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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
and Immigration
Services**



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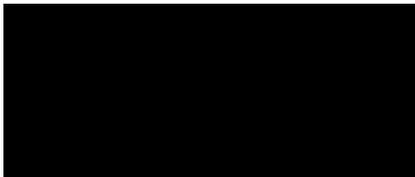
Date:

IN RE: Applicant:

JAN 10 2011

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 Acting District Director, Philadelphia, Pennsylvania, 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 the People's Republic of China (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 seeking admission into the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen, the father of a United States citizen stepchild and two lawful permanent resident children, and the son of lawful permanent residents of the United States. He 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 with his wife, stepchild, children, and parents.

The Acting District 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 Acting District Director*, dated March 10, 2006.

On appeal, the applicant, through counsel, asserts that either the applicant "did not commit fraud, and the [United States Citizenship and Immigration Services (USCIS)] erred in requiring him to file for a waiver, or it erred in finding that his deportation would not cause extreme hardship to his spouse." *Form I-290B*, filed April 11, 2006.

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant's wife, daughters, brother, and mother-in-law; psychological evaluations on the applicant's wife; medical documents for the applicant's wife; tax documents, bank statements, insurance documents, utility bills, business documents, lease documents, and mortgage documents. The entire record was reviewed and considered in arriving at a decision on the 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).

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

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 [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...

In the present case, the record indicates that on or about January 5, 1990, the applicant entered the United States by presenting a photo-substituted Taiwanese passport. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife and parents are the only qualifying relatives 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).

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 (Board) 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.

The first prong of the analysis addresses hardship to the applicant’s spouse if she relocates to China. In counsel’s appeal brief dated May 10, 2006, counsel states the applicant’s wife “has no immediate family outside the United States.” Counsel claims that “USCIS failed to consider the factor of conditions in the country to which [the applicant] and his spouse would be required to relocate.” He states the applicant and his wife “would have a likelihood of very low compensation if they were able

to find employment in China.” Counsel claims that “given [the applicant’s wife’s] persistent injury to her foot or lower leg,” she “would be less employable than a fully healthy individual.” The AAO notes that the record establishes that on December 28, 2001, the applicant’s wife suffered an injury to her left foot, she still has pain, and she “has a whole person impairment of 9%.” See letter from [REDACTED] dated September 21, 2004. Additionally, in a psychological report dated December 17, 2004, [REDACTED] reports that the applicant’s wife was in a car accident in 2002, and she “had major problems with her head, neck and back.” [REDACTED] indicates that the applicant’s wife “has not been able to work since her first accident in 2001.”

In a letter dated December 6, 1999, the applicant’s mother-in-law states she resides with the applicant and her daughter, she is “old and [in] poor physical condition,” and her daughter and the applicant care for her everyday. The AAO notes that [REDACTED] reports that the applicant’s wife resides with her children and the applicant, and she did not indicate that her mother resides with them. Additionally, the AAO notes that the applicant has not shown that his wife would endure additional hardship in China due to lacking the ability to reside with or assist her mother.

The AAO acknowledges the claims made by counsel regarding the difficulties the applicant’s wife would face in relocating to China. The AAO notes that the applicant’s wife has been residing in the United States for many years. However, the AAO observes that the applicant’s wife is a native of China and the record does not establish that she does not speak the native language. The AAO notes the documentation in the record regarding the applicant’s wife’s injuries. However, the applicant has not established that his wife’s injuries have resulted in impairment to a degree that eliminates employment opportunities. Additionally, other than counsel’s statement regarding the availability of jobs in China, no country conditions materials or documentation has been submitted to establish that the applicant’s wife would be unable to obtain employment in China. 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)). Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to China.

In addition, the record also fails to establish extreme hardship to the applicant’s wife if she remains in the United States. Counsel claims that the applicant’s wife “would be required to raise her child, who is currently in the formative, adolescent years of development.” [REDACTED] claims that the applicant’s wife “will not be able to manage the care of her children on her own.” In a statement dated December 15, 1999, the applicant’s wife states the applicant “is the backbone of support for [her] family both financially and emotionally.” Counsel states the applicant “is the sole breadwinner, and has a well-paying job.” In a letter dated December 16, 1999, the applicant’s daughters state the applicant “works hard to support [their] family” and they “can not [sic] live without [the applicant].”

The applicant's wife claims that she cannot work because she "must care for [her] parent and [her] in-laws." [REDACTED] reports that because of the applicant's wife's injuries, the applicant "does all of the housework and shopping." In a psychological evaluation dated December 17, 1999, [REDACTED] diagnosed the applicant's wife with acute stress disorder and depression, and prescribed her medication. [REDACTED] states "[g]iven [the applicant's wife's] history of problems with depression and excessive anxiety, if [the applicant] is deported this woman will suffer major emotional and psychological damage and she will become chronically depressed."

The AAO acknowledges that the applicant's wife suffered a foot injury and is 9% disabled; however, no documentation has been submitted establishing that because of her injury, the applicant's wife cannot work. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra*. The AAO notes that the applicant's stepson may suffer some hardship in being separated from his stepfather. However, the applicant has not shown that his stepson will experience challenges that elevate his wife's difficulty to an extreme hardship. The AAO finds the record to include some documentation of the applicant's and his wife's expenses; however, this material offers insufficient proof that the applicant's wife would be unable to support herself in the applicant's absence. Additionally, the record does not contain documentary evidence that demonstrates the applicant would be unable to obtain employment in China and, thereby, financially assist his wife from outside the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Matter of Soffici, supra*. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

As the applicant's parents are lawful permanent residents, the AAO will address hardship to his parents if they relocate to China or remain in the United States. In a letter dated December 14, 1999, the applicant's brother states the applicant supports their parents and his family, and they "depend on him to live." The applicant's wife states the applicant's parents "rely on [the applicant] for support and comfort" and the applicant's mother suffers from diabetes. The AAO notes that no medical documentation was submitted establishing that the applicant's mother is suffering from any medical conditions. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. [REDACTED] In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's parents would experience if they joined the applicant in China or remained in the United States, the AAO does not find the applicant to have established that his parents would suffer extreme hardship upon relocation or if they remain in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife and parents caused by the applicant's inadmissibility to the United States. 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.