

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

HLS

DATE: DEC 05 2012 OFFICE: NEW YORK FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), due to his use of fraud or material misrepresentation in an attempt to procure admission into the United States. The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

In a decision dated May 4, 2011, the District Director concluded that the applicant did not establish that his U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the hardship that would result to the applicant's U.S. citizen spouse is extreme.

In support of the waiver application, the record includes, but is not limited to legal arguments by counsel for the applicant, biographical information for the applicant and his spouse, biographical information for the couple's children, biographical information for the applicant's spouse's family in the United States, evaluations of the applicant's spouse's emotional health, country conditions information for China, an affidavit from the applicant's spouse, limited financial documentation for the applicant and his spouse, and documentation concerning the applicant's immigration history, including his applications for asylum before the Immigration Judge and motions before the Board of Immigration Appeals.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible to the United States under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), which is a permanent grounds of inadmissibility. Section 212(a)(6)(C) of the Act, provides, in pertinent part:

- (i) ...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.

...

The record makes clear that the applicant is inadmissible under section 212(a)(6)(C) of the Act for the use of fraud or material misrepresentation in an attempt to procure admission into the United States. On November 14, 2000, the applicant presented a photo-substituted Chinese passport and

U.S. visa issued to another individual, in an attempt to gain admission to the United States. The applicant was referred to secondary inspection where he admitted his true identity. The applicant expressed a fear of persecution in China and was paroled into the United States for removal proceedings. The applicant's application for asylum was ultimately denied by the Immigration Judge and his appeal and subsequent motions were dismissed by the Board of Immigration Appeals. The applicant does not contest his inadmissibility on appeal.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides a waiver for section 212(a)(6)(C) of the Act. Section 212(i) of the Act states that:

(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 the applicant's U.S. citizen or lawful permanent resident spouse or parent. The applicant has a U.S. citizen spouse. Hardship to the applicant or his U.S. citizen children is not considered in section 212(i) waiver proceedings unless it is shown to cause hardship to his qualifying relative. 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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 885 (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-I-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 for the applicant states that the applicant’s spouse would “suffer extreme health-related, financial and emotional hardship” if his spouse was not granted a waiver of inadmissibility. Counsel states that the applicant’s spouse relies on her husband for emotional, physical and financial support and would suffer extreme hardship if she were to be separated from him. The applicant’s spouse was evaluated by Dr. [REDACTED] M.D., Ph.D, a psychiatrist, who in a report dated June 24, 2010, diagnosed the applicant’s spouse with Major Depressive Disorder based on the following symptoms reported by the applicant’s spouse: “disturbed sleep, no appetite, feelings of powerlessness and despair...difficulty concentrating on her job and caring for her children...feeling passively suicidal.” Dr. [REDACTED] states that the applicant’s spouse relies on the

applicant “to provide her support and reassurance” and that she is vulnerable to major stressors. Dr [REDACTED] prescribed the applicant’s spouse various medications and advised that she seek psychotherapy at least on a monthly basis. No documentation was submitted to indicate whether the applicant’s spouse had taken the prescribed medications or attended psychotherapy. Additionally, although the applicant’s spouse reported to Dr [REDACTED] that she was having difficulty concentrating on her job and caring for her children, no supporting evidence was submitted in regard to that assertion. The AAO notes that the applicant’s spouse also mentions in her affidavit the emotional hardship that she would suffer if she must raise her two young children without the presence of their father in their lives. The applicant’s spouse, however, has not submitted any evidence of the role that the applicant plays in his children’s lives. Although the applicant’s spouse’s assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel notes that the applicant’s spouse would suffer health-related hardships as a result of separation from the applicant. The AAO notes the hardships mentioned in Dr [REDACTED] report regarding the applicant’s emotional health, however, no additional evidence was submitted in support of any other medical issues that may affect the applicant’s spouse. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record; however, is insufficient to establish that the applicant’s spouse suffers from such a condition. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

Counsel also states that the applicant’s spouse would face financial hardship in her husband’s absence. The applicant’s spouse states in her affidavit dated July 21, 2010 that the applicant “plays the most important role in our small take-out restaurant business.” The only evidence in the record, however, is the couple’s 2009 and 2008 tax returns. Those documents do not establish the role that the applicant plays in the family’s take-out business as essential. Moreover, the only information about the family’s expenses in the record is a lease document indicating that the family pays \$400 per month in rent. That information alone is not sufficient to indicate the degree of financial hardship that the applicant’s spouse would suffer in the applicant’s absence. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158 at 165.

Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse would endure hardship as a result of long-term separation from the applicant, the evidence in the record does not establish that the hardships she would face, considered in the aggregate, rise to the level of "extreme."

Counsel states that the applicant's spouse would also suffer extreme hardship if she were to *relocate to China to reside with the applicant. The applicant's spouse is a native of China who became a naturalized U.S. citizen on [REDACTED] 2006.* Counsel states that the applicant's spouse arrived in the United States in 1996, graduated from high school in the United States, and her Chinese language and cultural skills have diminished. Counsel also notes the applicant's spouse's family ties in the United States and states that she has "nothing left for her in mainland China." Again, the AAO notes that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158 at 165. The only evidence of the applicant's spouse's long-term residence in the United States includes copies of biographical information for her children and her other immediate family members in the United States. The AAO notes that the applicant's spouse is a naturalized U.S. citizen, however, the burden of proof is on the applicant to document his spouse's family ties to the United States. Section 291 of the Act, 8 U.S.C. § 1361. Biographical information alone does not establish the importance of the applicant's spouse's family ties. The record does not include statements from the applicant's spouse's family members or other members of the community. There is also no evidence in the record of the applicant's spouse's educational history or other ties to the United States. *The AAO notes the extensive country conditions information in the record concerning China, however, the record does not establish how the applicant's spouse would be specifically affected by those conditions.* Counsel states that the applicant's spouse would not be eligible for a work permit in China and that finding employment there would be "exceedingly difficult," however, counsel does not note whether the applicant would be able to find employment and provide for his family in China. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to China, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-I-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

Considered in the aggregate, the hardship to the applicant's spouse does not rise to the level of extreme beyond the common results of removal. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required 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 an 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.