

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

FILE:

Office: BALITMORE DISTRICT OFFICE Date: SEP 17 2007

IN RE:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, a citizen of the People's Republic of China, was found 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the son of a United States lawful permanent resident, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his mother.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her mother, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's mother would suffer extreme hardship if the applicant were required to return to China, and submits additional documentation in support of the application. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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 section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's mother. 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).

Regarding the applicant's grounds of inadmissibility, the record reflects that the he attempted to enter the United States, fraudulently, on August 20, 1992. Upon arriving in the United States on a flight from Sao Paulo, Brazil, he presented a Japanese passport issued to "Hachiro Umeda," which he had purchased from a smuggler. Presenting this passport, the applicant applied for admission under the Visa Waiver Pilot

Program as a visitor for pleasure for a period of three months. Thus, he attempted to enter the United States by making a willful misrepresentation of a material fact (his identity). Accordingly, the applicant is 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).

Court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

The record reflects that the applicant’s mother is a seventy-four-year-old lawful permanent resident of the United States. She has been a lawful permanent resident since 2005.

The record contains brief statements from two of the applicant’s mother’s doctors. In a March 20, 2005 statement, [REDACTED], states that the applicant’s mother was treated for gastritis on September 5, 2001 and October 7, 2001. In a March 18, 2005 statement, which is largely illegible, [REDACTED] mentions gallstones (nothing else in the note is legible).

The record also contains a “psychosocial diagnostic evaluation,” dated April 4, 2005, from [REDACTED] evaluation, which was based upon three interviews conducted over a one-week period, states that the applicant’s mother suffers from a slow gait, head-lowering, eye-closing, weakness in her extremities, unspontaneous responses, and sad looks; that the evaluation has confirmed her as having clinical depression; that the applicant’s mother suffers from gastritis, gallstones, abnormal intestinal growth, headaches, neck pain, and stomach pain; that she can feed, dress, and wash herself, but

has to rely upon others to carry out her other daily activities; that she requires an extraordinary attentive caretaker; that the applicant cooks, cleans, washes, shops, and runs errands for his mother; that the applicant supervises his mother's intake of medication; that the applicant takes his mother to doctor's visits; that the applicant interprets for his mother; that the applicant's mother is deeply fearful of being separated from the applicant; and that the applicant's presence at home with his mother is vital and beneficial to his mother's well-being.

The director denied the waiver application on May 1, 2006. In finding that the applicant had failed to demonstrate that his mother would suffer extreme hardship in his absence, the director noted that the applicant and his mother had been living apart for thirteen years. The director also noted that the applicant's United States citizen sister (through whom the applicant's mother obtained her permanent resident status) lives in New York. As his sister attested that she could financially support their mother at the time she filed for her, the director reasoned that she could be an effective caregiver to their mother as well. Further, the director noted that there was no evidence in the record that the applicant was living with his mother. While the applicant lives in Baltimore, Maryland, all of his mother's medical reports and prescriptions indicate that she is treated by New York doctors only.¹

On appeal, counsel does not respond to the director's findings. Counsel resubmits [REDACTED] evaluation, and submits an affidavit from the applicant's sister.

In her May 21, 2006 affidavit, the applicant's sister states that while she provides for her mother's financial needs, the applicant provides for her care, and that she cannot take care of her mother because she has a herniated intervertebral disk, two children of her own to care for, and she is busy with her job. She also states that her mother has become depressed, will not eat, and cannot sleep as a result of her worry over the applicant's immigration difficulties.

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) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship);

¹ The AAO notes that the psychological evaluation was also performed by a New York doctor.

INS v. Jong Ha Wang, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). 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) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy”).

In the instant case, the applicant is required to demonstrate that his mother would face extreme hardship in the event the applicant is required to return to China, regardless of whether she accompanies him to China or remains in the United States.

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 mother will face extreme hardship if the applicant returns to China. If she remains in the United States without the applicant, the record fails to establish that she would face greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son is removed from the United States or refused admission. As presently constituted, the record fails to establish that the financial strain and emotional hardship she would face would be any greater than that normally be expected upon separation. The statements from doctors regarding gastritis in 2001 and gallstones do not support a finding that the applicant’s mother is unable to manage her own affairs. As noted by the director, the applicant’s sister is a United States citizen. The presence of another adult child in the United States further diminishes the claim that separation from the applicant would be harder for his mother than for other parents in similar situations. Although she has had surgery on a herniated disk, has children of her own, and has a job, the record does not demonstrate that she is wholly unable to assist in her mother’s care (in the absence of the applicant) or contribute financially.

Nor has the applicant addressed the director’s finding regarding the residence of the applicant’s mother. As noted by the director, her doctors are in New York, which indicates that she is living in New York. Further, the AAO notes that [REDACTED]’s psychological evaluation was performed in New York. The AAO agrees with the director in that it appears as though the applicant is living in Baltimore while his mother lives in New York, which further undermines the contention that his presence is necessary for management of her daily affairs. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant, however, has elected not to address this portion of the director’s finding.

Nor does the letter from [REDACTED] establish extreme hardship. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letters are based on three interviews between [REDACTED] the applicant, and his mother conducted over a one-week period. The record fails to reflect an ongoing relationship between a mental health professional and the applicant’s mother or any history of treatment for the clinical depression found by [REDACTED]. Moreover, the conclusions reached in the submitted evaluation, being based on three interviews conducted over a one-week period, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the [REDACTED]’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship.

Nor has the applicant established that his mother would experience extreme hardship if she were to accompany him to China. This issue has not been addressed by the applicant.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The AAO finds that the District Director properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's mother would suffer hardship beyond that normally expected upon the removal of a son or daughter.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his mother would suffer hardship unusual or beyond that normally expected upon removal of a son or daughter. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

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