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: JUL 05 2012 Office: CALIFORNIA SERVICE CENTER 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 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, 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 presented a photo-substituted passport in an attempt to enter the United States. The applicant 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). She is the spouse of a U.S. citizen, daughter of a Lawful Permanent Resident (LPR) and has three U.S. citizen children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse or LPR mother, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 12, 2010.

On appeal, counsel for the applicant asserts the applicant is not inadmissible for misrepresentation, and that the applicant's relatives will suffer extreme hardship should the waiver application be denied. *Form I-290B*, received June 10, 2010.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (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 chapter is inadmissible.

The record indicates that the applicant presented a photo-substituted passport when entering the United States on March 13, 1995. She was detained, and upon secondary inspection admitted that the passport was fake and that she had paid a smuggler in China $4,000 to help her get to the United States. Record of Sworn Statement, Form I-263B, March 14, 1995.

On appeal, counsel asserts that the applicant did not make a material misrepresentation because she admitted to the inspection agent that the passport was falsified. She asserts that the applicant's admission to the inspection officer constitutes a recantation and is thus not a misrepresentation, citing to *Matter of Y-G-*, 20 I & N Dec. 794 (BIA 1994).

In order for an alien to recant a misrepresentation the retraction must be voluntary and without delay. *Matter of R-R-*, 3 I&N 823 (BIA 1949). An alien must correct his or her misrepresentation before being exposed by a government official. *Ramos-Senarrilos v. United States*, 177 F.2d 164 (9th Cir. 1949); *see also Ymeri v. Ashcroft*, 387 F.3d 12 (1st Cir. 2004)(finding that admitting a misrepresentation after presenting a passport and being confronted by an inspection officer was misrepresentation under the Act). In this case, the applicant presented a Korean passport to an inspection agent. The inspection agent saw that the passport had an obvious photo switch and referred the applicant to secondary inspection. Upon secondary inspection the applicant admitted that

she was not Korean and that she had paid a smuggler in China $4,000 to help her enter the United States. *Memorandum, Immigration Inspector*, U.S. Department of Justice, March 14, 1995. A person who knowingly presents a false passport as if it were genuine has engaged in a willful misrepresentation. *See Esposito v. INS*, 936 F.2d 911, 912 n. 1 (7th Cir.1991). The record supports that the applicant's retraction was not timely and she did in fact make a misrepresentation.

With regard to the materiality of the applicant's misrepresentation, counsel asserts that her true identity, and whether or not she would have been admissible based on her true identity, is not material. The AAO disagrees. The AAO notes that an applicant applying for a benefit under the Act has the burden of establishing eligibility, and this burden does not shift to the Department of Homeland Security at any point during the proceeding. *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978); *compare with Matter of Bosuego*, 17 I&N Dec. 125 (BIA 1980)(holding that a removal under section 237(a)(1) required Legacy INS to establish the fraud or misrepresentation). An alien's true identity, and eligibility to enter, is a material line of inquiry. In this case the record does not contain any documentation to establish that the applicant would have been admissible based on her true identity, and as such, her attempt to enter the United States using a photo-substituted passport was a material misrepresentation because it cut off a material line of inquiry, to wit, whether the applicant was authorized, and admissible, to the United States.

The AAO concludes that, based on evidence in the record, the applicant made a material misrepresentation when she presented a photo-altered passport to an inspection officer, and is therefore inadmissible under section 212(a)(6)(C) of the Act.

The record contains, but is not limited to, the following evidence: a brief from counsel; country conditions materials on China; a statement from [redacted] M.A., undated, pertaining to the applicant's spouse; copies of intake and invoice documents for therapy sessions for the applicant's spouse; a statement from the applicant; a statement from the applicant's spouse; copies of a lab report related to the applicant's mother; and copies of birth certificates for the applicant's children. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

> (1) The Attorney General may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and LPR mother are the 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).

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 on appeal that the applicant's spouse would experience financial hardship upon relocation to China. *Statement in Support of Appeal*, received July 8, 2010. Counsel asserts that the applicant's spouse is nearing mandatory retirement age in China and that he would be unable to find employment and would have to incur the costs of relocating himself and two children to China as well as the cost of enrolling them in school in China. Counsel further asserts that, due to having applied for asylum after leaving China, the applicant's spouse would experience a significant emotional impact arising from fear of persecution.

The record contains country conditions materials on China which detail their history of human rights abuses and the restrictive living conditions there. These materials are not specifically related to the applicant's spouse, and do not establish that he would be unable to find employment, or otherwise distinguish the impacts of relocation on him from those which are commonly experienced. Nonetheless, based on the applicant's spouse's manner of entry and naturalization into the United States, the AAO will give this factor due consideration when considering the overall impacts on the applicant's spouse upon relocation.

The applicant's spouse has submitted a statement asserting he would fear persecution if he returned to China. *Statement of the Applicant's Spouse,* dated December 29, 2009. While the AAO acknowledges the applicant's spouse's assertion of the emotional impact of returning to China after having received asylum in the United States, the record does not contain any documentation to corroborate the applicant's spouse's assertion. As such, while the AAO will give some consideration to the applicant's spouse's previous persecution with regard to relocation, it cannot find extreme hardship upon relocation based on this factor alone.

When the impacts upon relocation are considered in the aggregate, the AAO does not find the record to sufficiently distinuish the hardships which might impact on the applicant's spouse from those which are commonly experienced by the relatives of inadmissible aliens who relocate with their

spouses. As such, the record fails to establish that the applicant's spouse would experience extreme hardship upon relocation.

In relation to hardship upon separation, counsel asserts that the applicant's spouse and LPR mother will experience emotional hardship if the applicant is removed to China. *Statement in Support of Appeal*, received July 8, 2010. The applicant has also submitted a letter asserting that her mother has medical conditions and will experience emotional hardship if she is removed to China. *Statement of the Applicant*, dated December 29, 2009. The applicant further states that she is the one who cares for their children, and that if she is removed her spouse will not be able to maintain his restaurant and care for their children.

With regard to the assertion that the applicant's spouse would be unable to provide care for their children upon her departure, the record does not contain any evidence establishing that her spouse would be unable to afford child care. In addition, the record indicates that the applicant's spouse and the applicant both have family members in the United States who may be able to help mitigate the impacts of the applicant's departure. The record does not contain any documentation of the applicant's spouse's actual income, his financial obligations or any other evidence that he is experiencing uncommon financial challenges.

The applicant's spouse has also asserted that he and their children will experience emotional hardship if the applicant is removed. *Statement of the Applicant's Spouse*, dated December 29, 2009. The record contains a statement from [redacted] stating that the applicant's spouse has complained of sleeplessness and stress related impacts due to the applicant's inadmissibility. The record also contains copies of medical records related to the applicant's spouse's therapy with Mr. Herranan. An examination of this evidence does not reveal any basis upon which to conclude that the applicant's spouse or children are experiencing any uncommon emotional hardship due to the applicant's inadmissibility. The applicant's spouse has not been diagnosed with any mental health condition and there is nothing which indicates that the emotional impact on him rises above the norm. As noted above, children are not qualifying relatives in this proceeding, as such, any hardship to them is only relevant to the extent that it creates an indirect impact on the qualifying relative. In this case, there is insufficient evidence of emotional hardship to establish that the applicant's children are experiencing any uncommon emotional impact rising to such a degree that it would elevate the applicant's spouse's hardship to an extreme level.

In relation to counsel and the applicant's assertion that the applicant's mother will experience emotional hardship upon separation, the AAO notes the record does not contain any documentation to corroborate their assertions. As such, the AAO cannot distinguish the emotional impact on the applicant's mother from that which is commonly experienced by the parents of inadmissible aliens who remain in the United States. Nor does the record discuss what impacts, if any, the applicant's mother would experience upon relocation. With regard to the applicant's assertion that her mother has medical conditions which would cause her mother hardship if she were removed, the record contains a lab report bearing the name of the applicant's mother. However, this lab report contains only raw medical data. The AAO is not qualified to interpret raw medical data or draw conclusions

from medical records which do not clearly state a basis of medical hardship. Without an articulation of what medical impacts the applicant's mother is actually experiencing, how they impact her ability to function on a daily basis and relevent evidence to support these assertions, the AAO does not find the record to establish that she will experience any uncommon medical or physical hardship should the applicant reside outside the United States.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse or mother will experience extreme hardship if the applicant is prohibited from residing in the United States. The AAO recognizes that the applicant's family members may experience financial or emotional impacts related to the applicant's inadmissibility. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. *See* 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.