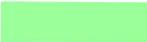




**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **FEB 26 2013** OFFICE: **NEW YORK** 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)

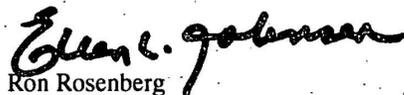
ON BEHALF OF APPLICANT:  


**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 District Director, New York, New York, 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), due to his use of fraud or material misrepresentation in an attempt to obtain a benefit under the Act. The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

In a decision dated April 21, 2011, the District Director concluded that the applicant did not establish that his U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the hardship that would result to the applicant's U.S. citizen spouse is extreme.

In support of the waiver application, the record includes, but is not limited to legal arguments by counsel for the applicant, biographical information for the applicant and his spouse, affidavits from the applicant's spouse, a psychological report concerning the applicant's spouse, biographical information for the couple's daughter, medical reports concerning the applicant's daughter, limited financial records for the applicant and his spouse, an affidavit from counsel concerning waiver applications filed by her on behalf of her clients, documentation concerning female workers in China, documentation concerning necrotizing enterocolitis, and documentation concerning the applicant's immigration history.

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 appeal.

The applicant is inadmissible to the United States under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), which is a permanent grounds of inadmissibility. 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 makes clear that the applicant is inadmissible under section 212(a)(6)(C) of the Act for the use of fraud or material misrepresentation in an attempt to obtain an immigration benefit under the Act. On April 19, 2000, the Immigration Judge denied the applicant's application for asylum,

withholding of removal, and relief under the Convention Against Torture. The Immigration Judge found the applicant, an arriving alien, was removable under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation as a result of his false testimony before the Immigration Court in regards to his application for asylum. The Immigration Judge did not find that the application was frivolous because there was no record that the applicant was warned of the legal consequences of filing a frivolous application for asylum. The applicant's appeal to the Board of Immigration Appeals was dismissed on April 4, 2002 and his removal order became final. On appeal, counsel states that the applicant was 17-years-old at the time of his immigration violation, as such, his violation is not egregious. We observe, however, that an exception is provided under section 212(a)(2)(A)(ii)(I) of the Act for individuals who, prior to turning 18, committed a single crime involving moral turpitude more than five years prior to applying for admission. Also, individuals who are under 18 do not accrue unlawful presence pursuant to section 212(a)(9)(B)(iii)(I) of the Act. However, section 212(a)(6)(C)(i) of the Act does not include such an age-based exception and the AAO cannot assume such an exception was intended. *See In re Jung Tae Suh*, 23 I&N Dec. 626 (BIA 2003) (citing *Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991 (BIA 1999) and noting that where a provision is included in one section of law but not in another, it is presumed that the Congress acted intentionally and purposefully). Accordingly, the applicant is subject to section 212(a)(6)(C)(i) of the Act despite the fact that he was a minor at the time of his immigration proceedings where he was found by the Immigration Judge to have knowingly presented false testimony.

Section 212(i) of the Act, 8 U.S.C. § 1182(i), provides a waiver for section 212(a)(6)(C) of the Act. Section 212(i) of the Act states that:

- (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 the applicant's U.S. citizen or lawful permanent resident spouse or parent. The applicant has a U.S. citizen spouse. Hardship to the applicant or his U.S. citizen child is not considered in section 212(i) waiver proceedings unless it is shown to cause hardship to his qualifying relative. 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-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 deportation, 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, 885 (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, 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.

On appeal, counsel for the applicant states that the applicant's spouse would suffer from extreme hardship if she were to be separated from the applicant. In particular, counsel states that the applicant's spouse would suffer from psychological and financial hardship in the applicant's absence. In regards to the psychological hardship, counsel makes a very serious allegation. In particular, counsel states that if the applicant is removed "there is a great risk that [the applicant's spouse's] suicidal ideation could lead to action, specifically, throwing herself into the way of a [redacted] Subway train." The AAO takes such an allegation very seriously noting at the same time that the assertions of counsel will not satisfy the applicant's burden of proof and the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In her affidavit dated June 13, 2011, the applicant's spouse stated that she was "very, very upset" thinking about what she would do if the applicant were removed from the United States. She reported that she saw a psychologist to whom she reported that she was worried all the time, has headaches, and cannot sleep. She also stated that she is so upset that sometimes she thinks of jumping on the subway track. The record indicates that this was reported to the psychologist. Again, the AAO notes that this is a very serious allegation that must be addressed by a medical professional. Significant conditions of health, including mental health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The AAO, however, is not in the position to diagnose health disorders. Absent an explanation in plain language from a treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. The AAO notes that although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence 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)). In a report dated May 23, 2011, Dr. [redacted], states that the applicant's spouse "reported sad and depressed moods, unpredictable crying spells, difficult falling and remaining asleep, and frequent awakenings during the night" as well as "excessive worrying that she has been unable to control," "decreased appetite and weight loss, excessive fatigue, poor focus and concentration, loss of interest in life's pleasurable activities, and isolation from other people." Dr. [redacted] states that the applicant's spouse reported suicidal ideation to her, including the thoughts of jumping onto the subway tracks. The AAO notes that Dr. [redacted] diagnosed the applicant's spouse with Major Depressive Disorder, but there is no indication that she prescribed any course of treatment for the applicant's spouse.

Counsel for the applicant also states that the applicant's spouse would suffer hardship as a single parent of a "medically vulnerable" young child and would suffer hardship trying to care for her parents in their retirement. As stated above, the qualifying relative in this case is the applicant's spouse. Any hardship to the applicant's child or the parents of his spouse is only relevant insofar as it is shown to cause hardship to the applicant's spouse. In her report, Dr. [REDACTED] stated that the applicant's spouse said that she would struggle "remarkably" if she had to raise her daughter and care for her mother by herself. In regards to the applicant's daughter's health, the record contains a letter dated May 4, 2011 from Dr. [REDACTED] stating that the child has been a patient of his clinic since 2007, had multiple surgeries in the past due to necrotizing enterocolitis, and was seen on February 12, 2011 for atypical pneumonia due to a prolonged cough. Dr. [REDACTED] also states that "[the child] needs more love and care from her parents." There is no indication in the doctor's letter or medical records submitted, however, that the child's condition may be fatal – as apparently reported by the applicant to the psychologist, Dr. [REDACTED]. In fact, Dr. [REDACTED] does not state that the child is "medically vulnerable" or state what specific risks or ongoing medical care that the child faces as a result of the surgeries that she had as a child. The record contains general reports on necrotizing enterocolitis indicating that it is a very serious condition in infants, however, there is no indication in the record that the applicant's spouse's child has suffered additional problems in her childhood as a result of this condition from which she suffered as an infant. As a result, it is not possible to determine the degree of hardship that the applicant's spouse would face raising the child without the applicant's support. Additionally, counsel and the applicant's spouse state that the applicant's spouse would suffer hardship if separated from the applicant as a result of the applicant's spouse's need to care for her mother. The record indicates that the applicant's mother resides with the applicant and his spouse and provides childcare for the applicant's and his spouse's child. Although there is a letter in the record indicating that the applicant's spouse's mother has suffered from hypertension, hyperthyroidism, and esophageal reflux, as well as had a hysterectomy, there is no indication that she requires assistance from her daughter.

Moreover, in regards to financial hardship, the record indicates that the applicant's spouse is employed by [REDACTED] where she earns \$1,600 per month. The record also indicates that the applicant's spouse's parents now reside with her and that her father works outside the home. There is no indication in the record of his income. There is also no indication or documentation in the record of the family's expenses. Again, 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 at 165. As such, it is not possible to determine the degree of financial hardship that the applicant's spouse would suffer if she were no longer able to rely on the applicant's income in the United States. Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse would endure hardship as a result of long-term separation from the applicant, the evidence in the record does not establish that the hardships she would face, considered in the aggregate, rise to the level of "extreme."

Counsel also states that the applicant's spouse would also suffer extreme hardship if she were to relocate to China to reside with the applicant. The applicant's spouse is a native of China who became a naturalized U.S. citizen on November 20, 2009. The record indicates that the

applicant's spouse's parents now reside in the United States. And, the applicant's spouse states that she feels an obligation to care for her parents in their retirement. The record, however, suggests that the applicant's spouse's parents are natives and citizens of China. As such, it is not clear why the applicant's spouse's parents would be unable to relocate to that country as well if they require their daughter's assistance. The AAO also notes that the record does not illustrate that the applicant's spouse's parents require her assistance. The applicant's spouse also states that she would be concerned for the health of her daughter should she relocate to China. There is no documentation in the record, however, to indicate that the applicant's daughter requires ongoing medical attention or would be unable to obtain health care in China. In fact, one of the medical reports in the record states that the applicant reported to the physician that the child lived in China for 2 ½ years. If the child did, in fact, live in China, there is no indication in the record whether she was able to receive medical care there. Again, the AAO notes that 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 at 165. The applicant's spouse also states that she would worry about relocating to China as a result of her Hepatitis B and the discrimination that she would face in China as a result of that illness. The record contains one newspaper article indicating that multinational firms may discriminate against individuals with Hepatitis B, however, this documentation does not illustrate that the applicant's spouse would be unable to obtain other employment in China or that she would face discrimination there beyond that reported in the newspaper article. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to China, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

Considered in the aggregate, the hardship to the applicant's spouse does not rise to the level of extreme beyond the common results of removal. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(i) of the Act. Having found the applicant statutorily

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ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an 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.