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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**

H5



DATE: **APR 27 2012**

OFFICE: LOS ANGELES, CALIFORNIA

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:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, 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 the People's Republic of China (PRC) 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 an Arrival/Departure Record (Form I-94) through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. On appeal, the applicant does not contest the finding of inadmissibility. Rather, he 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 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. *See Decision of Field Office Director*, dated October 23, 2009.

On appeal, the applicant's spouse asserts that if the applicant's waiver application is not granted, their family will break apart, they will lose the applicant's financial support, and the future of their son will be ruined.

The record includes, but is not limited to: letters of support; and identity, employment, and financial documents. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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 Field Office Director found the applicant inadmissible under 212(a)(6)(C) of the Act for having procured an I-94 card bearing a counterfeit I-551 stamp, indicating the applicant's temporary evidence of lawful admission for permanent residence, valid from April 1, 2001, until April 1, 2002. The applicant presented the I-94 card as evidence in support of his Application to Register Permanent Residence or Adjust Status (Form I-485). Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

(1) The Attorney General [now 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 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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant or the 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. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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.

The applicant’s spouse contends that she would suffer extreme financial and emotional hardship upon separation from the applicant because she would be unable to work fulltime given that nobody would be at home to take care of their children; and she has been unable to fall asleep, has lost her appetite, and could break down at any time given the thoughts of her family not being able to live together. In support of her financial hardship, the applicant’s spouse has included copies of her earnings statements and taxes.

The evidence in the record is sufficient to establish that the applicant’s spouse has been employed as [REDACTED] and may experience some financial and emotional hardship in the applicant’s absence from the United States. However, the record does not establish that the hardship that the spouse may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record does not include any evidence that the spouse would be unable to meet her financial obligations in the applicant’s absence. Moreover, the record does not include any evidence of the applicant’s employment opportunities in the PRC or his inability to provide financial support to his and the spouse’s households. Additionally, the record does not include any evidence of the spouse’s mental health or her inability to function without the applicant’s presence.

The AAO recognizes the difficulties in rearing children without the support of the other parent and that the absence of the other parent may result in hardships. However, the AAO finds that even when the hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

The applicant's spouse also contends that she would suffer extreme hardship upon relocation to the PRC with the applicant because they sold all of their properties and stocks there, and have spent an enormous amount of money to move to and establish themselves in the United States; have participated in the building up of the United States, their second motherland; and have abided by all U.S. laws and have never done anything against the interests of the United States. The spouse also contends that her son would suffer extreme hardship because he was born in the United States and is totally Americanized; he barely knows Chinese; it would be difficult for him to stay on grade level in the PRC given the differences in the education systems; and he could lose his confidence and normal attitude in life.

The AAO recognizes that the applicant's spouse may experience some hardship if she were to relocate to the PRC. However, the record does not establish that the hardship that the spouse may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record does not include any evidence of the economic, political, or social conditions in the PRC and how they would directly impact the spouse. Moreover, the record does not include any evidence of the spouse's employment opportunities or labor conditions in the PRC. Also, the AAO recognizes the desires of a parent to provide educational opportunities and to ensure the mental wellbeing of her children as the children transition to a different culture and that the parent may experience hardships because of these circumstances. However, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. 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.