

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

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[REDACTED]

DATE: Office: NEW YORK, NEW YORK FILE: [REDACTED]
DEC 21 2012
IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v), and 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 Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking a U.S. visa and admission to the United States through willful misrepresentation. He is the son of two lawful permanent residents (LPR). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his LPR parents, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 21, 2011.

On appeal, counsel for the applicant asserts that the Field Office Director's decision should be vacated because the Director employed a flawed analysis and the record establishes that the applicant's parents will experience extreme hardship. *Form I-290B*, received on October 19, 2011.

The record includes, but is not limited to, counsel's brief; statements from the applicant's parents, brother and sister; medical records pertaining to the applicant's mother; a psychological examination of the applicant's mother by [REDACTED] dated October 8, 2011; a pro forma note from [REDACTED] dated August 25, 2011, and pertaining to the applicant's mother; a medical statement from [REDACTED], undated, to another doctor and pertaining to the applicant's mother; a note from [REDACTED] to [REDACTED] dated September 13, 2010, pertaining to the applicant's mother; and tax records for the applicant's father. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) Misrepresentation, states 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 chapter is inadmissible.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such

alien's departure or removal from the United States, is inadmissible. . . .

The AAO notes that the applicant entered the United States in 1992 or 1993 using false documentation which he admits to procuring in China. He was ordered removed in 1998, but failed to depart. He remained in the United States until he was apprehended and removed in 2006. On or about October 15, 2009 the applicant applied for admission as an immigrant using his brother's identity, but was detained when his false identity was discovered. Based on the foregoing, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, and he does not contest this finding on appeal. He requires a waiver under section 212(i) of the Act.

The Director did not discuss the applicant's inadmissibility due to unlawful presence, but in this case the AAO finds that the applicant was clearly unlawfully present from April 1, 1997, the effective date of the unlawful presence provision of the Act, until his deportation in 2006, a period over one year. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within 10 years of his last departure from the United States, the AAO finds him additionally inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(i) of the Act states:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 Attorney General 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 sections 212(a)(9)(B)(v) and 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 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).

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 AAO notes that, although counsel for the applicant has submitted a brief, the brief does not articulate how the Director's decision was incorrect, and instead merely asserts that additional evidence submitted on appeal will demonstrate eligibility of the applicant. Evidence submitted includes additional statements from the applicant's mother, sister and brother and a psychological examination of the applicant's mother. The statements submitted by the applicant's mother, brother and sister do not add significantly to their previous statements, and fail to address the Director's conclusions. The Director's decision was lengthy and provided a full and reasonable explanation as to why the record did not establish that a qualifying relative would experience extreme hardship. Nonetheless, the AAO will review the assertions of hardship in an effort to clarify why the record fails to establish the applicant's eligibility.

The applicant originally asserted that his parents would experience extreme hardship upon relocation because they had been residing in the United States for a period of 10 years and would be unable to assimilate to China. The applicant's parents resided in China until they were into their 50's. The record does not contain any documentation to support the assertion that the applicant's parents would not be able to relocate to China. The record does indicate that the applicant's mother has travelled to China to visit the applicant after his deportation. This supports that the applicant's mother would not experience any uncommon physical hardship due to relocation to China. Based on these observations, the AAO does not find the record to establish that the applicant's parents would experience any uncommon physical or acculturation hardship impacts due to relocation to China.

The record does not specifically articulate any other basis of hardship if the applicant's parents were to relocate to China with the applicant. Although the record contains evidence that the applicant's mother suffers from various medical conditions, there is insufficient evidence to establish that these conditions significantly impact her ability to function on a daily basis, and there is no indication that she would be unable to receive any needed medical care if she were to return to China with the applicant. As such, the record does not establish that the applicant's parents would experience challenges which, even when considered in the aggregate, rise to the degree of extreme hardship.

With regard to hardship due to separation, the applicant previously asserted that his parents depend on him physically and financially and would experience extreme hardship if he were removed from the United States. *Statement of the Applicant*, dated August 26, 2011.

The applicant's mother asserts in her statement that Chinese culture holds that it is the duty of the oldest child to care for his parents. *Statement of the Applicant's Mother*, dated November 11, 2011. Although the applicant and his family members assert that Chinese culture favors the oldest son taking care of his parents, they have provided no evidence that this is distinct from other cultures in such a manner that it would distinguish any impact on the applicant's parents from the separation impacts commonly experience due to separation. In addition, as noted by the Field Office Director, asserting that the applicant's parents are unable to relocate to Buffalo, New York, or Florida because they prefer to live in New York City, is insufficient to demonstrate that they would experience any uncommon hardship due to separation. While it might represent an inconvenience to either relocate to Buffalo, New York with their other son or to Florida to reside with their daughter, inconvenience does not rise to the level of hardship, and these assertions that it would be inconvenient or not preferable to reside with their other children fails to distinguish any impact on them from what might commonly be experienced. As discussed below, there is insufficient evidence that the applicant's parents are actually physically dependent on the applicant, and as such, it's not clear they would have to move from New York if the applicant were removed. The AAO also notes that the applicant's parents have resided without the applicant to assist them on a number of occasions, and as discussed by the petitioner in this case – the applicant's sister - during the adjustment interview for the applicant she and her brother took care of their parents during periods of absence by the applicant.

The AAO must also note that the record does not establish whether the applicant's parents own or rent their current residence, or whether it is the applicant who owns or rents the residence where they reside. This is relevant because the applicant has asserted that his parents live with him and are dependent on him financially.

The applicant's mother has asserted that she has a number of medical conditions, and that she needs the applicant to care for her physically because she does not have a driver's license. The applicant's parents reside in New York City, and the AAO finds it reasonable to presume, based on the extensive public transportation system, that a license is not necessary to reside there. The evidence in the record includes a substantial amount of raw medical data. The AAO is not qualified to draw conclusions from raw medical data such as blood tests or Electro-Cardio Grams. As such, these documents are of limited value in assessing the depth and severity of any medical conditions suffered by the applicant's mother. As an example, the applicant's mother asserts that she has been diagnosed with breast cancer, but the medical documentation submitted makes no mention of any diagnosis of breast cancer, and a document submitted by the applicant and reviewed by the Director indicates that a growth found during a chest examination was not malignant.

The record includes a letter from the applicant's mother's doctor which states that she suffers from Vavular Heart Disease, Diabetes and cervix cancer. However, as with the statement regarding breast cancer by the applicant's mother, there is some inconsistency with this pro forma note and other evidence in the record. Although [REDACTED] diagnoses the applicant's mother with Valvular Heart Disease, a statement to her by [REDACTED] dated September 13, 2010, states that the applicant's mother was not experiencing any significant coronary artery disease at the time. A

statement from another specialist performing a colposcopy on the applicant's mother failed to mention or diagnose "cervix cancer", and only indicated that she would need to follow up for another examination in three months. These documents raise doubts about the accuracy of [REDACTED] pro forma note. Finally, [REDACTED] note fails to discuss the severity of any of her conditions or how they impact her ability to function on a daily basis. The note contains a "Treatment Section" containing several options which can be checked by the doctor to indicate what her treatment would be. In this case, the note indicates that her treatment would be oral medication and rehabilitation, rather than "In-Patient Management" or "Home Care." This document does not state that she is unable to care for herself physically, or that her own spouse, the applicant's father, would not be able to provide any necessary physical assistance. Based on this evidence, the AAO does not find the record to establish that the applicant's mother requires any medical or physical assistance to function on a daily basis. In light of this finding, the AAO does not find the record to establish that the applicant's mother will experience extreme hardship based on her medical conditions alone. The record lacks evidence which establishes that the applicant's mother's spouse or other children would be unable to provide for her physical needs, and as such, there is insufficient evidence that she will experience a physical or medical hardship due to the applicant's removal.

The applicant asserts that he provides transportation for his mother to attend doctor's appointments, but again, this is not supported by the record. Nor are the applicant's parents listed as financial dependents on his tax return, which is inconsistent with his assertion that he supports his parents financially.

On appeal the applicant submits a psychological examination of his mother. The examination, compiled by [REDACTED] concludes that she has Major Depressive Disorder and Anxiety disorder. The AAO will give this factor some consideration when aggregating impacts due to separation.

Although the record includes documentation indicating that the applicant's mother may experience some emotional impact, it is unclear to what extent she is affected by her physical medical conditions and what impact will arise if the applicant is removed. Thus, even when the hardship impacts asserted due to separation are examined in the aggregate, the AAO does not find them to rise to the level of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's husband faces extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's parents will have to make adjustments with regard to their daily routines and coping with the emotional impact of separation. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be

expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to his parents as required under sections 212(a)(9)(B)(v) and 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 application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.