identifying data to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

#5

FILE: Office: PHILADELPHIA, PA Date: JAN 19 2011

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted, the AAO dismissal of the appeal will be upheld and the underlying waiver application denied.

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 entering the United States using fraudulent documentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her U.S. citizen husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated May 30, 2006. The AAO dismissed a subsequent appeal, finding that there was insufficient evidence showing that the hardship the applicant's husband, would experience was beyond what would normally be expected. *Decision of the Administrative Appeals Office*, dated May 13, 2010. Specifically, the AAO found that there were insufficient details to show extreme financial or emotional hardship, and that the record contained no evidence addressing the applicant's claim that she fears being sterilized upon returning to China due to China's family planning policy. *Id.*

Counsel asks the AAO to reopen its previous decision of May 13, 2010, and submits new affidavits from the applicant and , as well as government reports addressing China's family planning policy.

According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In this case, the applicant has submitted new affidavits and documentary evidence to support her claim. Therefore, the motion to reopen will be granted.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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.

In this case, the applicant states that she and her husband have been married for ten years, that they have three U.S. citizen children who are thirteen, twelve, and five years old, and that they hope to have more children. The applicant states that if she returns to China and becomes pregnant, the Chinese government will force her to have an abortion and then be sterilized. In addition, the applicant contends that if her husband moves to China to be with her, their children will not be able to obtain a free education and will not have health care coverage. She states that she has no employment skills, that her husband will be unable to get a job in China, and that they will not have housing in China. *Affidavit of* , dated June 29, 2010.

states that if he and the couple's children go back to China with his wife, "then China's One Child policy will definitely apply to [his] wife." states that his children will have to give up their U.S. citizenship in order to obtain a public education and medical health coverage in China. According to he has been under a great deal of stress, particularly due to his concern about their daughter's asthma condition and whether she can obtain adequate medical care in China. In addition, contends he will lose the Laundromat he owns in the United States and that he will not be eligible for housing or a work authorization permit in China. He states that although his parents continue to live in China, they are retired and unable to financially assist him. Furthermore, contends that if he remains in the United States without his wife, their children would suffer such great anxiety, unhappiness, and emotional instability that no amount of counseling will be able treat. He also contends that he would be unable to care for the children without his wife because he works seven days a week at the Laundromat. According to , he suffers from depression and anxiety, has lost weight, and is unable to sleep. *Affidavit of* , dated June 28, 2010.

Upon a complete review of the record, including the evidence that was previously summarized in the AAO's initial May 13, 2010 decision as well as the additional documentation provided with this motion to reopen, the AAO finds that the record does not show that the applicant's spouse will suffer extreme hardship as a result of the applicant's waiver being denied. Specifically, the AAO finds that the applicant has not shown that the hardship her husband, , will experience if he decides to stay in the United States is beyond what would normally be expected under the circumstances. As stated above, hardship to the applicant's children can be considered only insofar as it results in hardship to , the only qualifying relative in this case. Although the AAO recognizes the challenges of single parenthood, there is no evidence showing that the applicant's situation is unique or atypical compared to other individuals separated as a result of inadmissibility or exclusion. *See Perez v. INS,*

supra (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). For instance, the applicant has not submitted any additional documentation, such as a letter from a medical or mental health care professional, suggesting that depression or the couple's daughter's purported asthma make their case unique or atypical. Similarly, regarding the financial hardship claim, although the applicant works part-time in the Laundromat "to help keep down [their] overhead costs," *Affidavit of , supra*, the applicant has not addressed the couple's restaurant business. As such, as stated in the AAO's previous decision, the record fails to provide sufficient details to show that the financial hardship would experience would be extreme. In sum, the record does not indicate that the applicant's departure would result in extreme financial or emotional hardship to her husband.

Furthermore, the record does not show that would suffer extreme hardship if he were to move back to China, where he was born, to be with his wife. does not claim that he has any physical or mental health issues that would make his transition to moving back to China any more difficult than would normally be expected under the circumstances. According to , both of his parents continue to live in China. *Affidavit of , supra*. In addition, the record shows that the couple's son, , lived in China for the first five years of his life. *Letter from* dated June 13, 2006. To the extent the applicant contends she fears being forced to have an abortion and be sterilized if she becomes pregnant again, the AAO recognizes the applicant has submitted government reports documenting the implementation of China's family planning policy. *U.S. Department of State, 2009 Human Rights Report: China*, dated March 11, 2010; *Congressional-Executive Commission on China, 2008 Annual Report*. Nonetheless, as the AAO's previous decision stated, there is no objective evidence that the applicant's children, who were born abroad, are "counted" for China's family planning purposes. *See In re J-W-S-*, 24 I. & N. Dec. 185, 190 (BIA 2007) (stating that the U.S. State Department has found that children born overseas are "not ... counted" for family planning purposes when the parents return to China) (citing Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *China: Profile of Asylum Claims and Country Conditions* 30 (May 2007)). In addition, whether the applicant may or may not become pregnant again is purely speculative.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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 AAO dismissal of the appeal is upheld and the underlying waiver application denied.

ORDER: The appeal is dismissed.