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

(b)(6)

DATE: OCT 0 1 2013 Office: NEWARK File:

IN RE: Applicant:

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the waiver application, the applicant appealed, and the Administrative Appeals Office (AAO) rejected the appeal as untimely. The matter will be reopened on USCIS motion and the appeal dismissed.

The applicant is a native and a 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 procuring or attempting to procure an immigration benefit by fraud or misrepresentation. The applicant contests having presented a false passport to gain U.S. entry, but alternatively seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director,* December 22, 2011.

On appeal, the applicant contends that USCIS erred in misconstruing the extreme hardships that his wife will suffer as a result of the applicant's inadmissibility if he is unable to remain in the United States, and denies having used a fraudulent passport at the port-of-entry. In support of the appeal, the applicant submits documentation including: an updated hardship statement and a supportive statement; a psychological evaluation; police certification; financial information, including business registration, social security statement, tax returns, utility bills, and bank statements; and photographs. The record also includes: prior hardship statements; birth, divorce, marriage and naturalization certificates; and support letters. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

> 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)(1) of the Act provides:

> 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 [...].

The record shows that, on July 5, 1991, the applicant was paroled into the United States to appear before an Immigration Judge after having attempted to enter the United States using a fraudulent

Malaysian passport issued to another person.[1] The applicant denies having presented the passport, which he claims the smuggler took back from him. The record contains a copy of the false Malaysian passport and, further, reflects that the applicant admitted at the port of entry that he presented the passport to immigration authorities, that it was forged and not issued to him by the Malaysian government, and that it cost $8,000. *See Record of Sworn Statement,* July 5, 1991. As the applicant's statement undermines his claim not to have used the passport to seek admission, the applicant is unable to meet his burden under section 291 of the Act of proving he is not inadmissible. The applicant is thus inadmissible under section 212(a)(6)(C)(i) of the Act.

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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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

[1] Although the field office director states in in the waiver denial that the passport was "in the name off [redacted]" the Malaysian passport presented by the applicant was under a different name. [redacted] is an alias given by the applicant in his July 5, 1991 sworn statement. In that statement, he claimed [redacted] to be his true name and admitted seeking admission with the fraudulent Malaysian passport. In his 1992 asylum application, the applicant admitted using the alias [redacted] and, further, having used a Malaysian passport as a travel document.

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, while 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, or cultural readjustment 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, although 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

For reasons discussed below, the AAO finds that the situations of the applicant's wife and children, should they relocate to China, comprise circumstances which, on aggregate, meet the extreme hardship requirement under the Act.

Regarding whether the applicant has established that his wife would suffer extreme hardship by relocating to China, the record reflects that her relatives in the United States include her two children from a prior marriage, ages seven and eight, and her mother. A psychological evaluation diagnoses the qualifying relative as suffering from anxiety, depression, and adjustment disorder, and concludes these conditions would be exacerbated by moving back to China. *See Psychosocial Evaluation,* January 9, 2012. The record reflects that she immigrated in 2002 at the age of 24, bore children in 2005 and 2006, naturalized in 2006, and has spent most of her adult life in the United States. She fears being unable to survive economically in China due to the poor job prospects she and the applicant will both face due to lack of local contacts after lengthy time overseas, the social stigma involved in having two children and in remarrying after a divorce, and discrimination based on her Christian religious beliefs.

Official U.S. government reporting supports the concern that high unemployment will make it difficult to find work, as well as confirms the potential for negative consequences to the applicant's wife and children of having nontraditional religious beliefs and of violating official policy regarding family planning in China. *See Country Condition Information—China,* U.S. Department of State (DOS), 2013, and *Country Reports on Human Rights Practices for 2012--China,* DOS, April 19, 2013 ("The law grants married couples the right to have one birth and allows eligible couples to apply for permission to have a second child if they meet conditions stipulated in local and provincial regulations. The one-child limit was more strictly applied in urban areas, where only couples meeting certain conditions were permitted to have a second child."[2]). There is no evidence on record that the applicant's wife will be considered to have violated this policy by having two children while outside China. Although the *International Religious Freedom Report for 2012—China,* DOS, notes that religious discrimination persists in some localities despite groups affiliated with Roman Catholicism and Protestantism being legally permitted to register and hold worship services, the applicant provides no evidence that his family will encounter such local discrimination. The potential for adverse consequences, however, read together with the factors set out in *Matter of Kao and Lin, supra*, confirms the qualifying relative's fears regarding likely cultural difficulties for her U.S. citizen children, including gaining social acceptance and being able to adapt without linguistic fluency, and qualifying for public benefits, including education and healthcare allocated at by local or provincial authorities.

Based on the totality of the circumstances, the evidence is sufficient to establish that a qualifying relative would experience extreme hardship by moving to China as a result of fears about her children's inability to adjust to life there and practice their religion, as well as poor employment prospects, social stigma, and health care that is below U.S. standards. Further, relocating would deprive the applicant's wife (and her children) of contact with their permanent U.S. resident mother (grandmother).

Regarding the claim of emotional hardship due to separation from the applicant, the aforementioned psychosocial evaluation is based on the qualifying relative's self-reported symptoms, including insomnia and nightmares, fatigue, crying, and mood swings. While the applicant's wife claims the prospect of her husband's departure underlies her condition, there is no evidence she is receiving treatment for her symptoms, or any indication that they represent an impact beyond the common or typical result of separation from a family member. Regarding the financial component of separation hardship, there is evidence that the applicant is the primary breadwinner, while his wife is a homemaker and caregiver to their children. The record reflects that the applicant's wife started as a waitress in her husband's restaurant and continues to help out with patrons, and the applicant is the chef. The qualifying relative claims to be fearful of becoming an unemployed single mother unable to meet her financial obligations, and there is documentation of household expenses to be met. Despite her claims that the applicant's departure would be economically devastating, there is no evidence she would be unable to run the restaurant or otherwise support herself without the

[2] We note the report states that 60% of families were deemed eligible to have a second child, and 5% qualified to have more than two. While pregnancies generally must be approved before a birth occurs, the record does not establish that this requirement applies to births occurring outside of China.

applicant. Although the AAO recognizes that the applicant's absence would represent a hardship to his family, the evidence does not show an impact beyond the typical result of removal or inadmissibility.

For all these reasons, the evidence fails to establish that the cumulative effect of the emotional and financial hardships the applicant's wife and children will experience due to his inadmissibility rises to the level of extreme. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer extreme hardship beyond those problems normally associated with family separation.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.