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



U.S. Citizenship  
and Immigration  
Services

Date: **JAN 29 2013**

Office: GUANGZHOU

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Guangzhou, China, 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 pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse and daughter.

In a decision dated March 1, 2011, the field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that his U.S. citizen spouse and daughter would experience extreme hardship as a consequence of his inadmissibility.

On appeal, counsel for the applicant states that the field office director erred in finding that the record evidence did not establish that the applicant's bar to admission would result in extreme hardship to his U.S. citizen wife and daughter. Counsel avers that the evidence outlining emotional and economic difficulties to the applicant's U.S. citizen spouse and daughter demonstrates extreme hardship under the standards articulated in the published case of *Matter of Cervantes*, 22 I&N Dec. 560, 565 (BIA 1999).

The record includes, but is not limited to: counsel's brief; statements by the applicant; college records; utility bills; country conditions documentation; copies of birth certificates; a marriage certificate; copies of naturalization certificates; tax documents and pay stubs; and documentation regarding the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, in pertinent part, that:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record indicates that the applicant was convicted of accepting bribes and bribery on January 25, 2002, in the People's Court of Canglang District of Suzhou City, China. The applicant was sentenced to 13 years imprisonment. The record of conviction reveals that the applicant's sentence was reduced three times and the actual time served by the applicant in prison was eight-and-a-half years. The field office director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the determination to be erroneous, the AAO will not disturb the finding of the field office director.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence . . . if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The AAO notes that a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). In this case, the applicant asserts that denial of his admission will impose extreme hardship upon his U.S. citizen wife and daughter.

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 the

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 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*, 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 is 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.

The record reflects that the applicant's wife is a 54-year-old native of China and citizen of the United States. The applicant and his wife have a 22-year-old U.S. citizen daughter, [REDACTED]. The applicant's spouse and daughter reside in the United States and are the qualifying relatives in these proceedings. With regard to relocation to China, counsel asserts that China has a high unemployment rate, that the applicant's wife will face difficulties finding a job since she will be

returning to a country where the retirement age is 52, and that relocation would signify lower living standards for the qualifying relatives due to China's high living costs. Counsel states that it would be very difficult for the applicant's wife and daughter to relocate to China after living in the United States for over 14 years. It is further stated that the applicant's daughter would experience educational difficulties if she relocated to China because she is currently a student and has yet to complete her college degree in the United States.

The record contains evidence concerning the current economic situation in China. Country conditions documentation indicate that recent years have seen an increase in inflation in China, and that the cost of living has increased significantly. For instance, there is evidence in the record indicating that housing prices have increased an average of forty percent a year in metropolitan areas.

The record evidence also demonstrates that relocation would affect the finances of the applicant's wife and daughter. Evidence in the record indicates that the applicant's wife is the main provider for her household. The record includes an employment reference letter dated July 15, 2010, which states that the applicant's wife has been employed as a dental assistant at the [REDACTED] in Atlanta, Georgia, since September 1999. In this letter, the applicant's wife's employer indicates that her annual salary is \$23,000 and that her prospect of continued employment is good. Pay stubs and income tax returns corroborate these assertions and reveal that the applicant's wife is the main provider for the household, that the applicant's daughter is listed as a dependent on the tax returns, and that the applicant's wife's reported income has remained essentially the same between the years 2007-2010. The applicant's wife asserts that if she returns to China, she would have to resign from her job as a dental assistant. Counsel contends that the applicant's wife resigning from her job would bring educational and financial hardships to their daughter, as it is her mother who covers her tuition costs. There is documentary evidence in the record indicating that the applicant's daughter is pursuing an undergraduate degree at the [REDACTED] and that the applicant's wife is responsible for tuition costs totaling \$10,000 per school year. The record contains no evidence indicating that the applicant's daughter is employed or that she earns sufficient income to pay tuition costs. Thus, the documentary evidence suggests that the applicant's wife's income is the only source of financial support for the applicant's daughter. The applicant's wife's income supports her household and serves to cover the applicant's daughter's tuition costs. Furthermore, counsel claims that the applicant's wife continued employment in the United States is essential for her retirement. Documentary evidence in the record indicates that the applicant's wife will have to work in the United States until the age of 70 to qualify for a monthly benefit of \$1,156. The AAO acknowledges that if the applicant's spouse relocates with the applicant to China, she would have to obtain employment in China at the age of 54 that would enable her to assist in supporting their three member household, in addition to discontinuing contributions towards her retirement.

Counsel for the applicant asserts that the applicant's daughter has been living in the United States "for decades" and that it would be emotionally difficult for her to return to China, as she is integrated into her college and community. Here, the AAO recognizes that the applicant's daughter has resided in the United States since she was at least nine years old and there is evidence she is integrated into the U.S. school and college systems and communities. The Board and U.S. Courts

decisions have found extreme hardship in cases where the language limitations of the children and their inability to adjust to life in another country impeded an adequate transition to daily life in the applicant's country of origin. In *Matter of Kao and Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the Board concluded that the language abilities of the respondent's 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in Taiwan. The girl had lived her entire life in the United States and was completely integrated into an American life style, and the Board found that her need for housing, food, clothing, education, and community support had been adequately met by her parents. Similar to the facts of *Matter of Kim*, the AAO notes that the applicant's daughter has lived in the United States since she was in grade school and that she is integrated into an American lifestyle. Like in *Matter of Kim*, uprooting the applicant's daughter when she is, at the most, one school year away from obtaining her undergraduate degree to relocate to China would be a significant disruption in her life. *See id.* Additionally, were the applicant's daughter to remain in the United States while her mother relocates to China would also signify the loss of the financial assistance she receives to meet her school's tuition costs.

Counsel contends that the applicant's wife and daughter have no ties to China because their family was ostracized after the applicant's conviction. He further asserts that their family members abandoned and "turned their back on them" after the applicant was convicted of bribery in China. However, the record contains no evidence concerning family ties in China or the alleged severing of such ties as a consequence of the applicant's criminal activities.

Nevertheless, the AAO finds that when looking at the aforementioned factors in the aggregate, particularly the documented financial difficulties of the applicant's wife upon relocation, the financial and educational difficulties upon the applicant's daughter upon relocation and separation from her mother, the emotional difficulties and disruption the applicant's daughter would experience as a consequence of relocation to China, and general concerns regarding job prospects in China and economic conditions, the AAO finds that the applicant has demonstrated extreme hardship to his wife and daughter were they to relocate to China.

Though the applicant has demonstrated extreme hardship to his qualifying relatives upon their relocation to China, it is noted that the AAO 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). Consequently, the AAO now turns to an examination of whether the applicant has demonstrated extreme hardship to his qualifying relatives resulting from separation.

With regards to separation from the applicant, the applicant asserts that he cannot imagine what would happen to his marriage if he is denied admission into the United States. The applicant asserts in his statement dated August 15, 2010, that his wish is to return to the United States to be reunited with his family and for his wife to be able to continue to work as a dental assistant until she reaches

her retirement age. The applicant asserts that if he remains separated from his wife, she would experience emotional, psychological and physiological suffering. Further, he states that separation from his daughter has caused her extreme emotional distress and that their relationship has been distant.

Here, the AAO finds that the applicant has failed to establish that his qualifying relatives will experience extreme hardship as a consequence of being separated from him. The record fails to provide sufficient detail and corroboration to demonstrate the types of emotional, psychological, and physiological hardships the applicant's wife would experience as a result of separation from the applicant. The record contains no statements from the applicant's wife addressing these asserted hardships. Nor is there medical documentation in the record indicating that the applicant is experiencing psychological difficulties resulting from or exacerbated by her husband's immigration situation. The record also does not contain any medical reports or other documentation showing that the applicant's wife has been diagnosed with a medical illness or that she is undergoing treatment for any medical conditions. The applicant's assertions constitute some evidence and will be considered by the AAO. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, the record contains no statement from the applicant's daughter or other documentation indicating that she is experiencing emotional difficulties as a result of separation from the applicant. The documentary evidence pertaining to the applicant's daughter is comprised of school acceptance letters, a birth certificate, a U.S. passport, and financial documentation indicating that the applicant's daughter is the beneficiary of a scholarship and that her mother covers the additional tuition costs. There is no evidence from which to conclude that the emotional hardships she experiences, if any, are related to the applicant's immigration situation.

With regard to financial hardship upon separation, there is insufficient evidence in the record to show that without the applicant's financial support, the applicant's wife and daughter would experience extreme hardship. From the two utility bills submitted as evidence of household expenses, it is reflected the applicant's wife has monthly obligations totaling \$102. The applicant's wife has not asserted, and the record does not demonstrate, that her earnings are insufficient to meet their monthly obligations. Other than the two utility bills and the applicant's daughter's tuition costs, no evidence detailing expenses related to the household or to the care of the applicant's family has been submitted. Additionally, though the record indicates that the applicant is employed in China, there is no evidence in the record demonstrating that he is unable to assist with the family's financial needs through his employment abroad. The record contains no further elaboration on the asserted financial difficulties or evidence regarding the inadequacy of the applicant's wife's earnings such that separation from the applicant would cause extreme hardship to his qualifying relatives.

Accordingly, the documentation in the record fails to establish the existence of extreme hardship as a result of separation from the applicant to his wife and daughter caused by his inadmissibility to the United States. Though the applicant has demonstrated extreme hardship to his qualifying relatives upon their relocation to China, it is noted that the AAO 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 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). Consequently, the AAO now turns to an examination of whether the applicant has demonstrated extreme hardship to his qualifying relatives resulting from separation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.