



U.S. Citizenship
and Immigration
Services

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[REDACTED]

DATE: **NOV 06 2012** OFFICE: PHILADELPHIA, PENNSYLVANIA File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 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, Philadelphia, Pennsylvania. The matter came before the Administrative Appeals Office (AAO) on appeal and the appeal was dismissed. The matter is again before the AAO on motion to reconsider. The motion will be granted and the underlying application will be denied.

The applicant is a native and citizen of China who was found to be inadmissible 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 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 the Field Office Director*, dated December 11, 2007.

On review, the AAO concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and dismissed the appeal accordingly. *See Decision of the Administrative Appeals Office*, dated May 13, 2010.

On June 14, 2010, counsel for the applicant filed *Form I-290B*, Notice of Appeal or Motion to the Administrative Appeals Office. On the *Form I-290B*, in Part 2, counsel indicated that she was filing a motion to reconsider by marking box E. *See Form I-290B*, received June 14, 2010.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Counsel contends that the decision of the AAO was not in conformity with the law and must be reversed, and that the denial of the waiver application constitutes an abuse of discretion as the applicant meets the criteria for a section 212(i) waiver because a bar to his admission would result in extreme hardship to his U.S. citizen spouse, children, and other family members. Counsel points specifically to misapplications by the AAO of *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) and *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). Counsel supplements the record on motion with new affidavits, a psychological evaluation, and other documents not previously available and described below. The AAO finds that the applicant has met the requirements of 8 C.F.R. § 103.5(a)(3), and the motion will be granted and the application reconsidered.

The record has been supplemented on motion with: *Form I-290B* and a brief in support of the motion to reconsider; a new hardship affidavit from the applicant's spouse; affidavits from the applicant's son, parents, sister, and brother-in-law; school records for the applicant's son; a list delineating the immigration status of the applicant's relatives in the United States; and tax returns for 2008 and 2009. The record also contains, but is not limited to: an earlier *Form I-*

290B and counsel's letter in support of the appeal; various immigration applications and petitions; earlier hardship letters and letters of support and concern; country conditions reports and documents concerning China; birth and marriage certificates and family photos; and documents related to the applicant's inadmissibility. The entire record was reviewed in rendering a decision on motion.

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 on September 17, 1992, the applicant sought admission into the United States by presenting a fraudulent passport and visa issued in Taiwan. 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.

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 his children 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 demonstrated qualifying relative.¹ 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).

¹ The record contains indications that the applicant's parents are lawful permanent residents of the United States, which would make them qualifying relatives under section 212(i) of the Act. However, the applicant has not established that they are in fact lawful permanent residents, and he has not asserted that they will suffer extreme hardship should he reside outside the United States.

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 record reflects that the applicant's spouse is a 37-year-old native of China and citizen of the United States who has been married to the applicant since November 1997. The couple has two U.S. citizen sons, ages 9 and 13-years-old. The applicant's spouse states that fear of the applicant being removed to China has caused her severe psychological pressure and insomnia as she loves him very much and cannot live without him. She writes that she is very close to her parents and the applicant's parents, all of whom are elderly with many illnesses and reside lawfully in the United States. While the applicant's lawful permanent resident parents write that the entire family burden would be placed on the applicant's spouse if their son is removed, the record contains no corroborating medical documentation that any of the parents suffer any illnesses, and no financial documentation demonstrating that they are dependent upon the applicant and his spouse financially.

relates that the applicant's spouse has no physical disorders but has endured long-term frustration concerning her husband's immigration case which has ruined her quality of sleep and caused her frequent nightmares of him being taken away by authorities. Dr. diagnoses the applicant's spouse with adjustment disorder, anxiety, depression, and insomnia and contends that she has demonstrated severe stress and depression related to the applicant's possible deportation. recommends keeping the family members together as the most beneficial outcome, but offers no recommendations concerning therapy, medication or any other potential treatment for these conditions.

Counsel asserts that the applicant's children have become emotionally unstable and are suffering extreme anxiety and emotional distress over the possibility of their father being removed. Dr. indicates that he told the children for the first time, during his single interview with them, that their father is facing possible removal, and that the younger child responded that he would go with his father and the elder that he did not want to relocate to China as he is the top student in his class and loves the USA. The evidence in the record does not corroborate counsel's assertion that the boys have become emotionally unstable or are suffering psychological difficulties sufficient to constitute extreme hardship to the applicant's qualifying relative spouse. Nor does it establish emotional/psychological hardship to the applicant's spouse beyond that ordinarily associated with a loved one's inadmissibility.

The applicant's spouse states that although she and the applicant "have been running a restaurant together all these years," without his share of the income she will not be able to pay the mortgage and other monthly expenses including those of her two sons and her and the applicant's parents. As previously noted, the record contains no documentary evidence that either set of parents are financially dependent upon the applicant and his spouse. The applicant's spouse does not explain or provide documentation concerning her share of the income verses the applicant's, nor does the evidence in the record establish that in the applicant's absence the income derived from

the family business would be reduced. Counsel asserts that the applicant has been the family's sole economic provider since his spouse stopped working in 2003 and that he is the one who oversees it and is responsible for managing it. The evidence in the record fails to demonstrate that the applicant's spouse has never shared in the management of their small restaurant or that she is unable to manage it in the applicant's absence or hire someone else to do so.

The AAO acknowledges that separation from the applicant would cause various difficulties for his U.S. citizen spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation-related hardship, the applicant's spouse indicates that she has lived in the United States since December 1995 and her two U.S. citizen sons have resided here their entire lives. She adds that her elder son is academically at the top of his class and [REDACTED] contends without foundation that were he to have to adjust to school in China he would "definitely suffer from depression." The applicant's spouse explains that she had significant family ties to the United States where her two minor children, her parents, the applicant's parents, and other extended family members all reside lawfully, are very close, and see each other frequently. Counsel maintains that the applicant's spouse has no family or friends in China because she left the country at an early age. Counsel asserts that the applicant's spouse would also be subjected to China's one-child policy resulting in punishment for them having two children. Counsel points to a 2009 U.S. State Department report which states that while physical coercion in family planning is prohibited by law, in reality local birth-planning officials use physical coercion to meet government goals. The AAO has reviewed the country conditions documents submitted and has additionally reviewed the State Department's current 2011 Country Report on Human Rights Practices which corroborates that the applicant's spouse could possibly face punishments ranging from monetary fines to forced sterilization in Fujian Province, China. Counsel adds that since the applicant's children were born outside of China, they may not be permitted to register on the family's household registration or be listed as Chinese nationals which could result in their being denied access to health care, public benefits, free education and other opportunities afforded Chinese nationals.

The AAO has considered cumulatively all assertions of relocation-related hardship including the applicant's spouse adjusting to a country in which she has not resided for many years; the impact of uprooting her two U.S. citizen children who have never resided in China and the impact their potential distress could have on her; her close family ties to the United States including to her own two minor children, her parents, her husband's parents, and other family members; her home and business ownership in the United States; and stated economic, educational, coercive family planning policy, and safety concerns related to China. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to China to be with the applicant. Accordingly, the AAO reverses its previous finding concerning relocation.

Although the applicant has demonstrated that his qualifying relative spouse would experience extreme hardship if she were to relocate to China to join him, we can find extreme hardship

warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 in this case.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. 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. Accordingly, the application remains denied.

ORDER: The motion is granted and the underlying Form I-601 application remains denied.