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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H5

DATE: [redacted] OFFICE: BANGKOK, THAILAND

IN RE: JAN 17 2012 Applica[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 District Director, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Taiwan, who was found to be 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 procured a visa for admission to the United States through fraud or misrepresentation. The applicant also was found to be inadmissible to the United States pursuant to section 212(a)(6)(G) of the Act, 8 U.S.C. § 1182(a)(6)(G), for having obtained the status of a nonimmigrant under section 101(a)(15)(F)(i) of the Act and violating a term or condition of such status. The applicant has parents who are Lawful Permanent Residents. The applicant contests these findings of inadmissibility and seeks 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 her parents and sibling.

The District Director concluded that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, and section 212(a)(6)(G) of the Act, a ground for which a waiver is unavailable, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Revised Decision of District Director, Bangkok, Thailand*, dated September 8, 2009.

On appeal, the applicant asserts that page two of the District Director's initial decision letter contained various mistakes such as the applicant's name; nationality; A Number; and applicable inadmissibility provisions of the Act. *See Form I-290B, Notice of Appeal or Motion*, dated September 10, 2009. The applicant further asserts that contrary to the District Director's determination that she is inadmissible under a provision of the Act for which a waiver is unavailable, she is in fact eligible for a waiver. *Id.*

The record includes, but is not limited to: statements from the applicant, her mother, and her mother's siblings; biographic documents; school records, articles, certificates and awards, and letters of recommendation; police records; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (C) Misrepresentation.-
>
> > (i) In general.- 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.
> >
> > ...
> >
> > (iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

...

> (G) Student visa abusers.- An alien who obtains the status of a nonimmigrant under section 101(a)(15)(F)(i) and who violates a term or condition of such status under section 214(l) is inadmissible until the alien has been outside the United States for a continuous period of 5 years after the date of violation.

The record reflects that the applicant presented a Certificate of Eligibility for Nonimmigrant Student (F-1) Status (Form I-20) in support of a nonimmigrant visa application. The record further reflects that the applicant did not intend to study at the school that issued the Form I-20. On appeal, the applicant's mother states that the applicant did not understand the immigration laws and regulations, is regretful for her behavior, and that they would never intentionally commit any illegal acts. As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). Although the applicant may not have understood the immigration laws and regulations, the record reflects that the applicant presented a Form I-20 to immigration officials even though she did not intend to study at the school that issued the Form I-20. The AAO therefore finds that the applicant's misrepresentation was willful as opposed to accidental, inadvertent, or in an honest belief that the facts were otherwise. As such, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

The District Director found the applicant inadmissible under section 212(a)(6)(G) of the Act. The AAO additionally finds that since the applicant has remained outside the United States to date upon concluding her secondary school studies in June 2006, the applicant is no longer inadmissible under section 212(a)(6)(G) of the Act. Accordingly, the AAO will determine whether the applicant is eligible for a waiver to the inadmissibility provisions contained in section 212(a)(6)(C) of the Act.

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

> (1) The [Secretary] may, in the discretion of the [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 [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.

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. Hardship to

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

The applicant's mother contends that her family has suffered extreme hardship since being separated from the applicant because they are a very close and tight-knit family, and they will not know what to do if the applicant were not permitted to come to the United States. *See Letter of Support from* [redacted], dated September 10, 2009. The mother further contends that her family is a pious, Catholic one that would never intentionally commit any illegal acts; the applicant is a gifted, talented individual and would make great contributions to the American society; and the family was going to divest itself of its home in Taiwan and use the applicant's father's retirement for starting a new life in the United States. *Id.* The mother also contends that she and the applicant's father would feel lonely and hopeless without their children, including the applicant. *Letter of Support from* [redacted] undated. In support of these contentions, the applicant has submitted statements from her aunts in which they discuss the circumstances and reactions concerning the applicant's immigration matters in the United States as well as the applicant's academic achievements, opportunities, and community activities. *See Letters of Support from* [redacted]

The AAO notes that the applicant's parents may experience some emotional hardship because of separation from the applicant. However, the record does not establish that the hardship that the parents may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record does not include any evidence of the parents' current mental health or physical conditions, or the effect that separation from the applicant has had on the parents' overall wellbeing. Moreover, the record does not establish that the parents would be unable to function without the applicant's presence. The AAO recognizes the desires of the applicant's parents to have their children with them; however, the difficulties described do not take the present case beyond those hardships ordinarily associated with the inadmissibility of a family member.

The AAO also notes that the applicant's parents may experience some financial hardship because of separation from the applicant. However, the record does not establish that the hardship that the parents may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record does not include any evidence of the parents' financial obligations or inability to maintain their expenses in the United States without the applicant's

presence. Moreover, the record does not contain any evidence that the parents would be unable to travel between the United States and Taiwan to visit the applicant.

The AAO recognizes that the applicant's parents may experience some hardships as a result of separation from the applicant. However, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's parents will suffer extreme hardship as a result of separation from the applicant.

Additionally, the AAO notes that the applicant does not address how her parents would endure extreme hardship if the parents were to relocate to Taiwan to be with the applicant. *See Form I-290B, Notice of Appeal or Motion, supra*; *see also Letter of Support from* [redacted], dated March 11, 2009. The applicant's parents are natives of Taiwan, and the record reflects that they continue to maintain a home and financial ties there. Also, there is no evidence in the record that the parents do not maintain their citizenship or family and social ties in Taiwan. Moreover, the record does not include any country conditions information concerning economic, political, or social conditions in Taiwan and how such conditions would impact the parents.

Although the applicant's parents could experience some hardships as a result of relocation to Taiwan with the applicant, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's parents will suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relatives, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her Lawful Permanent Resident parents as required under section 212(a)(6)(C)(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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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 will be dismissed.

ORDER: The appeal is dismissed.