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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: JUL 27 2012 OFFICE: CHICAGO, IL 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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, 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 has resided in the United States since March 13, 1990, when she presented a passport which did not belong to her to procure admission into the United States. She 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the daughter of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. 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 her U.S. Citizen mother.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated May 7, 2010.

On appeal, counsel for the applicant contends the applicant's mother would experience extreme hardship if she relocated to China because of her emotional and psychological state, the lack of adequate medical care in China, family ties, and financial considerations. Counsel asserts that the applicant's mother would also experience extreme hardship upon separation from the applicant because she relies on the applicant for emotional, familial, and financial support.

The record includes, but is not limited to, statements from the applicant's mother and siblings, medical and financial documents, evidence of business ownership, a psychological evaluation, evidence of birth, marriage, residence, and citizenship, other applications and petitions filed on behalf of the applicant, and articles on medical care. 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 [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.

In the present case, the applicant admitted in a sworn statement that she obtained a passport which did not belong to her from a coyote, and used that passport on March 13, 1990 to procure admission into the United States. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is her U.S. Citizen mother.

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.

A licensed clinical social worker opines that the applicant's mother suffers from depression and anxiety, and that she depends on the applicant, her youngest daughter, for emotional, financial, and other support, especially given the comfort the applicant provided when she experienced emotional abuse and infidelity at the hands of her husband. The mother adds that she prefers to go to Chinese-speaking medical practitioners in New York City, and that the applicant always takes her and pays for her medical expenses. The mother further states that she relies on the applicant, her youngest child out of five children, most of all, and that she and the family would not be able to survive without her. The applicant's sister, who lives in Maryland, reiterates that the applicant has provided their mother with emotional support during her difficult divorce in 2001, and continues to do so. The applicant's two brothers, who live in Brooklyn, New York, add that the applicant has provided comfort and support for the whole family, and that although they are now 38 and 35 years old, they still view themselves as "baby brothers" who need her care. *Affidavit of Yan Qiao Chen and An Qiao Chen,* November 8, 2004. The applicant's mother adds that income earned from the applicant's Chinese restaurant business provides her with financial support. A certificate of ownership of business and business licenses are included in the file.

Counsel for the applicant contends that the applicant's mother suffers from osteoporosis, and that China does not have adequate treatment programs for this disease. Articles on osteoporosis treatment in China and medical records are submitted in support. Counsel also claims that her emotional health would suffer if she returned to China because she possesses an overwhelming fear of returning to the poverty of her youth. A licensed clinical social worker reports the mother

has indicated she will be heavily fined and possibly imprisoned for leaving China without permission. Counsel adds that returning to China would entail difficulties readjusting to her new life, hardships obtaining proper medical care, and finding a suitable home or financial support.

The applicant's mother's claim that she is dependent on the applicant for financial support is not supported by evidence of record. The record contains no indication of the applicant's current income, no documentation of the applicant's financial support of her mother, and no evidence of the mother's expenses to support a finding of financial hardship.[1] Furthermore, the record contains no assertions or documentation to show why the mother's four other children, at least three of whom are adults, cannot assist their mother financially. Without details and supporting evidence, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's mother will face.

Furthermore, although the applicant's mother explains that the applicant takes her to see Chinese speaking doctors in New York, there is no explanation of why the applicant's brothers, who both live in Brooklyn, New York, could not assist with this. The mother's history of osteoporosis is documented in an imaging report from 2007. However, the record contains no current explanation in plain language from the treating physician of the exact nature and severity of this condition and a description of any treatment or family assistance needed. Without such an explanation, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The record reflects that the applicant's mother has some psychological difficulties, and that she is emotionally attached to the applicant. While the AAO acknowledges that the applicant's mother would face some difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's mother are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to China without her mother.

The applicant has also failed to demonstrate extreme hardship upon relocation to China. The record reflects that the applicant's mother is a native of China, lived in China for many years, and prefers to communicate in a Chinese dialect instead of English. Additionally, although counsel asserts that the mother will have difficulty treating her osteoporosis in China, the evidence submitted suggests otherwise. An article submitted on appeal indicates that an osteoporosis treatment program, which includes free osteoporosis screenings for the elderly and osteoporosis education in major cities, is currently in place. *China launches osteoporosis treatment program, 1Hangzhou.com,* October 12, 2009. The article also indicates that a widely-used osteoporosis drug, Fosamax, is produced in China and is readily available. *Id.* The record also lacks evidence

[1] It is noted that the restaurant certificate and licenses are in the applicant's spouse's name. The record does not reflect how much income the applicant has from the business.

to show that the applicant and her mother would experience undue financial difficulties in China, or that the applicant's four other siblings would be unable to assist their mother financially. Although the mother's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record similarly lacks evidence to support the mother's assertion that she will be fined or imprisoned for having previously left China.

The AAO notes that relocation to China would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the mother's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's mother are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that she would experience extreme hardship if the waiver application is denied and she relocates to China.

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 her U.S. Citizen parent 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 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 will be dismissed.

ORDER: The appeal is dismissed.