identifying data deleted 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

H5

[redacted]

Date: JUL 0 6 2011 Office: PORTLAND, MAINE FILE: [redacted]

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,

Michael Hathway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, South Portland, Maine, 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. He was further found inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by willful misrepresentation. He seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident mother and father and U.S. citizen children.

The director found that the applicant's conviction was not for a crime involving moral turpitude, thus he does not require a waiver under section 212(h) of the Act.[1] *Decision of the Director,* dated December 31, 2008. However, the director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver under section 212(i) of the Act accordingly. *Id.*

On appeal, counsel for the applicant asserts that the applicant's father will suffer extreme hardship if the present waiver application is denied. *Statement from Counsel on Form I-290B*, dated January 28, 2009.

The record contains, in pertinent part: a brief from counsel; statements from the applicant, the applicant's parents, the applicant's employer, and the applicant's father's former employer; tax records for the applicant and his parents; a medical document for the applicant's father; reports on conditions in China; documentation in connection with the applicant's proceedings in Immigration Court; documentation relating to the applicant's criminal conviction; and copies of birth certificates and medical records for the applicant's children. 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.

---

[1] The record shows that, on August 31, 1999, the applicant pled guilty or admitted sufficient facts to a charge of Sexual Conduct for Fee under Massachusetts General Laws Chapter 272 § 53A, for which he received pretrial probation until August 31, 2000. The director determined that the applicant is not inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The AAO will not conduct an independent analysis of this finding, as the applicant has not shown that he is eligible to be considered for a waiver under section 212(i), as discussed herein.

The record shows that, in February 1991, the applicant attempted to enter the United States using a passport that bore a false identity. The director determined that the applicant attempted to enter the United States by making a material misrepresentation, and is thus inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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-Moralez,* 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 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).

On appeal, counsel asserts that the applicant's father will suffer extreme hardship if the present waiver application is denied. Counsel states that the applicant's father has been receiving medical treatment for depression, insomnia, and other medical problems. Counsel contends that the applicant's father quit his job due to leg and back pain resulting from an accident in December 2008. Counsel provides that the applicant's father and mother moved into the applicant's residence and that they are relying on him to care for them in their old age.

Counsel indicates that the applicant's father was 56 years old as of February 26, 2009. Counsel states that the applicant's father fears being separated from the applicant and the treatment the applicant will face in China due to violating Chinese law. Counsel asserts that the applicant would be unable to take his two children to China with him, thus his parents would be compelled to care for them, creating additional burden. Counsel contends that the applicant's parents' concern for the applicant is greater than that commonly experienced by the parents of inadmissible individuals. Counsel asserts that the applicant's father would not be able to return to China due to poor human rights conditions there, thus he would become separated from the applicant indefinitely. Counsel indicates that the applicant's parents are totally dependent on the applicant financially and for everyday caretaking needs. Counsel notes that the applicant's parents do not get along with their younger son, and that he has refused to care for them in their old age. Counsel adds that the applicant would be unable to get a job in China to assist his parents.

In a statement dated September 18, 2007, the applicant's father stated that he fears that the applicant will be apprehended in China and imprisoned for an indefinite period due to departing without permission and remaining in the United States for a lengthy period. The applicant's father cites poor

human rights conditions in China. The applicant's father asserted that the stress of care for the applicant's two children could exacerbate his and the applicant's mother's health problems. The applicant's father asserted that the applicant would suffer consequences in China should he bring his children due to the one-child policy.

In a statement submitted on appeal, the applicant's father states that he is experiencing significant emotional distress due to the applicant's immigration difficulties. He expresses concern for his and the applicant's mother's care when they are old. The applicant's father indicates that the applicant's mother suffers from high blood pressure and other symptoms, and that she has not worked since she came to the United States due to her medical problems. He adds that he worked in restaurants for years, but that he is unable to continue due to back and joint pain. The applicant's father notes that he and the applicant's mother do not get along with their younger son.

The applicant submits a statement in which he makes the same assertions as his father, discussed above. He contends that he has lost contact with his relatives in China, and that he and his children would have no support there.

The applicant provides medical documentation for his father that indicates that the applicant's father had insomnia, poor short-term memory, and poor appetite. The applicant's father was diagnosed with Adjustment Disorder on March 23, 2009, attributed to his sister being ill and the loss of his job. A medical record dated May 27, 2009, indicates that the applicant's father was depressed due to the passing of his sister, and that he has become socially withdrawn since her death. The same record states that the applicant's mother has hypertension and that she is employed, and that the applicant's father's younger son owns a take-out restaurant. The applicant's father was diagnosed with Depressive Disorder on May 27, June 24, and September 2, 2009.

The applicant provides a letter from his father's former employer, [redacted], confirming that he no longer works there as of December 31, 2008.

In a statement dated February 23, 2009, the applicant's mother states that she suffers from high blood pressure and that she has headaches, dizziness, ear sounding, nausea, and cold extremities. She indicates that she is emotionally fragile as a result, and she is suffering emotional hardship due to the applicant's immigration difficulties. She contends that she and the applicant's father do not get along with their younger son, and he does not wish to assist them. She adds that her younger son's restaurant business "failed years ago." She indicates that she and the applicant's father do not have sufficient savings to live on without support from the applicant.

The applicant's parents assert that they rely on the applicant for economic support. However, the applicant has not shown that his parents in fact require his support or that they are unable to earn sufficient income to meet their needs.

The record contains inconsistent information regarding the applicant's mother's past or present employment, or ability to engage in future employment. The applicant submitted a letter from his mother in which she stated that she immigrated to the United States in 1996, but that she has not

worked since January 1, 2004. Conversely, the applicant's father asserts that the applicant's mother has never worked in the United States. As noted above, a medical record dated May 27, 2009 indicates that the applicant's mother was employed as of that date. These statements cannot be reconciled. Further, while the applicant's father asserts that the applicant's mother is unable to work due to her health problems, the applicant has not provided any medical records to support this contention. Thus, the record does not clearly show whether the applicant's mother is presently employed, and the applicant has not shown that she is unable to engage in employment.

Further, the applicant has not shown that his father is unable to engage in any type of employment due to his health challenges. While the record supports that he voluntarily relinquished his employment, the applicant has not provided medical evidence that his father's conditions prohibit him from earning income. It is noted that the applicant's father reported an income of $43,240 for 2008.

The applicant's parents each stated that they do not get along with their younger son. However, the record contains inconsistent information regarding the applicant's brother. Specifically, the applicant's mother stated on February 23, 2009 that his restaurant failed "years ago." Yet, a medical document, dated May 27, 2009, indicates as part of the applicant's father's social history that the applicant's brother owns a restaurant. This inconsistency calls into question the accuracy of the information provided by the applicant's parents regarding his brother, including whether his brother is available or willing to assist them in the applicant's absence should the need arise.

The applicant's father expressed concern for human rights conditions in China, and harms the applicant may face should he return. However, the applicant has not presented evidence, specific reports, or explanation to establish that he will be targeted for particular harms. The applicant has not shown that conditions in China are sufficiently harsh that any person residing there faces extreme hardship. The applicant has not shown that he would be targeted for departing and remaining in the United States. The AAO takes notice of the one-child policy of China, yet the applicant has not explained how exactly he would personally be affected by this policy. It is further noted that the applicant has not indicated whether his children's mother presently cares for them in the United States or whether he would have the option of relocating them to China should he choose. Thus, while it is understood that the applicant would face challenges in returning to China, he has not shown that he would face risks that would raise his parent's emotional difficulty to an extreme level.

The AAO acknowledges that the applicant's father is facing emotional difficulty for which he has received medical treatment. It is understood that parents who are separated from an adult child due to inadmissibility often endure psychological difficulty, and that the applicant's immigration situation is contributing to his father's challenges. However, it is noted that the medical documentation regarding the applicant's father's mental health reports that he was distressed regarding the passing of his sister and the loss of his employment. The documentation does not indicate that the applicant's father was experiencing emotional difficulty regarding possible separation from the applicant. The applicant has not shown that his father is experiencing emotional hardship as a result of the applicant's possible departure that can be distinguished from the common

consequences when parents are separated from adult children due to inadmissibility. However, all elements of hardship are considered in aggregate, and due consideration is given to the applicant's father's mental and physical health.

As noted above, the applicant has not shown that his children are not cared for by their mother. Thus, the applicant has not established that his parents would endure hardship due to a need to care for the applicant's children in the applicant's absence.

The applicant has not identified other elements of hardship his mother or father may face should they reside in the United States without him. Considering the stated hardship factors in aggregate, the applicant has not shown that his mother or father will suffer extreme hardship should they remain in the United States.

The applicant has not shown that his mother or father will face extreme hardship should they relocate to China with him. As discussed above, the applicant's father expressed concern for human rights conditions in China. However, the applicant has not presented evidence, specific reports, or explanation to establish that his parents will be targeted for particular harms. The applicant has not shown that conditions in China are sufficiently harsh that any person residing there faces extreme hardship. Thus, while it is understood that the applicant's mother and father would face challenges in returning to China, he has not shown that they would face specific risks that rise to an extreme level due to conditions or government practices there.

The applicant has not presented sufficient explanation or evidence to show that his parents would lack sufficient economic resources in China to meet their needs. As noted above, the applicant has not shown that his mother is unable to work, or that his father lacks access to any form of income-generating activity.

The record supports that the applicant's father receives medical treatment in the United States. Yet, the applicant has not indicated the source of funding for his father's treatment or shown that returning to China would interrupt any medical benefits they receive. The applicant has not shown that his parents would lack access to required medical care should they reside in China.

The applicant's parents indicated that they have other family residing in the United States, yet other than their younger son, the record does not identify these individuals. The applicant has not shown that his parents have greater family contacts in the United States than they do in China, or that they would lack the support of family and community should they relocate abroad.

The AAO acknowledges that the applicant's parents have resided in the United States for a lengthy duration, and it is understood that such residence builds emotional and community ties. In considering the totality of hardship factors, due weight is given to the emotional challenge of now departing the United States and becoming separated from these ties. Yet, departing one's community to relocate to another country is a common consequence of moving abroad to join an inadmissible family member.

The applicant has not identified other elements of hardship his mother or father may face should they reside in China. Considering the stated hardship factors in aggregate, the applicant has not shown that his mother or father will suffer extreme hardship should they reside in China.

As the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to his mother or father, he has not shown that he is eligible for a waiver under section 212(i) of the Act. Accordingly, 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) 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.