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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**

**PUBLIC COPY**



H5

DATE: **MAY 14 2012**

OFFICE: LAS VEGAS, NEVADA

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:

**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 with the field office or service center that originally decided your case by filing a 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Las Vegas, Nevada 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and lawful permanent resident child.

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 the Field Office Director*, dated February 23, 2010.

On appeal counsel asserts that the applicant's spouse will suffer extreme hardship if the waiver is not granted. See *Form I-290*, Notice of Appeal or Motion, received March 10, 2010.

The record contains, but is not limited to: Form I-290B and counsel's brief; numerous immigration applications and petitions; hardship statement; psychiatric assessment and MRI report; divorce, marriage and birth records; records related to inadmissibility, asylum and removal proceedings. The entire record was reviewed and considered in rendering this decision on the appeal.

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

- (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 reflects that the applicant entered the United States on August 24, 1999 by presenting a Chinese passport and non-immigrant visa issued in a name and date of birth not his own. The applicant testified that his family purchased the fraudulent passport from a smuggler to help him leave China. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.<sup>1</sup>

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<sup>1</sup> While counsel does not specifically contest the applicant's inadmissibility, he asserts that documents used to facilitate travel or gain entry into the United States "cannot in and of themselves be used as the basis to deny benefits like asylum..." See Form I-290B at pg. 2. With regard to the present matter the AAO notes that the applicant's § 212(a)(6)(C)(i) inadmissibility is unrelated to "benefits like asylum." Instead, it is

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 or applicant's child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is his only 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 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

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related to his application to adjust status where the applicant has the burden to prove that he is admissible to the United States.

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 record reflects that the applicant’s spouse is a 56-year-old native of China and citizen of the United States. She believes that her husband will be arrested and jailed if removed to China, where she asserts he is on the government’s wanted list for practicing Falun Gong. No supporting documentation has been provided on appeal by counsel to establish that the applicant specifically would be in danger were he to return to China, thereby causing hardship to his wife.

The applicant’s spouse does not assert separation-related hardship of an economic nature in her January 2010 statement. In a psychiatric evaluation dated the same month [REDACTED] M.D. relays from interviewing the applicant’s spouse that she is very dependent economically on her husband who earns \$36,000 a year. Dr. [REDACTED] maintains that though the applicant’s spouse owns her own small business she cannot support herself because her earnings are minimal. While the AAO recognizes that the applicant’s spouse will experience a reduction in overall

income in the event of the applicant's removal, the evidence in the record does not establish that she would be unable to support herself or suffer severe economic difficulties in his absence.

The applicant's spouse contends that if the applicant is deported, the happy family she has built with him and his now 20-year-old son will be destroyed. She states that she has no relatives in the U.S. and the applicant has only his son and former wife. The applicant's spouse indicates that she has been very depressed, suffers headaches and stomach aches, difficulty sleeping, and hair loss. Dr. [REDACTED] maintains that he conducted a psychiatric evaluation on January 21, 2010, that the applicant's spouse was born in China, and she speaks virtually no English. He asserts that the applicant's spouse is severely depressed, has severe anxiety, but no suicidal ideations. Dr. [REDACTED] diagnoses her with major depressive disorder, adjustment disorder with anxiety, and insomnia. He contends that the applicant's spouse suffers headaches, chest pain and stomach aches secondary to her depression and anxiety. Dr. [REDACTED] notes that he told the applicant's spouse he could not treat her at this time and recommends she take Lexapro for depression, Klonopin for anxiety, Zolpidem to sleep, and that she go to an emergency room concerning her increasing headaches in order to rule out a space-occupying lesion. Counsel asserts that the applicant's spouse's medical condition was ignored by the field office, but no documentary evidence has been submitted on appeal either addressing her physical conditions or showing that she followed Dr. [REDACTED] recommendations. Thus, the AAO is unable to determine the extent to which the applicant's spouse's medical and psychological problems are affecting her life.

The applicant's spouse does not address the possibility of relocating to China to be with the applicant. Counsel, however, asserts that the applicant's spouse may not adjust to life in her native China. Counsel does not elaborate concerning adjustment difficulties and the record shows that the applicant's spouse speaks virtually no English, communicating instead in her native language. Counsel contends that the qualifying relative's family ties outside the United States should be considered. The applicant's spouse states herself that she has no family ties in the U.S. Counsel claims that the applicant's spouse would be persecuted because of her husband's Falun Gong faith and that country conditions should be considered. The record contains no objective documentary evidence addressing country conditions in China, and the evidence is insufficient to establish that the applicant or his spouse would be persecuted therein.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including adjustment to a country in which she has not resided in a number of years; her U.S. home and business ownership; and safety concerns for herself and the applicant. Considered in the aggregate, the AAO finds that the evidence is insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if she were to relocate to China.

The applicant has, therefore, failed to demonstrate the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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) and 212(a)(9)(B)(v) 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.