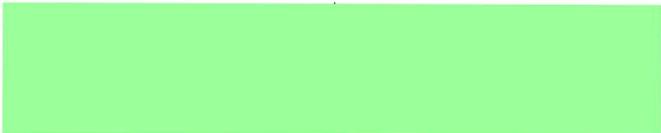


(b)(6)

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: FEB 21 2013 Office: SAN JUAN, PUERTO RICO

FILE: [Redacted]

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg,  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Field Office Director, San Juan, Puerto Rico denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO on a motion. The motion will be granted, and the underlying application will remain denied.

The applicant, a native and citizen of China was found inadmissible under Immigration and Nationality Act (INA or the Act) § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i) in order to reside in the United States with his U.S. citizen spouse. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his spouse.

The Field Office Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute. The applicant appealed that decision and the AAO dismissed that appeal, finding that the hardship that the applicant's spouse would suffer did not meet the requirements under section 212(i) of the Act. The applicant filed a motion to reopen the AAO decision.

On motion, counsel states that new facts, particularly country condition reports, a statement from a medical doctor indicating the applicant spouse's limited ability to work, along with a home and social study prepared by a social worker for support, demonstrate that the applicant's spouse will, in fact, suffer extreme hardship if the applicant is not granted a waiver of inadmissibility.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motion.

The applicant is inadmissible under INA § 212(a)(6)(C) and does not dispute his inadmissibility. A waiver is available to the applicant under INA § 212(i) dependent on his showing that the bar to his admission would impose extreme hardship on a qualifying relative. The applicant's U.S. citizen 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).

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 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.

The AAO previously found that the applicant's spouse would not suffer extreme hardship if she were to relocate to China with the applicant because the applicant failed to submit sufficient

evidence in support of his assertions. The applicant indicated on appeal that his spouse would suffer extreme hardship upon relocation because she would not find sufficient employment in China and in addition, their children would be unable to attend public school, causing greater financial burdens upon the family. On motion the applicant submits country condition information, specifically a 2005 U.S. Department of States Country Report on Human Rights Practices in China to controvert the previous findings. *See Department of State Country Reports on Human Rights Practices-China, 2005.* The report discusses general human rights conditions in China but counsel fails to specify how the applicant's spouse would be affected. Although it is acknowledged that the report states that women on average receive less pay than their male counterparts, and that most women employed in industry jobs are more vulnerable to restructuring of state-owned enterprises and layoffs; there was insufficient explanation provided as to how this would affect the applicant's spouse. The applicant indicates fear that his wife will not find sufficient employment, but fails to fully explain what type/level of work he believes would be adequate, or how his spouse might be affected. Currently, the applicant's spouse works limited hours and the applicant has indicated that he is the primary income earner for their family in the United States. No information has been provided to indicate that this situation would change if they relocated to China. The applicant also did not indicate how the fact that his children could not attend a public school would affect his spouse, the only qualifying relative. The AAO also notes that the applicant's spouse's was born and lived a significant portion of her life in China and that her parents continue to live there. When viewed cumulatively, the AAO does not find that the applicant's spouse would experience extreme hardship if she were to return to China with her husband.

On motion the applicant has submitted a note from [REDACTED] indicating the applicant's spouse can only work four hours per day due to suspected lumbar Radiculopathy. Also submitted is a home and social study from [REDACTED]. The study indicates that if the applicant were to be removed his spouse would have to sell their business due to her physical limitations thus causing financial difficulties. Within the home and social study report it is noted that the applicant's spouse attends physical therapy sessions with a [REDACTED]. The report also indicates that the family would suffer emotional hardship from the separation. The applicant submitted a list of estimated expenses from an accountant, and in past submissions provided tax returns and bank statements to illustrate the family's expenses. Not all expenses are supported by documentation and there is no indication of the current income for the family, but based on other information in the record regarding the applicant's spouse ability to work there would be economic hardship if the spouse were to remain in the United States without her husband. When viewed cumulatively, the applicant's spouse's medical condition, her inability to work full time, her need to care for and support two young children and the normal emotional consequences of separation, rise to the level of extreme if she were to be separated from her spouse.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the

result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

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