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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

[REDACTED]

Date: FEB 27 2012 Office: NEWARK, NEW JERSEY 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Newark, New Jersey, 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 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 attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is the mother of two United States citizen children and the daughter of a lawful permanent resident of the United States and a United States citizen. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 her children and parents.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives, her parents, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 20, 2010.

On appeal, the applicant, through counsel, asserts that the United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application. *Form I-290B*, filed January 24, 2011. Counsel claims that USCIS' statement that after acquired equities do not carry substantial weight is "filmy [sic] and inconclusive." *Id.* Additionally, counsel claims that USCIS erred in disputing the applicant's father's medical condition when evidence in the record establishes that he and his wife rely on the applicant for support. *See id.*

The record includes, but is not limited to, statements from the applicant parents; letters of support for the applicant and her husband; medical documents for the applicant, her children, and her parents; mortgage, tax, and business documents; school records for the applicant's children; and a country conditions document for China. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the 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 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 [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...

In the present case, the record indicates that on July 24, 1992, the applicant attempted to enter the United States with an altered and mutilated Chinese passport. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest her inadmissibility.

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 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-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 of Immigration Appeals (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.

In a statement dated December 23, 2009, the applicant’s father states he could not move to China because he is a United States citizen. In a statement dated December 23, 2009, the applicant’s mother states she would not move back to China because she was sterilized by the Chinese government. They also state they do not want to live outside Chinatown in New York City, and they cannot speak English. In a psychological evaluation dated December 14, 2009, [REDACTED] reports that the applicant’s father worries that if he accompanied the applicant to China, there would be no income to support the family, they would be “disfavored” because the applicant has two children in violation of China’s “one-child” policy, he would be separated from the rest of his family in the United States, he would not have the same medical care he receives in the United States, and his grandchildren would have difficulty adjusting because of their lack of Chinese language skills.

The applicant’s father states he has hepatitis B and is on daily medication. He also states that he suffered a cerebral hemorrhage several years ago. The AAO notes that medical documentation in the record establishes that the applicant’s father has hepatitis B. The AAO also notes that no medical documentation has been submitted establishing that the applicant’s father suffered a cerebral hemorrhage several years ago; however, a document in the record establishes that the applicant’s father has been a patient at the UPMC Hamot Medical Center since October 16, 2011, for complications from an intercranial

hemorrhage. The submitted medical document is signed by an ICU nurse; therefore, it is inferred that the applicant's father requires constant care. The applicant's mother states she has gastritis and is on medication. The AAO notes that medical documentation in the record establishes that the applicant's mother has high cholesterol. However, the record does not contain any documentary evidence establishing how serious the applicant's mother's medical condition is, what treatment she is receiving or may require, or that she has to remain in the United States to receive treatment. The submitted evidence is insufficient to find extreme hardship to the applicant's mother if she relocated to China.

The AAO acknowledges that the applicant's father is a citizen of the United States and that he has been residing in the United States for many years. Based on the record as a whole, including the applicant's father's separation from his family, his serious medical condition, and the disruption of his medical treatment, the AAO finds that the applicant's father would suffer extreme hardship if he were to relocate to China to be with the applicant.

The applicant's parents state that if they are separated from the applicant, they will suffer depression and their medical conditions will worsen. As noted above, the applicant's father is now hospitalized. In an updated psychological report dated May 1, 2011, [REDACTED] states the applicant's father is suffering depression and was prescribed medication. The applicant's father states the applicant visits him once or twice a week and helps with the upkeep of their home. The applicant's mother states they rely on their children for financial and emotional support. On appeal, counsel claims the applicant's parents rely on the applicant for support. [REDACTED] indicates that the applicant's father's poor health, which worsened after his son-in-law's detention, requires the applicant's care. [REDACTED] reports that the applicant's care is "absolutely vital to her father's life and survival as well as to those of her mother." The record establishes that the applicant's father has been a patient at UPMC Hamot Medical Center, located in Erie, Pennsylvania, since October 16, 2011, for complications from an intercranial hemorrhage. The applicant's brother resides in Girard, Pennsylvania, approximately 16 miles from Erie, while the applicant resides in Roselle Park, New Jersey, which is approximately 427 miles from Erie. The record does not establish how the applicant provides support from this distance.

The applicant's father states he is retired and he receives a pension of \$337.00 a month. The AAO notes that the record establishes that the applicant's father receives \$337.00 a month in Social Security benefits. The applicant's father states the applicant provides them financial assistance of about \$100.00 a month. The applicant's mother states she works part-time and makes \$6,500.00 annually. [REDACTED] reports that the applicant's father could not travel to China to visit the applicant because it would be financially, physically, and emotionally draining.

The AAO acknowledges that the applicant's parents may suffer some emotional problems in being separated from the applicant. The AAO has carefully considered the psychological evaluations regarding the emotional difficulty experienced by the applicant's parents. While it is understood that the separation of loved ones often results in significant psychological challenges, the applicant has not distinguished her parents' emotional hardship upon separation from that which is typically faced by the loved ones of those deemed inadmissible. Regarding financial hardships, the AAO finds the record to include some documentation of the applicant's and her parent's income and expenses; however, this material offers

insufficient proof that the applicant's parents will be unable to support themselves in the applicant's absence. Additionally, the AAO notes that there is no documentary evidence in the record establishing that the applicant would be unable to obtain employment in China and, thereby, financially assist her parents from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that her parents would suffer extreme hardship if her waiver application is denied and they remain in the United States.

Although the applicant has demonstrated that her father would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

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. *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.