(b)(6)

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]

Date: MAY 29 2013 Office: GUANGZHOU, CHINA 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:

SELF-REPRESENTED

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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Guangzhou, China. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

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 record reflects that the applicant presented a passport bearing a false date of birth in an attempt to obtain a U.S. visa. The applicant is the son of U.S. lawful permanent resident parents. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States.

The field office director found that the applicant failed to establish that his qualifying relatives would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 23, 2010.

The applicant had contested the finding of misrepresentation contending that he did not know his date of birth was incorrect and that it was his father who had applied for the applicant's visa. On appeal the AAO concluded, however, that as the applicant was an adult, attended the visa interview, and presented his passport bearing a false date of birth, he was legally responsible for any representation made before a U.S. government official. The AAO also found that the applicant had failed to establish his qualifying relative parents would experience extreme hardship due to separation from the applicant or if they were to relocate abroad to reside with the applicant. *See Decision of the AAO* dated July 24, 2012.

On motion the applicant submits statements from his father, grandmother and mother and a medical letter about his father and grandparents. The record also contains affidavits from the applicant and family members; medical documentation for the applicant's grandparents; and pay and insurance information for the applicant's father. 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 ....

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.

As noted, the AAO concluded that the emotional impact of separation from the applicant on his parents did not rise to the level of extreme hardship and that evidence was insufficient to establish that the impact on the parents if they were to relocate would rise above the common consequences of relocation to a degree of extreme hardship.

On motion the applicant's father states he had altered the applicant's date of birth so the entire family could be in the United States together. He states that, except for the applicant, the entire family has immigrated to the United States and is living together in New York City. He further states that his own father is now deceased and that his mother, the applicant's grandmother, suffers from poor health. The applicant's father states that he has hypertension, cholesterol, and diabetes, hampering his ability to work and support the family, and thus needs the applicant to care for his grandmother. In a previous statement the applicant's father asserted he would be unable to find employment or health benefits if he relocated to China and that his parents, the applicant's grandparents, depend on him in the United States.

An affidavit from the applicant's grandmother states she is in poor health and that her husband died in 2010 wishing to see the applicant in the United States. The applicant's mother states her husband and his mother are in poor health and that she and her three children work to support the family, but they need the applicant to help provide care and support.

A note from a physician states the applicant's father has hypertension and another note indicates the applicant's grandparents are elderly with chronic illnesses, including stroke, Hypertension, malnutrition, and diabetes, and that given their age these conditions will become more serious.

The applicant states his father has health problems, and his parents are unable to visit the applicant often due to their age. He states if his parents relocated to China the grandparents would be left unattended.

The AAO finds that the applicant has failed to establish his qualifying parents will suffer extreme hardship as a consequence of being separated from the applicant. The applicant's parents and family members state that the applicant is needed so the entire family is together, and the applicant's parents state the applicant is needed to provide care and support for his father and grandparents. However, the record does not support that this emotional hardship is beyond the common result of separation to rise to the level of extreme. Moreover, the applicant failed to provide any detail or supporting evidence explaining the exact nature of the qualifying parents' emotional hardships and how such emotional hardships are outside the ordinary consequences of separation, particularly given that the parents immigrated to the United States 2001. 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)).

Medical documentation shows the applicant's father has health problems, but does not explain the severity of his condition or how his condition or any required treatment, given that other immediate family members are living with them, necessitates the applicant's presence in the United States.

The record contains 2010 pay statements for the applicant's father, but no other documentation to establish the family's current income, expenses, assets, liabilities or overall financial situation, or how the applicant would contribute financially, to establish that without the applicant's physical presence in the United States his parents experience financial hardship. Further, 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).

The AAO also finds the record fails to establish that the applicant's parents would experience extreme hardship if they were to relocate to China. On motion the applicant does not address relocation. The applicant's father had previously stated that if he relocated he would be unable to find employment or health benefits, and that his own parents in the United Stated depend on him. As the record contains no documentation supporting the assertion that the applicant's parents would have no medical benefits or otherwise be unable find support in China, and given the number of immediate family members in the United States able to offer support for the grandmother, there is insufficient evidence on record to support this hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, 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.

ORDER: The motion is granted and the underlying application remains denied.