U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: SEP 0 6 2013 Office: LOS ANGELES, CA 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:

[redacted]

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 waiver application was denied by the Field Office Director, Los Angeles, California, and 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 having attempted to procure admission to the United States in December 1993 by presenting a passport containing a fraudulent U.S. nonimmigrant visa. He is the beneficiary of an approved Petition for Alien Relative (Form I-130) which was filed by his U.S. citizen sister. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his lawful permanent resident parents and two U.S. citizen children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 20, 2012.

The record contains the following documentation: a brief filed by the applicant's attorney in support of the Form I-290B, Notice of Appeal or Motion; a brief filed by the applicant's former attorney in support of the applicant's Form I-601; and evidence of hardship to the applicant's parents submitted in support of the applicant's initial Form I-601.[1] 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.

The record shows that the applicant attempted to enter the United States on December 26, 1993 using a fraudulent U.S. nonimmigrant visa. On appeal, counsel contends that at the time the applicant attempted to enter the United States, the applicant was unaware that the visa in his passport was fraudulent. Counsel contends that the applicant had no idea of the falsity of the visa, and that the applicant entered the United States under a mistaken belief that his documents were valid.

The applicant was born on January 7, 1993, and was over 20 years of age at the time of his attempted entry to the United States. In a sworn statement dated December 26, 1993, the applicant testified that

[1] The applicant previously filed a Form I-601 on May 6, 2009, and the Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the applicant's initial Form I-601 accordingly. *Decision of the Field Office Director*, dated June 2, 2009. In reviewing the applicant's Form I-601 on appeal, the AAO concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established, as required by the Act. *Decision of the AAO*, dated May 16, 2011.

he did not know anything about smugglers and that his father got him the passport and the U.S. visa. In a sworn statement dated October 26, 2006, the applicant testified a street vendor applied for the passport for him, and that he paid the street vendor $3,000 for both the passport and the U.S. visa. The applicant further testified that he did not know that he personally must be present at the U.S. Embassy to obtain the U.S. visa, and that he paid the street vendor to get the passport and U.S. visa for him. In the brief submitted by applicant's former counsel in support of the applicant's initial Form I-601, counsel states that he applicant enlisted the help of a travel agency to help him obtain his passport and visa, and at the time, the applicant did not know that the passport and visa were false documents. In a brief submitted by the applicant's former counsel in support of the applicant's current Form I-601 application, counsel states that the applicant consulted a third party for assistance, and acknowledged that the applicant paid a sizeable fee for his assistance.

In application proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The applicant must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In the present case, the applicant has failed to meet his burden of demonstrating that he did not know the visa he presented was fraudulent.

The applicant does not present any evidence to show he believed he was employing a legitimate travel agency to facilitate a genuine B-2 nonimmigrant visa application. Further, the record contains conflicting statements from the applicant concerning his application for the visa. Based on the evidence on the record, including the applicant's inconsistent statements concerning the manner in which he obtained the visa, the AAO finds that the applicant has not established that he was unaware that the visa he obtained was not a legitimate visa.

As such, despite counsel's assertion to the contrary, it has not been established by a preponderance of the evidence that the applicant did not seek to procure admission by fraud and/or misrepresentation. The AAO thus concurs with the Field Office Director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

> 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 lawful permanent resident parents

are the only qualifying relatives in this case.[2] Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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

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[2] The AAO notes that the record includes a marriage certificate indicated that the applicant was married in New York City on June 3, 2002, and the record further indicates that the applicant has two U.S. citizen children. The record includes two Form I-485s (Application to Register Permanent Residence or Adjust Status) filed by the applicant in 2004 and 2010, which indicate that the applicant is married. However, the record does not contain any information regarding the current residence of the applicant's spouse, or any information regarding her immigration status, if any, in the United States. The applicant makes no claim of hardship to his spouse if the waiver application is not approved, nor does the applicant make any claim that hardship to his children will cause extreme hardship to a qualifying relative if the waiver application is not approved.

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. *See Salcido-Salcido v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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 the present application for a waiver of grounds of inadmissibility, neither applicant's former counsel nor the applicant's current counsel makes any claim that the applicant's qualifying relatives will experience extreme hardship if the waiver application is not approved.

As noted above, the applicant previously filed a Form I-601, which was denied on June 2, 2009, and the AAO dismissed an appeal of the denial on May 16, 2011. The AAO notes that the applicant's previous counsel contended that the applicant's lawful permanent resident parents would suffer emotional, physical and financial hardship were the applicant to relocate abroad due to his inadmissibility while they remain in the United States. Counsel stated that the applicant's father is a prostate cancer survivor and relies greatly on his son to care for him as he is unable to care for himself on his own. Counsel further contended that the applicant's lawful permanent resident mother also requires her son's assistance to care for her daily needs. Counsel also asserted that the applicant's parents rely on the applicant's financial assistance as they are too old to work and were he to relocate abroad, they would experience financial hardship. *Brief in Support of I-601 Waiver,* dated May 5, 2009.

In the previous decision of the AAO, the AAO determined that it has not been established that the applicant's parents will experience emotional hardship due to long-term separation from their son. The AAO noted that the applicant has four siblings residing in the United States, and it has not been established that the applicant's siblings are unable to assist their parents. The AAO also noted that no documentation was provided to establish that without the applicant's continued presence in the United States, the hardship to the applicant's parents would be extreme. *Decision of the AAO*, dated May 16, 2011. As noted above, no additional assertions were made in support of the current Form I-601 that the applicant's parents would experience extreme hardship if the waiver application is denied, and no further evidence or information was submitted concerning any potential hardship to the applicant's parents.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's lawful permanent resident parents will face extreme hardship if the applicant is unable to reside in the United States. The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's parents would face as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. Counsel contended that were the applicant's parents to relocate abroad to reside with the applicant, they would be forced to leave their two other children and multiple grandchildren and that would cause them emotional hardship. In addition, counsel noted that the applicant's parents have been in the United States for over a decade and no longer have ties to China. Counsel asserts that medical care in China is not up to par with the Western world, and that the applicant's parents' treating doctors are in the United States and a relocation abroad would cause them hardship as they would no longer be treated by professionals familiar with their conditions and treatment plans.

In the previous decision, the AAO found that, based on the documentation provided by counsel with respect to the applicant's parents' medical conditions as well as the substandard medical care in China and the applicant's parents' age and family ties to the United States, the applicant's parents would experience extreme hardship were they to relocate to China to reside with the applicant due to his inadmissibility. *Decision of the AAO*, dated May 16, 2011. There is nothing on the record to indicate that this finding should be overturned.

Although the applicant has demonstrated that the qualifying relatives would experience extreme hardship if they relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 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 relatives in this case.

As noted above, 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. In the brief in support of Form I-290B, counsel contends that the Supreme Court distinguished those who engage in a pattern of immigration fraud from aliens who commit a single, isolated act of

misrepresentation. *INS v. Yang*, 519 U.S. 26, 117 S.Ct. 350 (1996). In *INS v. Yang*, the respondent was statutorily eligible for a waiver, and the Supreme Court reversed the decision that denied the respondent the waiver as a matter of discretion. In this particular case, the applicant has not established that he is eligible for a waiver.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed

ORDER: The appeal is dismissed. The waiver application is denied.