U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: OCT 0 7 2013 OFFICE: BALTIMORE, MARYLAND 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 (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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, denied the waiver application. The applicant appealed the District Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on motion. The motion is granted, the prior AAO decision is withdrawn and the underlying appeal is sustained.

The record reflects the applicant is a native and citizen of the People's Republic of China (PRC) who was found to be inadmissible to the United States pursuant to 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 sought to procure admission into the United States by willful misrepresentation. The District Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative and denied his Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO dismissed the applicant's appeal and affirmed the District Director's decision and further found the applicant to be inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for having been ordered removed and seeking admission within the proscribed period.[1]

On motion, counsel asserts the AAO erred by "not giving due deference" to medical professionals' opinions in assessing hardship to the applicant's mother, and the AAO also did not "fully and meaningfully" consider and interpret all relevant facts supporting a finding of extreme hardship to the applicant's mother upon separation from the applicant.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has established reasons for reconsideration, the motion to reconsider will be granted.

The record includes, but is not limited to: motions, briefs, and correspondence; letters of support; identity, medical, psychological, employment, financial, and academic documents; photographs; Internet articles; and criminal records pertaining to the applicant's father. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6) of the Act provides, in relevant part:

> (C) Misrepresentation.-
>
> > (i) In general.- Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a

[1] The record reflects the applicant filed *Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal* (Form I-212) on January 1, 2011, but the record does not include a decision concerning the applicant's Form I-212.

> visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
>
> ...
>
> (iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The District Director found the applicant inadmissible for having presented to U.S. immigration officials a Republic of China (Taiwanese) passport that did not belong to him upon seeking entry into the United States on September 7, 1991. On motion, the applicant does not contest the finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act.

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

> (1) The Attorney General [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.

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. Hardship to the applicant, his spouse, or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parent is the only demonstrated qualifying relative in this case. 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 of Immigration Appeals (the BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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. at 246-47; *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 BIA 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. at 383 (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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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.

In support of the applicant's motion, counsel asserts that other AAO decisions reflect a much lower standard for establishing extreme hardship than the standard used in the applicant's case. Counsel includes copies of unpublished AAO decisions with the motion to support his position. Only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c), however, are binding on U.S. Citizenship and Immigration Services officers. The decisions submitted by counsel are unpublished and not

designated as precedent decisions. The findings made in the other AAO decisions, therefore, have no binding precedential value for purposes of the applicant's case.

Additionally, counsel contends the applicant's mother's mental-health evaluator is a licensed clinical psychologist and "qualified to provide an assessment on the mental conditions of a person" as a professional "recognized by the law," *citing* 8 C.F.R.§ 216.5(e)(3)(vii); and the AAO should have given deference to the psychologist's opinion and evaluation concerning the applicant's mother's mental health. The regulation cited by counsel specifically involves conditional residents or their children, whose applications for a waiver are based on a claim of having been battered or subjected to extreme mental cruelty. The record does not demonstrate the applicant is a member of this class of applicants. Moreover, the AAO previously found Dr. s diagnosis of the applicant's mother sufficient and did not question his professional capacity to conduct mental-health evaluations or to make diagnoses. Rather, the AAO determined the record did not show that Dr. 's expertise as a licensed clinical psychologist qualified him to present cultural practices prohibiting daughters and permitting solely sons to assume responsibility to care for their mother.

Counsel also contends: the applicant's mother's mental health has deteriorated since his appeal was denied, and her treating psychiatrist has concluded that granting permanent residency to the applicant would prevent her "from suffering psychological trauma continuously"; the AAO failed to consider the applicant's mother's health conditions of hypertension, hyperglycemia, and severe anemia in evaluating her emotional and physical hardship if she were to remain in the United States without the applicant's care and support; the AAO failed to consider the "prospective permanent separation" between the applicant and his mother as well as her separation from his spouse and U.S. citizen children; additional evidence demonstrates the applicant has become the head of his family and served as his mother's protector from her abusive husband, his father; the applicant and his mother have "developed an unbreakable bond"; and the applicant's mother would be unable to travel to the PRC to visit the applicant, given her age and health conditions.

Previously the AAO determined the record is sufficient to establish the applicant's mother was diagnosed with generalized anxiety disorder, she is currently being treated for hypertension, and she also was previously diagnosed with hyperglycemia and severe anemia. Also, the AAO previously determined the record included evidence the applicant's mother was a member of the applicant's household,[2] and she had been in arrears for medical and credit-card bills. On motion the AAO finds the record establishes the applicant's mother's mental health has deteriorated because of the applicant's inadmissibility, resulting in additional diagnoses and treatment for major depressive disorder and panic disorder. The applicant's presence would be essential to the physical, emotional, and financial wellbeing of his mother. Accordingly, the AAO finds, in the aggregate, the applicant's parent would suffer extreme hardship upon separation from the applicant.

[2] The AAO's previous decision erroneously indicates the applicant's mother lives with her youngest son. However, the record reflects the applicant's mother lives with her eldest son, the applicant.

In its previous decision, the AAO found the applicant's parent would experience extreme hardship if she were to relocate to the PRC due to her length of residence in the United States, strong family ties to the United States, and the poor medical standards in the PRC, along with the normal hardships associated with relocation. The applicant's parent's circumstances have not improved since the AAO's previous decision. Accordingly, the record continues to reflect the cumulative effect of the hardship the applicant's parent would experience upon relocation to PRC rises to the level of extreme.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives) . . .

Id. at 301.

The BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen mother, his U.S. citizen children and other familial ties, steady employment and business ties, the filing of income taxes, and the absence of a criminal record. The unfavorable factors include the applicant's misrepresentation of his identity upon presenting a passport that did not belong to him when seeking admission to the United States and an outstanding order of removal.

Although the applicant's violations of immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

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 been met.

ORDER: The motion is granted. The prior decision of the AAO is withdrawn, and the underlying appeal is sustained.