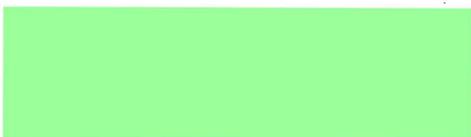


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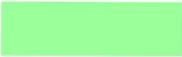


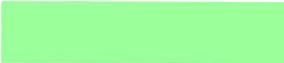
U.S. Citizenship
and Immigration
Services



DATE: FEB 21 2013

Office: LOS ANGELES, CALIFORNIA

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

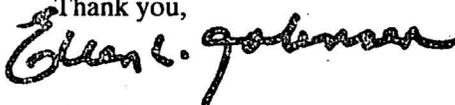
ON BEHALF OF APPLICANT:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 Field Office Director, Los Angeles, California, 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 pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States through fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated November 15, 2010.

On appeal the applicant submits additional medical and financial evidence he states demonstrates extreme hardship to his spouse.

The record contains, but is not limited to: statements from the applicant and the applicant's spouse, letters from interested parties, financial records, medical records, as well as various immigration applications and decisions. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record reflects that the applicant testified during an interview for adjustment of status that he entered the United States on July 13, 2002 using a passport and visa which were not his own. The applicant does not contest his inadmissibility. He is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in pertinent part:

- (1) 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent 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 the 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 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 1292 (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.

The applicant indicates that his spouse will experience financial hardship if he is not allowed to live with his family in the United States. The applicant states his spouse will be unable to continue operating the restaurant they both own without his daily assistance. The applicant also states that his spouse would face an income loss without him to operate the trucking business they share. The applicant submits various financial documents such as business tax forms, a lease agreement, asset purchase agreement and promissory note for the restaurant. The applicant also states that his stepson depends on him for assistance with finances and would suffer hardship without his presence in the United States. The applicant submits a statement from his stepson, [REDACTED] along with a university transcript in support of these assertions. The applicant further indicates that he fears he will face problems from the Chinese government upon return due to his flight from the country after an altercation with officials in which he was beaten. In support of this claim he submits letters from Drs. [REDACTED] dated September 21, 2009, indicating surgical changes with large bone defects in the left frontal parietal region of his skull, and [REDACTED] also dated September 21, 2009, indicating degenerative spinal changes with anterior spurs. The applicant's spouse also indicated that she cannot relocate with the applicant to China because her health would suffer further from the poor air quality within the country.

The applicant has not demonstrated that the separation from his qualifying spouse would result in extreme hardship. The applicant indicated that his spouse would suffer financial hardship without him to assist in running their enterprises however, according to additional evidence submitted to the record, the applicant closed the trucking company in 2009 after he suffered physical injuries during a vehicular accident, and no further information was submitted demonstrating this business was reopened. In addition, although some financial documents were submitted to demonstrate that they later began operating a restaurant, there was little information submitted detailing why his spouse would be unable to operate the business without him. The applicant stated that his wife's age might prevent her from fully participating in the business, but fails to offer anything further to document how this fact has impacted her ability to work. In addition, although the applicant also states that he fears harm from the Chinese government due to the circumstances of his departure, hardship to the applicant can only be considered based on its effect on the qualifying relative. In this case, the sole qualifying relative is the applicant's spouse. It is also noted that the doctor's letters submitted to support his claim of harm by the Chinese government were dated September 21, 2009, shortly after

the September 1, 2009 accident in which he indicated he suffered injuries. The doctor's letters do not indicate when the surgery on his head took place or the cause of the degenerative spinal changes. The AAO is unable to determine that these conditions predated his accident. The applicant has failed to provide sufficient evidence illustrating how these particular issues might cause harm to his qualifying relative upon their separation. The applicant also indicated that his stepson relied on his financial assistance while attending college, but again failed to indicate how his inability to offer this assistance would impact the qualifying spouse. Moreover, according to the record the applicant's stepson has now graduated. When viewed cumulatively, any harm the applicant's spouse may experience on separation do not rise to the level of extreme

The applicant has also not demonstrated that relocation to China would cause extreme hardship to his spouse. The applicant's spouse indicates her main concern is that she would face further health problems due to the poor air quality in China. However, no specific information was offered related to the applicant's spouse's health issues in order to gauge any level of hardship upon relocation. Although the U.S. State Department indicates air pollution is a significant problem in China, and may affect people with certain health conditions, no documentary information has been submitted regarding the applicant's spouse's health conditions. The AAO is, therefore, unable to make a determination regarding whether relocation would result in hardship due to this factor. In addition, although the applicant also indicated that his wife would not want to live in a Communist country, he offered no further details about this issue beyond this assertion. Though the record reflects that the applicant's wife is from Taiwan, the applicant offered no specific information as to what particular issues his wife had with the government of China or why living there would result in harm. Cumulatively, the claims of hardship on relocation do not rise to the level of extreme.

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 U.S. citizen 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 proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.