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 10 2013 Office: NEW YORK 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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The District Director, New York, New York, denied the waiver application, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 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 district director found that the applicant failed to establish that the bar to his admission would result in extreme hardship to his U.S. citizen wife and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the District Director,* September 8, 2012.

On appeal, filed in October 2012 but not received by the AAO until June 2013, the applicant contends that USCIS erred in misconstruing the extreme hardships that his qualifying relative will suffer as a result of the applicant's inadmissibility, if he is unable to remain in the United States. In support of the appeal, counsel for the applicant submits a brief and documentation including: a psychological evaluation; a medical note; updated hardship statements and supportive statements; copies of birth, marriage, and naturalization certificates; country condition information; financial evidence, including tax returns, credit card statements, a balance sheet, tax returns, business filings, and a lease; and photographs. The record also includes an earlier psychological evaluation, statements from the qualifying relative and the applicant, financial records, and various immigration applications. 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 August 20, 2001, the applicant attempted to enter the United States on August 20, 2001 using a fraudulent Form I-327 Reentry Permit and an ADIT (lawful permanent resident) stamp issued to another person, and was placed into removal proceedings. On October 1, 2003, an Immigration Judge denied the applicant's asylum claim and issued a removal order. The

applicant is thus inadmissible under section 212(a)(6)(C)(i) of the Act and requires a waiver of inadmissibility to immigrate.

A waiver of inadmissibility under section 212(i)(1) 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 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.

The record reflects that the applicant's wife has relatives in the United States, including her one-year-old child, two married brothers, and her 63-year-old mother.[1] The record reflects that she immigrated in 1999 at the age of 17, naturalized in 2005, has lived her entire adult life in the United States, and, except for a grandmother in China, has her entire extended family here in the United States. She fears being unable to survive economically in China due to the poor job prospects she and the applicant both face due their lack of employment history in China, lack of education, and the social stigma involved in returning after lengthy time overseas. U.S. government reporting regarding increasing unemployment supports the qualifying relative's concerns about working in China. *See The World Factbook—China,* Central Intelligence Agency (CIA), August 22, 2013. The applicant's wife claims that her waitressing experience and the applicant's cooking background obtained while working here are not saleable skills in the part of rural China where she and her husband would relocate. Counsel reports that, rather than having family in China able to assist with relocation, the applicant has been sending money to help his mother take care of his handicapped older brother. Documentation establishes that this 38-year-old sibling is mentally retarded due to brain damage caused by improper childhood medical care. The record shows that the applicant and his wife subsist on modest earnings from a small take-out restaurant, which they state they financed through their credit cards. Two credit card statements confirm a balance due of approximately $4,000 on each card. The qualifying relative's claim that they will be unable to repay these loans if they move overseas is supported by the evidence of their limited financial resources, coupled with poor job prospects and low wages in China.

The applicant's wife claims to have a close bond with her mother due to being the only daughter, abusive husbands, and fears severing their relationship. The applicant's mother-in-law reports that she divorced her husband in 2000 due to his alcoholism and associated domestic violence, and notes that her daughter had a difficult upbringing in an abusive household in China. The applicant's wife

[1] The applicant's wife's father also lives in the United States, but they have no contact.

notes being estranged from her father and, after leaving his household, having suffered psychological abuse by her first husband, who she states made her feel worthless as a human being. Both mother and daughter claim to suffer from depression, and two psychological evaluations address the role of family history in creating their emotional problems. Documentation on the record establishes that psychiatric care is unavailable or of low quality in China, where mental illness is stigmatized or ignored. Adding the diagnosis of Post-traumatic Stress Disorder (PTSD) from repeated exposure to her father's violent outbursts, the more recent evaluation notes the potentially serious consequences of relocating to where she felt fear and helplessness as a child. The evaluation states she may become unable to care for herself and her child and even be at risk of suicide. She is taking prescription medication -- which may not be readily available in China -- for a glandular disorder, hypothyroidism, affecting her ability to function day-to-day. *See Psychological Evaluation,* September 25, 2012; *see also Country Specific Information—China,* U.S. Department of State (DOS), September 5, 2013. The applicant's wife also is afraid of the adverse consequences to her baby's health of widespread air and water pollution, health care below U.S. standards, unavailability of medications commonly prescribed here, and unreliable emergency services. *See Id.*

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 for her family's financial security, worries about unavailability of mental health care, social stigma, and medical care and treatment that are below U.S. standards. Further, relocating would deprive the applicant's wife of contact with her mother, siblings, and other extended family members who live here.

Regarding the claim of emotional hardship due to separation from the applicant, the evidence shows that the qualifying relative has a history of psychiatric problems stemming from growing up with an alcoholic father who abused his wife and children in China. Her mother's statement and the two psychological evaluations substantiate the severe impact on the qualifying relative's self-esteem preceding her current marriage. Her psychological evaluations indicate that the applicant is a supportive partner and she depends on the him. She does not appear to have the financial resources to visit her husband to ease the pain of separation. The evaluations agree that the happiness founded on the stability and security of this relationship would not survive the applicant's absence.

Regarding the financial component of separation hardship, his wife claims that she is unable either to fill the applicant's role of cook at their restaurant or afford to hire a cook to replace him, and her husband's departure will force her to close the business. She also claims that her husband's self-acquired knowledge in preparing the Chinese cuisine favored in the United States and lack of formal education will make it difficult for him to find a job to support himself in China. Noting that she already has to take her baby to work with her, the applicant's wife states she fears an uncertain financial future in which the restaurant will close and she will be unable to find work to pay off business expenses and support herself, her child, and her husband overseas.

The psychological evaluations state that the applicant's departure would add the stress of financial hardship to the other conditions discussed above. They conclude that, as her coping ability will deteriorate if she loses her husband's love and support, she will be at increased risk of suicide and her baby at risk of child neglect. For all these reasons, the cumulative effect of the physical and

emotional, as well as financial, hardships the applicant's wife, child, and mother-in-law are experiencing or are likely to 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 suffer extreme hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957):

> In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's wife and child will face if the applicant returns to China, regardless of whether they join the applicant there or remain here; supportive statements; the applicant's 12 year residence in the United States; lack of any criminal record; history of gainful employment; existence of a growing business; and statements regarding good character. The unfavorable factors in this matter concern the applicant's arrival without valid documentation, attempted fraudulent entry, and failure to depart the country as ordered.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the equities involved, including the passage of time since the applicant's violations of immigration law, 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 appeal is sustained.