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

[redacted]

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DATE: DEC 0 4 2012 OFFICE: NEW YORK, NY FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, New York City District Office, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen and reconsider. The motion to reopen will be granted, the motion to reconsider will be denied, the prior decision of the AAO will be affirmed, the appeal will remain dismissed, and the application will remain denied.

The applicant is a native and citizen of China who has resided in the United States since September 1, 1994 when he sought to procure admission into the United States by presenting a photograph-altered Japanese passport to immigration officials. He 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 admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen, the son of lawful permanent residents, and is the beneficiary of an approved Petition for Alien Relative filed by his spouse. 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 with his U.S. citizen spouse and lawful permanent resident parents.

The Director determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

> 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)(1) of the Act provides, in pertinent part:

> The [Secretary of Homeland Security] may, in the discretion of the [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 [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....

The Director concluded that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and that the applicant failed to establish that the bar to admission would impose extreme hardship on his U.S. citizen spouse and lawful permanent resident parents, the qualifying relatives, and denied the application accordingly. *Decision of Director*, dated November 5, 2007. The AAO dismissed the applicant's appeal on February 3, 2011, finding that the applicant's spouse would suffer extreme hardship upon relocation to China, but not upon separation from the applicant. The AAO also determined that the applicant had not demonstrated that his parents would suffer extreme hardship upon separation or relocation.

On motion, counsel submits evidence of new facts, primarily the death of the applicant's father, to demonstrate that the applicant's mother will, in fact, suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. Counsel states that the AAO previously found insufficient evidence in the record showing that the applicant's wife would suffer extreme hardship upon separation from the applicant and submits new evidence of emotional, psychological, academic and financial hardship. In support of the motions, counsel submits a brief dated February 28, 2011, a report from the psychological evaluation of the applicant's spouse by [redacted] dated February 11, 2011, medical records for the applicant's mother, a death certificate for the applicant's father, a support letter from the applicant's son, tax records and copies of academic records for the applicant's wife and son.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The record includes, but is not limited to, hardship statement from the applicant's wife, support letters from the applicant's son and mother-in-law, financial documents, medical records and copies of identification, marriage, birth and death records for the applicant's family. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motions. Counsel's submission meets the requirements for a motion to reopen, but not for a motion to reconsider.

The applicant does not contest that he is inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure admission to the United States through fraud or willful misrepresentation. Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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.

Counsel asserts that the applicant's lawful permanent resident mother will suffer extreme hardship if the applicant's waiver is denied. On appeal, counsel submits a death certificate showing the

recent death of the applicant's father and medical records for the applicant's mother. The record, in the aggregate, establishes that the applicant's mother will suffer extreme hardship upon relocation to China due to her age and health conditions. The record indicates that the applicant's mother is over 70 years old and is being treated for diabetes, hypertension, heart disease, polyarthralgia, and a left shoulder condition causing her acute pain. *Letter from* [redacted] dated February 10, 2011; *Medical report by* [redacted] dated December 16, 2010.

Although the applicant has established that his mother will suffer extreme hardship upon relocation to China, the record does not show that the applicant's mother will suffer extreme hardship upon separation from the applicant. Counsel claims that the family business operated by the applicant provides financial support to the applicant's mother. The record does not contain financial records documenting this support and the 2008 and 2009 tax records for the applicant do not list the applicant's mother as a dependent. Counsel further asserts that the applicant's mother relies on the applicant for basic medical, nutritional, safety and transportation needs. In a two-sentence letter, the applicant's mother's physician briefly stated that his mother requires the applicant's assistance, but the record lacks evidence of the specific needs of the applicant's mother for which the applicant provides her with support, or evidence that the applicant is the sole or primary source of support for his mother. The applicant has not established that his mother will suffer extreme hardship upon separation from the applicant.

We have previously found that the applicant's spouse would suffer extreme hardship if she were to relocate to China with the applicant, but not upon separation from the applicant if she remained in the United States. The new evidence submitted on motion does not show that the hardships faced by the applicant's wife upon separation from the applicant, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

Counsel states that the applicant's spouse will face emotional, psychological, academic and financial hardship upon separation from the applicant, but not upon separation from the applicant if she remained in the United States. The evidence indicates that the applicant's spouse was recently evaluated by a psychologist who diagnosed the applicant's spouse with Adjustment Disorder with Mixed Anxiety and Depressed Mood and referred her to another psychologist. Other than the evaluation, the record does not contain further medical evidence to document the ongoing condition and treatment of the applicant's spouse's psychological health. While the evaluation indicates that the applicant's spouse is having difficulty concentrating, her academic records indicate that she is exceling in her classes while taking a full-time course load.

During an interview with a psychologist in 2011, the applicant's spouse stated that she needs the support of the applicant since she cares for her parents and they are aging. *Psychological evaluation report of* [redacted] dated February 11, 2011. The record contains no evidence of the specific needs of her parents and the support that the applicant's wife requires in order to the meet the needs of her parents.

The applicant's spouse further stated that she is unable to care for her teenage son with attention deficit disorder without the emotional support of her husband. *Id.* While the evidence of record

includes a report card and a support letter from the applicant's son, the record does not include supporting evidence such as, for example, medical records discussing the special needs of the applicant's son, or other documentation of the difficulties the applicant's spouse would encounter in raising their son while the applicant relocated to China.

The evidence indicates that the applicant's wife is enrolled in a university to pursue pharmacy studies. The applicant's spouse stated that she was expecting to graduate in May 2011 but has been unable to secure employment. *Id.* The record does not contain evidence that the applicant's spouse has encountered difficulty in securing employment. The applicant's spouse maintains that it is impossible to operate the family business without the applicant and that the entire family is reliant on the applicant's earnings. The record does not include evidence of total family income and expenses, including the applicant's mother and the applicant's wife's parents. Nor has any evidence been provided to establish that the family business could not continue to function with the help of others, thereby providing income to the applicant's spouse and child, or that the sale of the family business would result in a loss that would cause extreme financial hardship to the applicant's spouse.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship to his wife or mother upon separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

The applicant has provided evidence of new facts to reopen these proceedings but the evidence of record does not establish his eligibility for a waiver of inadmissibility based on extreme hardship to a qualifying relative under section 212(i) of the Act. In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, 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 remains dismissed and the waiver application remains denied.

ORDER: The motion to reopen is granted, the appeal remains dismissed and the waiver application remains denied.