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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

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DATE: DEC 07 2011

OFFICE: SAN FRANCISCO, CA

FILE: 

IN RE:

Applicant: 

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:

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,

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of China who was found to be inadmissible to the United States pursuant to 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 procured a benefit under the Act by fraud or willfully misrepresenting a material fact. The applicant is the spouse of a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 2, 2009.

On appeal, counsel asserts that the applicant has established extreme hardship to his U.S. citizen spouse and requests that the waiver application be approved. Counsel submits a brief and additional evidence. *See Notice of Appeal or Motion (Form I-290) and attachments.*

The record includes, but is not limited to, statements from the applicant, his spouse, his son, his cousin, his father-in-law, and his spouse's uncle, describing the hardship claimed; income tax returns and income tax transcripts; earnings statements, and bank statements; childcare payment receipts, auto insurance statements; and counsel's briefs and attachments. The entire record was reviewed and considered in arriving at a decision on appeal.

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

- (i) In general.-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.
- . . . .
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The record reflects that the applicant gained entry to the United States in December 1990 by presenting a Japanese passport. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act for having procured entry into the United States by fraud or willfully misrepresenting a material fact. The applicant does not contest this finding.

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

- (i) (1) The Attorney General [now the Secretary of Homeland Security] may, in the discretion of the Attorney General, waive the application of clause (i) of subsection

(a)(6)(C) in the case of an immigrant 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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-Morales*, 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

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 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.

On appeal, counsel asserts that separation would result in hardship for the applicant’s spouse. He states that separation would be emotionally stressful for the applicant’s spouse as she will be concerned that their children are being deprived of their father and that she cannot provide the support they need. Counsel also contends that the burden of caring for the applicant’s son (now [REDACTED] and his stepdaughter (now [REDACTED]) would fall solely on his spouse. He further asserts that separation would result in financial destitution for the applicant’s spouse as the applicant is the sole breadwinner for the family. As a result, counsel states, the applicant’s spouse would probably be forced to seek public assistance to help feed, house, and clothe the children.

In a July 21, 2009 statement, the applicant’s spouse asserts that a permanent separation from the applicant would not only result in emotional hardship for her, but would require her to assume full responsibility for the care of her stepson. The applicant’s spouse also indicates that as a result of the recent recession and high unemployment, she is unemployed and that the family depends on the applicant’s income.

In an October 31, 2007 affidavit, the applicant states that he and his spouse have become a loving family and that she would suffer emotionally, as well as financially, if they are separated. The applicant also asserts that his return to China would be a great burden for his son who depends on him. The applicant’s son, in an October 31, 2007 affidavit, states that he would be devastated if he is separated from his father on whom he depends, financially, spiritually and morally. Statements from the applicant’s cousin and his spouse’s uncle also indicate that the applicant’s son is dependent on him.

The AAO notes the claims of emotional hardship made on behalf of the applicant’s spouse and son, and acknowledges that they would experience some level of emotional hardship as a result of their separation from the applicant. We do not, however, find the record to include documentation, e.g., evaluations of the applicant’s spouse and son by a licensed mental health practitioner or other medical

evidence, that would establish how or the extent to which their mental or emotional health would be affected if they and the applicant are separated. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. 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)). The AAO, therefore, cannot assess the extent of the emotional hardship that the applicant's spouse and son would face in his absence. Moreover, the AAO notes that the applicant's son is not a qualifying relative for the purposes of a section 212(i) proceeding and that the record also fails to demonstrate how any hardship he might suffer in the applicant's absence would affect his stepmother, the only qualifying relative.

The record includes a 2004 income tax return and transcript for the applicant; income tax returns and transcripts for the applicant and his spouse for 2005, 2006 and 2007; and three 2006 earnings statements and a 2006 W-2 Wage and Tax Statement for the applicant's spouse. The record also includes bank statements, dated in 2007, for the applicant's spouse.

We note the applicant's claim that his spouse is unemployed. However, there is nothing in the record in the form of recent documentation, such as proof of the termination of her employment and evidence of receipt of unemployment compensation, to establish that the applicant's spouse is unemployed and cannot contribute to the family's financial well-being. Beyond the 2004 -2007 income tax returns and income tax transcripts, and 2006 earnings statements for the applicant's spouse, and 2007 checking account statements for the applicant's spouse, the record does not include evidence to establish the family's financial circumstances. Without this evidence, the AAO is unable to determine the family's financial situation and, therefore, cannot assess the nature and extent of financial hardship, if any, the applicant's spouse would experience in his absence. While the applicant's spouse may experience some financial hardship, it has not been established that the financial hardship is beyond that which would normally be experienced as a result of separation.

The AAO notes that the applicant's spouse would suffer hardship without the applicant. However, even when considered in the aggregate with the hardships that commonly result from separation, the record does not establish extreme hardship to the applicant's qualifying relative.

Counsel asserts that the applicant's spouse and children cannot relocate to China with the applicant. He states that the applicant's spouse and children have never lived in China and that the applicant and his spouse cannot ask their children to live in a foreign country where they would be deprived of the basic rights and freedoms, that are their birthright as U.S. citizens. Counsel contends that the applicant and his spouse believe that relocation to China would be a deliberate sabotage of their children's future and tantamount to child abuse.

Counsel's claims regarding conditions in China are not, however, supported by any documentary evidence. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). Further, as previously discussed, the applicant's children are not qualifying relatives in this proceeding and the record further fails to document how the applicant's spouse would be affected by any hardships that her daughter and stepson might experience upon relocation.

The AAO finds, therefore, when the hardship factors are considered in the aggregate, the applicant has failed to establish that his U.S. citizen spouse will experience hardship beyond what would normally be expected as a result of his inadmissibility.

The AAO's review of the documentation in the record, finds that even when considered in its totality, the evidence fails to establish extreme hardship 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 for application for waiver of grounds of inadmissibility under section 212(i) 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.