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

U.S. Citizenship and Immigration Services

H5

[redacted]

FILE: [redacted] Office: PITTSBURGH Date: DEC 17 2010

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 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 law was inappropriately applied by us 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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Pittsburgh, Pennsylvania, 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 procuring admission by willful misrepresentation. The applicant 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 U.S. citizen wife and children.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 5, 2008.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, submitted July 23, 2008.

The record contains a brief from counsel; copies of birth certificates for the applicant's children; a statement from the applicant's wife; a copy of the applicant's birth record; a copy of the applicant's wife's lawful permanent resident card; copies of documents relating to the applicant's and his wife's employment and business activities; a copy of a deed for real property, and; copies of tax records for the applicant and his wife. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> 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 reflects that on February 22, 1995 the applicant attempted to enter the United States using a false identity. He applied for asylum, but his application was denied by an immigration judge on June 12, 1995, and his subsequent appeal was denied by the Board of Immigration Appeals (BIA) on April 16, 1996. Accordingly, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission into the United States by willful misrepresentation. The applicant does not contest his inadmissibility on appeal.

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

> (1) 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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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 *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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

On appeal, counsel contends that the applicant's wife will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, submitted July 23, 2008. Counsel asserts that the field office director erroneously stated that the applicant has a background of repeated immigration fraud and false testimony, when in fact he only committed a single act of using a false passport to enter the United States. *Id.* at 1. Counsel notes that the applicant's wife has ties to the United States, as her mother, father, and sister are lawful permanent residents, and her two children are U.S. citizens. *Id.* Counsel asserts that the applicant's wife would face the equivalent of permanent separation from her family members should she relocate to China. *Id.* at 2.

Counsel states that documentation in the record shows that the applicant and his wife have established a modest, sustaining business that requires both of them to operate. *Id.* Counsel asserts that the applicant's wife would have difficulty operating the business by herself due to having two young children, and that she could not currently afford to hire an employee to perform the applicant's tasks as chef. *Id.*

Counsel indicates that the applicant and his wife would face economic difficulty in China, as operating a small Chinese take-out restaurant in the United States has not prepared them for sustaining themselves and their children in China. *Id.* at 3.

Counsel states that choosing between separation from the applicant or separation from her family is psychologically devastating for the applicant's wife. *Id.* at 2. Counsel notes that the hardship and cost of travel would result in the applicant's wife seeing the applicant or her family rarely. *Id.* Counsel asserts that the applicant's wife will further be affected by hardships endured by her children. *Id.* at 3.

The applicant's wife stated that she will suffer extreme hardship if the applicant is compelled to depart the United States. *Statement from the Applicant's Wife*, dated March 18, 2008. She provided that she will be a single parent raising two children who never knew their father. *Id.* at 1. She asserted that she could not operate their business without the applicant's participation, and that the business will fail leaving her unable to pay for her expenses. *Id.* She indicated that she will lose their house and her family will become homeless. *Id.* She stated that she does not have a close family that can help support her, physically or financially. *Id.* She provided that she cannot go to China with the applicant and give up what she has in United States, including a decent life for herself and her children and the opportunity to become educated. *Id.* She asserted that she and the applicant would not be able to find employment in China, and that the applicant's family would not be able to assist them. *Id.*

The applicant's wife stated that she fears going to China, as she carries a U.S. passport and she is not a Chinese citizen. *Id.* She explained that she would be subject to population control if she chooses to have more children. *Id.* at 1-2.

The applicant's wife expressed that the applicant has been her strength and spiritual support for the previous seven years, and that she will suffer emotional hardship should she be separated from him. *Id.* at 2.

Upon review, the applicant has not shown that his wife will suffer extreme hardship should the present waiver application be denied. The applicant has not shown that his wife will endure extreme hardship should she remain in the United States without him. The applicant's wife asserts that she will face economic difficulty should the applicant reside outside the United States. However, the applicant has not provided a sufficient account of his wife's expenses in the United States, thus the AAO is unable to determine her financial needs in order to assess whether she is capable of meeting them without the applicant's assistance. The applicant's wife contends that she cannot operate their restaurant without the applicant, yet the applicant has not provided detail regarding the functions or needs of the restaurant such to show whether the applicant's tasks can be performed by a staff member. The AAO acknowledges that the duties of a chef are vital to a restaurant's success, and that the applicant's wife has concern for the availability of a replacement for the applicant, yet the applicant has not shown by a preponderance of the evidence that appropriately skilled employees are unavailable in their area. Nor has the applicant indicated whether, as the sole proprietor of a small restaurant and Chinese native, his wife possesses culinary skills sufficient to prepare appropriate food. The applicant has not established that his wife's business will fail should he depart the United States.

The applicant has not indicated whether his wife has other employable skills that may be applied to employment should her business fail to provide adequate income for her needs. The record suggests that, as the sole proprietor of a small business, the applicant's wife has related accounting, clerical, and management skills that could be applied to a position with another company.

The applicant's wife asserted that she has no other individuals who can assist her in the applicant's absence. However, counsel contends that the applicant's wife's mother, father, and sister reside in the United States. The applicant has not provided any information regarding his wife's family members, such as where they reside or their closeness to his wife. Thus, the AAO is unable to determine

whether the applicant's wife may in fact obtain emotional or financial support from her family members should she require it.

Acting as a single parent involves significant emotional, financial, and physical challenges. It is evident that becoming separated from a spouse often creates significant psychological difficulty. The cost of travel between the United States and China is considerable, and the record supports that the applicant's wife has limited means with which to visit the applicant in China. While it is evident that the applicant's children will face disadvantages should they reside apart from him, the record does not show that they will experience unusual circumstances that will elevate the applicant's wife's hardship to an extreme level. These challenges presented by the applicant represent common consequences when families reside apart due to inadmissibility. The AAO has carefully considered the provided evidence, including the statement from the applicant's wife. The applicant's wife briefly addressed her possible emotional difficulty should her family become separated, and her statement does not distinguish her psychological hardship from that commonly faced by individuals who reside apart from a spouse due to inadmissibility.

Based on the foregoing, the applicant has not established that his wife will suffer extreme hardship should he depart the United States and she remain.

The applicant has not shown that his wife will suffer extreme hardship should she relocate to China to maintain family unity. The applicant's wife asserted that she and the applicant will be unable to find employment in China. However, the applicant has not submitted any documentation or reports to support that he and his wife would lack access to employment in China that is sufficient to meet their needs. The AAO agrees with the field office director that the record suggests that the applicant and his wife have readily transferable skills with which to generate income in China. While counsel calls this finding into question, the applicant has not supplemented the record with probative evidence to refute it. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, the record does not establish that the applicant's wife would suffer financial difficulty in China that rises to an extreme level.

Counsel asserts that the applicant's wife would become separated from her parents and sister in the United States should she reside in China. However, the applicant has not submitted sufficient evidence to support that his wife's mother, father, or sister resides in the United States. The applicant's wife indicated that she does not have a close family that can help support her, physically or financially, in the United States. Her statement calls into question whether her relatives reside in the United States, and if so, her level of interaction or closeness with them. Thus, the applicant has not shown that his wife will endure significant emotional difficulty due to separation from other family members.

The applicant's wife indicated her concern for being subjected to China's population control policies should she choose to have more children. Yet, her concern is speculative, as the record does not show that the applicant and his wife in fact intend to have more children, or that his wife is presently pregnant.

The AAO acknowledges that the applicant's wife would face other challenges should she relocate to China, including the possible loss of her restaurant, the loss of academic opportunities present in the United States, and the loss of use of the real property she and the applicant own. However, the applicant has not sufficiently distinguished these elements of hardship from the common consequences when an individual relocates abroad to maintain family unity. It is noted that the applicant's wife is a native of China, thus she will not face the challenges of adapting to an unfamiliar language or culture should she reside there. The applicant has not asserted or shown that his children would face difficulties in China that elevate his wife's hardship to an extreme level.

All elements of hardship to the applicant's wife have been considered in aggregate. Based on the foregoing, the applicant has not established that his wife will suffer extreme hardship should she relocate to China.

Accordingly, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to his wife as required for a waiver under section 212(i) of the Act. 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 regarding a waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the burden of proving eligibility remains entirely 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.