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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

Date: FEB 2 8 2013 Office: NEW YORK FILE:

IN RE : Applicant:

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:

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 attempting to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) submitted on his behalf by his brother, a U.S. Citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his family, including his Lawful Permanent Resident parents.

The District Director found that the applicant failed to establish that his qualifying relative parents would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the District Director* dated April 15. 2011.

On appeal, counsel for the applicant contends the denial by the Service is erroneous. With the appeal counsel submits a brief; an affidavit from the applicant; and his child's birth certificate showing birth in the United States. The record also contains documents related the siblings of the applicant being U.S. citizens; affidavits from the applicant's siblings; and copies of the lawful permanent resident cards for the applicant's parents. 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 that:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 . . ..

Prior to addressing whether the applicant qualifies for a waiver, the AAO will consider the issues related to the applicant's inadmissibility.

The District Director found that the applicant attempted to enter the United States in 1994 by presenting a photo-switched reentry permit, Form I-512, and a counterfeit Alien Resident Card. The District Director therefore found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for misrepresentation.

On appeal counsel asserts that the documents were not in control of the applicant, but rather the smuggler hired by the applicant to transport him to the United States. Counsel asserts the applicant therefore had no knowledge of the contents or nature of the documents, which counsel contends were seized in Brazil before the applicant was then allowed to board a flight to the United States. Counsel contends the applicant lacked intent and knowledge to commit fraud or misrepresentation and never presented these documents to us officials.

In his affidavit the applicant states that when attempting to board an airplane in Brazil for the United States he used "improper" travel documents provided by a smuggler he had hired, but that the documents were seized by a customs officer with the applicant and smuggler then allowed to board the flight. The applicant asserts he was not aware of the nature of the documents because they were provided by the smuggler who walked with the applicant through customs in Brazil and had control of the documents the entire time. The applicant further states that when detained by immigration officials in the United States he was not in possession of the documents confiscated in Brazil and therefore never presented fraudulent documents to U.S. officials. The applicant asserts he did not have the intent to commit fraud because the smuggler was in possession of the documents with the applicant unaware of the nature of the documents as he was simply following the direction of the smuggler.

Documents on the record, including a sworn statement made by the applicant at the time he sought admission in 1994, indicate that he presented the fraudulent reentry permit and counterfeit permanent resident card to an immigration officer. There is no evidence on the record to support the applicant's claim that the documents were confiscated in Brazil and that he never presented them to an immigration officer. Counsel and the applicant further assert the applicant was unaware of the contents of the documents, but the documents contained the applicant's correct name and date of birth, indicating the proper information had been provided by the applicant to the smuggler. The sworn statement by the applicant further indicates he was aware the documents were fraudulent and that he had purchased a "passport" in Brazil for $27,000. In an application for an immigration benefit, the burden of proving admissibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not established he is not inadmissible under section 212(a)(6)(C)(i) of the Act, and he therefore requires a waiver of inadmissibility.

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. The applicant's parents are the only 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. *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) (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.

In his affidavit the applicant states that wife does not work making him the sole provider of economic support for family. The applicant also states that his parents are retired he is the primary source of their economic support.

The AAO finds that the applicant has failed to establish that his qualifying parents will suffer extreme hardship as a consequence of being separated from the applicant. No assertion or evidence has been submitted to the record that the applicant's parents will experience extreme emotional hardship were they to remain in the United States while the applicant resides abroad due to his inadmissibility. Although the applicant states that he is the sole provider of economic support for his family, he failed to provide any detail or supporting evidence. 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)).

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986). No documentation has been submitted establishing the parents' current income, expenses, assets, and liabilities or overall financial situation to establish that without the applicant's physical presence in the United States, the applicant's parents will experience financial hardship. Further, the applicant has not addressed, given he has two U.S. citizen siblings, why he is the primary source of economic support for his parents.

In regards to establishing extreme hardship in the event the qualifying relatives relocates abroad based on the denial of the applicant's waiver request, the AAO notes that this criterion has not been addressed. As such, it has not been established that the applicant's parents would experience extreme hardship were they to relocate abroad as a result of the applicant's inadmissibility.

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 qualifying parents 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.