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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 3 0 2013 Office: FRESNO, CA 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 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 Acting Field Office Director, Fresno, California. The denial was appealed to the Administrative Appeals Office (AAO). 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 having misrepresented material facts when applying for admission to the United States. He is married to a U.S. citizen, and has two U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Acting Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 15, 2012.

On appeal, counsel for the applicant asserts the Acting Field Office Director erred in concluding the applicant was inadmissible pursuant to section 212(a)(6)(C) of the Act, and failed to consider all the evidence and facts of the case when determining that the applicant's qualifying relative would not experience extreme hardship. *Attachment, Form I-290B*, received March 15, 2012.

The record contains, but is not limited to, the following documents: statements from the applicant, his spouse and friends and family members of the applicant; tax returns for the applicant and his spouse; tax documents related to a business operated by the applicant and his spouse; country conditions materials on China, including a State Department report and news periodicals on China's family planning policies, discrimination and employment and labor conditions; and documents filed in relation to the applicant's Form I-130, Petition for Immediate Relative. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel has submitted a copy of a memo from U.S. Immigration and Customs Enforcement (ICE) as support for the assertion that certain considerations be taken into account during determinations of an applicant's removability. This proceeding, however, deals with the applicant's admissibility which is under the jurisdiction of the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS). While the AAO has given some consideration to counsel's assertions as they relate to hardship factors in this proceeding, counsel's assertions that the AAO should exercise some form of discretion over the applicant's removability cannot be considered.

Section 212(a)(6)(C) of the Act 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.

The record indicates that the applicant presenting a false Taiwanese passport when entering the United States in 1992. *Joint Statement of the Applicant and Applicant's Spouse*, received July 1, 2011. Counsel asserts on appeal that the applicant did not fail to mention this at an interview for his adjustment application, and thus he is not inadmissible pursuant to section 212(a)(6)(C) of the Act. In his decision, the Field Office Director may have created confusion by discussing whether a verbal omission of the applicant's 1992 entry at an adjustment interview was a misrepresentation, when it is the act itself, having procured a false visa and using it to enter the United States, which renders the applicant inadmissible pursuant to misrepresentation. The applicant attempted to enter the United States with a false passport, but was detained and entered into removal proceedings. After being paroled into the United States the applicant applied for asylum, which was subsequently denied. As such, the applicant entered the United States by materially misrepresenting his identity with a false passport and is inadmissible pursuant to section 212(a)(6)(C)(i) 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. The applicant's spouse is the only qualifying relative 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-Moralez,* 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.

Counsel for the applicant asserts on appeal that the applicant's spouse would experience physical and financial hardhsip due to separation from the applicant. *Brief in Support of Appeal*, received March 15, 2012.

Counsel asserts on appeal that the applicant's spouse has family and business ties to the United States, including her parents and other family members, and a Chinese food business she operates with the applicant. Counsel asserts that if the applicant were removed the applicant's spouse would not be able to operate the business as well as care for her children and financially support her aging parents.

The record contains tax returns and other documents related to establishing the presence of a business owned by the applicant and his spouse. However, the record does not demonstrate that the applicant's spouse would be unable to hire other employees, or that she would experience any impacts which are not commonly experienced by the relatives of inadmissible aliens. In addition, there is no evidence that the applicant's spouse is providing physical or financial assistance for her parents. The record indicates that her parents reside with her, leading to the reasonable conclusion that they are available to assist with household chores in the absence of the applicant. There is no evidence that they are physically incapacitated or unable to care or provide for themselves physically and financially.

While the AAO recognizes the applicant's removal may result in an economic impact on the applicant's spouse, the record does not demonstrate that this impact would be uncommon or rise above what is typically experienced due to separation from an inadmissible family member.

Even when the hardship factors asserted with regard to separation are considered in the aggregate, they fail to demonstrate that the applicant's spouse will experience hardship factors rising above the common hardships to a degree of extreme hardship due to separation.

With regard to hardship upon relocation, counsel for the applicant asserts the applicant's spouse will experience extreme physical and financial hardship upon relocation. *Brief in Support of Appeal*, received March 15, 2012. Counsel asserts the applicant's spouse would not be able to find employment due to the fact that she is a woman, is over the age of 30 and has two children in violation of family planning policies in China.

Counsel refers to a number of newspaper articles as support for the assertion that the applicant's spouse would have difficulties finding employment due to age and gender discrimination. While the AAO acknowledges the submission of these articles and background materials, it notes that topics discussed broadly in newspaper articles are not sufficient to demonstrate that a particular applicant will suffer a specific hardship, or that a particular applicant will be in any worse circumstance than what is commonly experienced by the relatives of inadmissible aliens who relocate abroad with their spouses.

Although counsel asserts the applicant's spouse has resided in the United States for 12 years, and that China is "completely strange and unfamiliar" to her, the applicant has not shown that his wife has been outside of China for a duration that would make reacclimating to the culture unusually difficult. *Brief in Support of Appeal*, received July 12, 2012.

Other assertions in the record concerning country conditions, such as forced sterilization or difficulties arising from a lack of household registration in China, are not supported with sufficient evidence which demonstrates that she specifically would experience a hardship that is not common for spouses who relocate to China with inadmissible applicants. The AAO notes that a general reference to reports of forced sterilization in a U.S. State Department report is not sufficient to demonstrate that the locality where the applicant and his spouse would reside employ any practice of sterilization.

While the applicant has submitted some evidence to support assertions of hardship to his spouse due to his inadmissibility, these hardships, even when considered in the aggregate, do not rise above the hardships commonly experienced to a degree of extreme hardship due to relocation. The record does not establish that a qualifying relative will experience extreme hardship, either upon relocation or separation. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.