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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

DATE: DEC 23 2013 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:

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 and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reconsider. The motion will be granted and the prior AAO decision affirmed.

The applicant is a native and citizen of Taiwan 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 fraud or willful misrepresentation, in connection with a Petition for Alien Worker (Form I-140). The applicant seeks a waiver of inadmissibility in order to reside in the United States as the beneficiary of an approved spousal Petition for Alien Relative (Form I-130).

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, September 8, 2008. On appeal, the AAO also concluded the record evidence did not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility. *Decision of the AAO*, January 13, 2011.

On motion, filed in February 2011 and received by the AAO on October 1, 2013, counsel for the applicant asserts in his brief that the AAO failed to consider a psychological evaluation provided in support of the applicant's appeal. The record also contains an appeal brief and supporting documentation including, but not limited to, a psychological evaluation, a hardship statement, naturalization and marriage certificates, and several benefits applications and supporting materials. The AAO has not received any additional documents regarding the dismissal of the applicant's appeal besides counsel's motion brief.

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

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)(1) of the Act provides:

The [Secretary] may, in the discretion of the [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 [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 [...].

The record shows the field office director found the applicant inadmissible for procuring admission to the United States on April 13, 1994 using an E-1 visa after the California Service Center revoked for fraud the underlying Form I-140 on which the visa was based. On appeal, the

AAO also found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. He thus requires a waiver under section 212(i) of the Act.

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 wife is the only qualifying relative in this case. If extreme hardship 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 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 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.

Previously, the AAO observed that the applicant had not provided documentary evidence of hardship to his spouse from relocating to her native Taiwan, and no additional evidence has been offered on motion. The record contains a psychological evaluation of the qualifying relative dated December 12, 2007, which was submitted in support of the applicant's waiver application. There is no evidence supporting the report's statements regarding the qualifying relative's job prospects in Taiwan, no evidence of her income since 2007, and nothing on record regarding relatives or their whereabouts (except for the psychologist's mention of a 21 year-old son whose location is unknown). There is little evidence of her ties to the United States besides the fact she naturalized in 2004, filed tax returns from 2004 to 2006, and had a bank account and expenses including a residential lease and related costs as recently as 2007. The record reflects that she and her husband share a common heritage and speak the same Chinese dialect, that she is a frequent international traveler, and that she has no conditions for which treatment is unavailable in Taiwan. There is thus no documentary evidence from which we may conclude that returning to Taiwan would represent more than the inconvenience commonly associated with relocating abroad. The AAO thus finds the applicant has failed to demonstrate his wife would suffer extreme hardship were she to relocate to be with him.

Although counsel contends that the qualifying relative would encounter emotional and physical hardships if the applicant is not granted a waiver, our review of the record reveals no basis for changing our prior finding that the applicant had not established his wife would suffer extreme hardship as a consequence of their separation. The 2007 psychologist's report states that she has a history of depression dating to a 2003 divorce from her previous husband and notes her then current symptoms included insomnia, crying, sadness, and inability to enjoy life. *See Psychological Evaluation*. According to the report, the applicant's wife credited her husband with enabling her to escape depression without medication and told the psychologist she could sleep well without medication after marrying the applicant. There is no documentation on record regarding her previous depressive episodes, prescribed medication, or other treatments undertaken before she married the applicant, nor is there evidence she is currently taking any medication or

receiving other treatment for depression or anxiety. The report notes that in 2006 she started experiencing symptoms of menopause. Her psychologist reports that she traveled frequently overseas for work and that employment pressure caused her headaches for which she took pain medicine. There is no documentary evidence from a physician regarding her medical conditions, treatment prescribed, or prognosis, although the psychologist states that her mental condition would suffer in her husband's absence.

Counsel's claim of physical hardships due to separation remain unsupported by medical evidence. The evidence on record is insufficient to establish that the applicant's wife suffers from any serious physical conditions and, if so, their severity and prognosis. Without documentary support, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Although the psychologist notes his patient reporting menopausal symptoms, there is no indication of their frequency, severity, impact, or whether they have subsided six years later. While the AAO recognizes that the applicant's wife would miss her husband and that his absence would represent a hardship, he has not established that his wife would suffer hardship beyond the common or typical result of inadmissibility or removal.

Financial evidence on the record shows that the applicant's wife has been gainfully employed and does not rely on her husband's contribution for support. While the AAO recognizes that household income may decline as a result of separation, the evidence fails to establish that the applicant's wife will be unable to meet her financial obligations in the applicant's absence. There is no evidence of the applicant's living expenses in Taiwan or that he would be unable to meet them himself. There is no evidence of his work history in Taiwan and no indication he would be unable to find work and support himself. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

For all these reasons, while the AAO recognizes that the applicant's absence would cause emotional pain to his wife, there is insufficient evidence that the cumulative effect of the emotional and financial hardships to her due to her husband's inadmissibility would rise to the level of extreme. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer hardship beyond those problems normally associated with family separation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's wife's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

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*NON-PRECEDENT DECISION*

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Having again found the applicant statutorily ineligible for relief under the Act, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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 and, accordingly, the prior decision of the AAO will be affirmed.

**ORDER:** The motion is granted. The prior decision of the AAO dismissing the appeal is affirmed.