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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

[redacted]

AUG 2 7 2013

Date: Office: LOS ANGELES 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:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the waiver application. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

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 procuring admission to the United States through fraud or misrepresentation. The record reflects that the applicant entered the United States in 2002 using a passport and visa belonging to another person. The applicant does not contest his inadmissibility but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his U. S. citizen spouse.

The field office director concluded that the applicant had 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. *Decision of the Field Office Director*, dated November 15, 2010.

On appeal the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative as a consequence of his inadmissibility. The appeal was subsequently dismissed. *Decision of the AAO*, dated February 21, 2013.

In support of the motion the applicant submits a statement; a declaration from his stepson; financial documentation; country information for China; and information for parents of Lesbian, Gay, Bisexual and Transgender Youth. The record also contains medical information for the applicant and information for the applicant's business. The entire record was reviewed and considered in rendering a decision on motion.

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

> (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.

Section 212(i) of the Act provides that:

> 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. 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

On appeal the AAO found that the applicant failed to establish his qualifying relative spouse would experience extreme hardship either due to separation from the applicant or if she were to relocate to China to reside with the applicant. The AAO concluded that the applicant had submitted little information detailing why his spouse would be unable to operate their business without him or how her age impacted her ability to work. The AAO found that the applicant failed to provide sufficient evidence of how his particular health issues would cause harm to his spouse upon their separation and how his inability to offer assistance to his stepson would impact his spouse. The AAO further determined that the applicant had offered no specific information related to the spouse's health issues if she were to relocate to China and offered no detail beyond the assertion his spouse would not want to live in a Communist country.

On motion the applicant contends that the low profit margin of their restaurant business required that he and his spouse work long hours and that it was not feasible to hire a worker, thus if he were removed from the United States his spouse would be unable to replace him. The applicant states, however, that the business has been sold and that while he is now working his spouse is currently unemployed. The applicant states he has been the financial provider for his spouse, but if he returned to China he would not be able to provide the same level of assistance as he would get minimum skill labor jobs and his spouse would then fall below the poverty level in the United States. The applicant states his spouse grew up in Taiwan during a tense period with China and she is deeply disturbed by China's political system and lack of democracy regarding the rights of citizens. He states that as a small business owner his spouse fears arbitrary charges in China that force business people into submission. He states that if he were in China his spouse would have difficulty bearing the thought of him living where human rights are not protected and that she would be unable to visit often for financial and emotional reasons. The applicant also states that his stepson has declared himself to be gay, which is not openly discussed in Chinese culture. The applicant states that he soothes his spouse's stress and concern that her child will suffer discrimination and that if they were separated she would lose the person in whom she can confide.

In his declaration the applicant's stepson states that the applicant has been a great support to his mother, the applicant's spouse.

The AAO finds that the record fails to establish that the applicant's qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. On motion the applicant has failed to address the issues raised by the AAO regarding how the applicant's health or ability to assist his stepson would affect his spouse. As for emotional hardship, the applicant contends his spouse needs his emotional support due to her son's revelation of being gay and that she would not be able to bear the thought of the applicant in China, where human rights are not protected. However, other than general information about China and about parents of gay children, the record contains no supporting evidence concerning the emotional hardship the applicant states his spouse would experience due to long-term separation from the applicant or how such emotional hardships are outside the ordinary consequences of removal. Assertions cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant indicates that he provides financially for his spouse and submitted income information for himself, but no documentation has been submitted establishing the spouse's expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States his spouse will experience financial hardship. The record also reflects that the applicant's spouse had participated with the applicant in running their restaurant and although the spouse is currently unemployed the applicant has not shown that his spouse is unable to work, thus supporting herself. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The AAO also finds the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate to China to reside with the applicant. On motion the applicant has failed to address the issues raised by the AAO with respect to the spouse's medical problems if she were to relocate to China. The applicant states, however, that his spouse does not want to live in a Communist country, having grown up in a time of tension between her native Taiwan and China. Information submitted to the record includes reports describing generalized country conditions, but the record does not indicate how they specifically affect the applicant's spouse. The submitted country conditions information fails to establish that the applicant's spouse would be at risk if she relocated to China.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying spouse as required under section 212(i) of the Act. 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. ˆ 1361. Here, that burden has not been met.

ORDER: The motion is granted and the underlying application remains denied.