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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: FEB 2 6 2013 Office: NEW YORK FILE: [redacted]

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,

Ron Rosenberg
Acting 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 having procured admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 U.S. citizen spouse and children.

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 that he warrants a positive exercise of discretion. The application was denied accordingly. *See Decision of the District Director,* dated April 29, 2011.

The applicant's attorney, on appeal, asserts that the District Director erred in concluding that the qualifying spouse would not suffer extreme hardship upon separation and relocation. Further, the applicant's attorney states that the District Director failed to consider any favorable or mitigating factors that would support granting the waiver, which in turn, violated his due process rights. Moreover, the applicant's attorney contends that the applicant's equal protection rights were violated, because waivers have been granted in similar cases where unfavorable factors were more egregious than in the instant case, and therefore the applicant has not been treated like similarly situated applicants. However, constitutional issues are not within the appellate jurisdiction of the AAO and, therefore, these assertions will not be addressed in the present decision.

The record contains the following documentation: the Application for Waiver of Grounds of Inadmissibility (Form I-601); two Notices of Appeal or Motion (Forms I-290B); an appeal brief, letters and an affidavit from the applicant's attorney; statements from the qualifying spouse and her mother; medical documents; e-mails between the applicant and qualifying spouse; a psychological report regarding the qualifying spouse; a document concerning land purchased in China; country-conditions materials regarding China, including information about political activists in the United States; copies of political-group membership cards for the applicant and qualifying spouse; photographs; financial documentation; notes from American Immigration Law Association meetings; copies of prior AAO decisions[1]; an approved Form I-130; documents establishing identity, relationships, citizenship and immigration status for the applicant, qualifying spouse, their children and family members; certificates regarding the applicant and qualifying spouse's businesses; an Application to Register Permanent Residence or Adjust Status (Form I-485) and the applicant's Application for Asylum and Withholding of Removal (Form I-589) with supporting documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

[1] Only AAO decisions published and designated as precedent decisions in accordance with the requirements outlined in 8 C.F.R. § 103.3(c) are binding on U.S. Citizenship and Immigration Services employees in the administration of the Act.

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 Liberty International Airport, Newark, New Jersey, presented himself to immigration inspectors without any documentation, and requested asylum. In November 2000 an immigration judge denied the applicant's application for asylum and ordered him removed from the United States. On April 30, 2001, the Board of Immigration Appeals dismissed the applicant's appeal. On June 24, 2001, the applicant was removed. The applicant subsequently applied for a non-immigrant visa from China using a false date of birth and indicating he was married. As a result of these misrepresentations, the applicant was issued a tourist visa. On March 3, 2002, he re-entered the United States at Los Angeles International Airport, using the fraudulent non-immigrant visa. 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 has been having difficulty sleeping, eating and has been crying "a lot" due to her fear that the applicant will be returned to China. She indicates that she was overwhelmed and emotionally

fragile when the applicant was detained pending his asylum hearing. According to a psychological report the applicant submits with his appeal, the applicant's spouse was diagnosed with major depressive disorder and generalized anxiety disorder. Although the input of any mental-health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and a psychologist. The record fails to reflect an ongoing relationship between a mental-health professional and the applicant's spouse or any treatment plan for the conditions noted in the evaluation, to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental-health professional, thereby rendering the findings speculative and diminishing the evaluation's value.

The applicant's spouse also contends that she feared for the applicant's safety, based on his prior problems in China, when he was removed. However, the immigration judge who denied the applicant asylum found no evidence supporting a conclusion that the applicant would be persecuted on account of a protected ground if he returned to China. *See Oral Decision of the Immigration Judge*, dated November 29, 2000. Additionally, the record lacks evidence demonstrating that the applicant would suffer safety concerns due to his prior problems in China. The qualifying spouse states that she and her husband recently joined the Democratic Party and that they have openly participated in group activities. As a result she fears that the applicant could be disappeared or detained in China for political reasons. The record contains copies of their Democratic Membership cards, pictures of their activities in the United States and country-conditions materials regarding the political climate in China. However, the applicant provides no evidence showing that their political involvement in the United States, advocating for democracy in China, could present safety issues for them in China.

The qualifying spouse also asserts that if the applicant returns to China, she will face financial hardships because she will have to leave her job and run their business alone. She claims to have "no talent" and that she would need to close their business. She states that although her wages are the family's main source of income, without the applicant's income, their family would experience a "financial crisis" and they would probably have to sell their two-family home at a loss. However, the record does not reflect that the applicant's spouse would face financial difficulties if the applicant returned to China. The most recent tax records from 2009 indicate, consistent with the qualifying spouse's statements, that she earns more than half of their joint income. However, although she states that the applicant manages their business, the record does not show that only he could assist her. Further, she states that her work hours would have to be reduced to care for her mother and children. Moreover, she also states that without the applicant, she would not be able to spend any time with their children and would have to work all the time. However, her statements regarding her reducing her work hours to care for her children and her having to work all the time are inconsistent. Furthermore, the record does not address how many hours the applicant's spouse currently works, how she would reduce her schedule and whether she would be unable to afford childcare or alternative care for her mother. The AAO finds that the applicant does not provide sufficient evidence that, considered in the aggregate, establishes extreme hardship to the qualifying spouse as a result of their separation.

The qualifying spouse also describes the psychological, behavioral, educational and medical hardships, among others, that their children would face, whether separated from the applicant or as a result of the qualifying spouse's relocation to China. However, the record provides little detail regarding how their children's hardships will affect the qualifying spouse. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to their children will not be separately considered, except as it may affect his spouse.

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 qualifying spouse asserts that because her household registry was cancelled when she immigrated to the United States, she and their children cannot live permanently in China. They would have to travel between China and the United States to renew their tourist visas. She further contends that her children would be unable to attend public school there and would have to pay more for healthcare. However, the record does not include evidence to corroborate claims that the applicant's spouse's household registry was cancelled, that this makes her unable to legally reside in China permanently, or that their children would have to attend private school and pay more for healthcare.

Further, the qualifying spouse asserts that she could not relocate to China because she cares for her aging parents. She states that she provides care for her mother by monitoring her diabetes, checking her blood pressure, taking her to medical appointments and making sure that she is taking her correct dosage of medications, which she states she needs assistance with because she has problems with her memory. She also states that her father works in Massachusetts and only travels back to New York one day and overnight each week, and therefore he is unable to care for her mother. Documentation in the record confirms the qualifying spouse's mother has hypertension, diabetes and osteoporosis. Further, the qualifying spouse's mother's doctor states that family support and assistance are crucial for her health. However, the evidence does not establish the qualifying spouse's father is unable to care for her mother. The qualifying spouse's father's employer notes in a letter that he works in Massachusetts and he earns $900 monthly but does not note his work hours. Further, the applicant does not explain why his father-in-law could not live with his mother-in-law to assist her.

The applicant's attorney also states that the qualifying spouse does not want to return to China, where her parents were persecuted. However, his qualifying spouse indicates that she has returned to China "several times in recent years." Moreover, the applicant's spouse was aware that the applicant was deported and that he, as she stated, "circumvent[ed] normal immigration procedures" to re-enter the country, so she had reason to expect at the time they were married that the applicant may not be able to live with her in the United States. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 567. 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 U.S. citizen 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.