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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]

#5

Date: JUL 2 6 2012 Office: NEW YORK FILE: [redacted] consolidated therein)

IN RE: [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 District Director, New York, New York. The matter 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 attempting to enter the United States at John F. Kennedy International Airport by presenting a photo-substituted Japanese passport on February 26, 1992. The applicant is married to a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his lawful permanent resident spouse.

The District Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of the District Director,* dated June 30, 2010.

The applicant's attorney, on appeal, asserts that the District Director "erroneously denied" the applicant's waiver. The applicant also submits new evidence of his qualifying spouse's hardship with his appeal.

The record contains the following documentation: the Application for Waiver of Grounds of Inadmissibility (Form I-601); the Notice of Appeal or Motion (Form I-290B); a letter from the applicant's attorney; an affidavit from the qualifying spouse; a doctor's letter; copies of two certificates of job training received by the qualifying spouse; a recommendation letter regarding the qualifying spouse; an approved Petition for Alien Relative (Form I-130); photographs; an Application to Register Permanent Residence or Adjust Status (Form I-485) and documents establishing identity, relationships, citizenship and immigration status. 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 [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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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. The applicant's wife is the only qualifying relative 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.

The record indicates that the applicant attempted to enter the United States at John F. Kennedy International Airport by presenting a photo-substituted Japanese passport on February 26, 1992, in order to enter the United States. Therefore, as a result of the applicant's misrepresentations, he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant has not disputed his inadmissibility.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him. The qualifying spouse asserts that she would suffer emotional and psychological distress if she were to be separated from the applicant. With respect to her potential emotional and psychological hardships, the record contains a letter from the qualifying spouse stating that she believes she "would suffer emotional and psychological distress if after finally reuniting, [they] were forced to be separated again." Further, the applicant's spouse states that she is fifty years old and has been separated from him for the last eighteen years. She does not, however, describe how their separation affected her. The record fails to provide detail regarding the types of emotional and psychological hardships that she would face upon separation and does not describe how the applicant's spouse's hardship would amount to hardship beyond that commonly experienced by other separated families. In addition, the applicant provided no additional supporting documentation regarding his spouse's potential emotional and psychological issues with her affidavit. Assertions made by the applicant's spouse regarding her potential hardships are evidence and have been considered. However, assertions cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

The applicant's spouse also refers to the medical hardship that she would face upon separation from the applicant. She experiences extreme headaches that can "put [her] into unconsciousness." A letter from her doctor fails to mention her headaches, and the record does not contain any other evidence about this condition. Absent supporting documentation, the AAO is not able to reach conclusions concerning the severity of the qualifying spouse's medical condition with regard to her headaches. The AAO finds that the applicant did not provide sufficient evidence to establish that the qualifying spouse would suffer emotional, psychological and medical hardships as a result of her separation from the applicant that, considered in the aggregate, are extreme.

The applicant must also establish that his qualifying relative would suffer extreme hardship were she to relocate to China to be with the applicant. The applicant's spouse contends that she cannot relocate to China because she was unable to find employment there; employers told her that she was too old and that her health was deteriorating. The applicant, however, provided no documentation to support these assertions. The applicant's spouse indicates that without a job, she could not afford her medical treatments and medication in China. The applicant's spouse also states that her health problems include headaches, palpitations and dizziness from hypertension, which "constantly interfered with [her] daily life." The record contains a letter from her doctor indicating that she suffers from hypertension, allergic rhinitis, conjunctivitis, middle ear infection, recurrent urinary tract infections and latent tuberculosis infection. Her doctor further states that most of her conditions are chronic and "have improved or remain stable upon treatment." There is no evidence in the record, however, concerning the treatment that the applicant's spouse receives, other than periodic medical evaluations, and there is no reference to medications she requires to stabilize her conditions. Moreover, the record lacks evidence showing that she would be unable to find or afford medical care in China or that she was unable to find care in China when she was living there.

The applicant's spouse states that their daughter and grandchildren live in the United States, and she wants to enjoy their time together now that they are reunited. However, the record does not address the extent and nature of her family ties to China. The applicant's spouse also contends that she does not have a home in China, because it was lost due to harassment related to their violation of the one-child policy. Yet the record lacks evidence showing that the applicant and his spouse would be unable to have a home in China. Further, the Immigration Judge presiding over the applicant's asylum case indicated that he lacked credibility regarding his fears that he would not have a home if he returned to China due to his refusal to pay a penalty for his violation of China's one-child policy by having a second child. *See Oral Decision and Orders of the Immigration Judge*, dated September 12, 2002. As such, the applicant has not provided sufficient evidence to show that his qualifying spouse's cumulative hardships would result in extreme hardship upon relocation.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 his legal permanent resident spouse 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.

In proceedings for application for 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 will be dismissed.

ORDER: The appeal is dismissed.