicant's immigration court proceedings, sworn statement, and failure to abide by terms of voluntary departure. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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.

The record reflects that the applicant attempted to enter the United States with the passport of another individual on or about January 15, 1993. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The applicant does not contest these findings on appeal.

Section 212(i) of the Act provides, in pertinent part:

> (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 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.

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 or his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's wife is the only 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. *See Salcido-Salcido*, 138 F.3d at 1293 (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.

The record reflects that the applicant's wife is a 36 year old native of China and citizen of the United States. With regard to separation from the applicant, she states that if her husband was sent to China her "whole life would be destroyed" and she and her two sons would "be unable to live." See *Hardship Affidavit*, dated August 3, 2009. With regard to emotional hardship, counsel asserts that the applicant's wife "is under attendance of the Psychologist" and that she "needs the applicant's taking care of." *Form I-290B*, received August 6, 2009. The applicant's wife states that she worries all the time, feels anxious, depressed, helpless, hopeless, is unable to eat or sleep well, she became very thin, her hair began falling out, she has headaches, stomach aches, feels pain in her waist and legs, and her arm got burned at work because she was unable to concentrate. *Id.* In support, the applicant submits a *Psychological Evaluation*, undated. Therein [redacted], Ph.D asserts that the applicant's wife reported thought racing, insomnia, decreased appetite, weight loss, hair loss, body pains, and feelings of helplessness though she denied any suicidal or homicidal ideations. *Id.* [redacted] asserts that the applicant's wife reported a previous depressive episode in 1997 linked to her first husband's unfaithfulness, and full recovery in late 1998 with the applicant's help. *Id.* [redacted] asserts that the applicant's wife "reported one prior visit to a psychologist in March 2008 for an evaluation," but that she had some difficulty communicating with the psychologist who did not speak Chinese. *Id.* [redacted] diagnoses the applicant's wife with "Major Depressive Disorder, Recurrent, Severe Without Psychotic Features and Anxiety Disorder, NOS based on the Diagnostic and Statistical Manual of Mental Disorders (American Psychiatric Association)." *Id.*

[redacted] makes three recommendations with regard to this diagnosis. That the applicant's wife: (1) "have weekly supportive psychotherapy to help her reduce depression and anxiety and manage stresses due to her husband's immigration problem;" (2) "try anti-anxiety and antidepressant medication with a psychiatrist or her family doctor if her condition does not improve significantly with psychotherapy"; and (3) that her "husband work closely with the immigration authorities to solve his immigration problem and avoid deportation to China, which, in this psychologist's

professional opinion, would cause extreme hardship to the patient and their two children." *Psychological Evaluation*, undated. Although the applicant's wife asserts in her *Hardship Affidavit*, dated August 3, 2009: "Now I am under attendance of the Psychologist," there is no evidence in the record that shows she is currently receiving or has ever received psychotherapy treatment, that she has consulted with a psychiatrist or family doctor, or that she has been taking medication to help with the conditions described.

With regard to the applicant's children, [redacted] asserts that his youngest son attends a "gifted program" about one to two hours away by bus and that the applicant "picks him up daily so that he will not be exhausted when he gets home." *Id.* [redacted] adds regarding the applicant's wife, that "she did not drive and could not take her children to places." *Id.* [redacted] asserts that the applicant's wife stated that the children are very attached to their father and that roller skating and bike riding are their favorite activities to do with him. *Id.* Congress did not include hardship to the applicant or his children as factors to be considered in assessing extreme hardship under section 212(i) of the Act, except as it may affect the qualifying relative – here the applicant's wife. That the applicant's children would be unable to spend as much time with their father as they like and enjoy his company are hardships ordinarily associated with removal of a family member. [redacted] asserts that "the risk for child neglect in this family will increase substantially if the patient's condition further deteriorates, and she is left alone to care for her two young boys. The link between maternal depression and child neglect has been well-established in the literature." *Id.* [redacted] does not cite any such literature, and no evidence has been submitted to support his assertion. The existence of a link between maternal depression and child neglect alone is insufficient to demonstrate that the applicant's wife will neglect her children in her husband's absence. Thus, the AAO is unable to make a determination that hardship to the applicant's children will cause extreme hardship to the applicant's spouse. The AAO acknowledges and has considered [redacted] diagnoses and professional opinion, but the record does not establish that the applicant's wife's emotional difficulties go beyond the normal hardships associated with inadmissibility of a family member. Given that the evaluations are based on self-reporting by the applicant's wife, and considering [redacted] statements that she would benefit from psychotherapy and medication, there is insufficient evidence to establish that the applicant's spouse would suffer significant emotional hardship in the event of separation.

The applicant's spouse asserts economic hardship on separation, stating that travel to visit her husband in China would be very expensive and limited. See *Earlier Hardship Affidavit*, dated January 2009. The applicant's wife states that she could not run their Chinese restaurant without her husband's help and support and would be unable to manage financially. *Id.* She states that her husband is the restaurant manager and cook, that she is the cashier, and that she only works there a few hours on weekdays because she needs to "pick up" her sons from school by 3:00 p.m. The AAO notes that this statement is inconsistent with the assertions discussed, *supra*, as reported by the applicant's wife to [redacted] concerning the family's school transportation arrangements. The applicant's wife states that child care is very expensive and she does not earn enough money to support the household and pay someone to care for the children. *Id.* No evidence was submitted that shows the cost of child care. The applicant's wife states that she has no experience running a restaurant and her husband has all the business experience and savvy. *Id.* The applicant asserts that the restaurant will not be able to continue in his absence, that he is "taking main charge" of it,

and that they cannot afford to hire other employees. See *Applicant's Affidavit*, dated August 3, 2009. The applicant's wife states that they also own a house in Virginia Beach and that she "could not manage all of this and all the other expenses involved with caring for our two children and maintaining our home without my husband's help," and that "without his help, I might have to sell our house and our business in order to support the children and myself." *Id.* The record does not contain a household budget, and no evidence has been submitted to show the family's regular expenses in relation to their income. Though the AAO recognizes that the applicant's spouse may suffer economic difficulty in the absence of her husband, the evidence in the record is insufficient to establish that she will suffer significant economic hardship beyond that ordinarily associated with the removal or inadmissibility of a family member.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. The difficulties described, however, do not take the present case beyond those hardships ordinarily associated with removal of a family member, and the evidence in the record is insufficient to demonstrate that the challenges to the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

With regard to relocation, the applicant asserts that China has a very high rate of unemployment, that he will have trouble finding a job, and that if he does find a job the income will be too low to support his family. See *Applicant's Affidavit*, dated August 3, 2009. The record contains no evidence concerning the economic situation in China. The applicant's wife states that it would be very difficult to get used to life in China after living outside the country since 1995. See *Earlier Hardship Affidavit*, dated January 2009. She states that she no longer has ties to or relatives in China and that all of her immediate family members live in the U.S. *Id.* Counsel asserts that the applicant's wife "will not be able to receive proper treatment for her psychological problems." *Form I-290B*, received August 6, 2009. [redacted] asserts that it is unlikely the applicant's wife will get the treatment "that she needs," and that it is "well known that mental illness is still stigmatized in China, and the care for the mentally ill there is poor and often inappropriate." See *Psychological Evaluation*, undated. The record contains no evidence concerning mental illness in China. And as discussed, *supra*, there is no evidence in the record that the applicant's wife has sought or received any psychological treatment, despite [redacted] recommendation that she have weekly psychotherapy and consult a family physician or psychiatrist about taking antidepressant and antianxiety medications. *Id.* The AAO finds that as the record does not show that applicant's spouse has availed herself of psychological "treatment" in the United States, counsel's assertion that she would suffer hardship related to being unable to do so in China is unpersuasive.

Counsel asserts that the applicant's children "will not be able to receive proper education because they do not read or write Chinese." *Form I-290B*, received August 6, 2009. [redacted] asserts that the children "speak fluent English but limited Chinese." See *Psychological Evaluation*, undated. There is no evidence in the record to show that the two young boys will be unable to learn to read and write their parents' native language, whether in the U.S. or China, nor is there evidence to show that their education would be significantly compromised. As discussed, *supra*, hardship to the applicant's children is relevant only insofar as it may affect the qualifying relative spouse. While the applicant's children may face some difficulty in adjusting to life in China, the record

does not establish that such difficulties would cause uncommon hardship for the applicant's spouse.

The AAO has considered cumulatively all assertions of hardship related to relocation, including that the applicant's wife would have to readjust to a country she has not lived in for approximately 16 years, her significant family ties to the United States, community ties, home and restaurant ownership in the U.S., her psychological condition, the education of her children, and economic prospects in China. Considered in the aggregate, the AAO finds that the evidence is insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to China to be with the applicant.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden, in that he has not shown that a purpose would be served in adjudicating his waiver under section 212(i) of the Act due to his inadmissibility under section 212(a)(6)(C)(i) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.