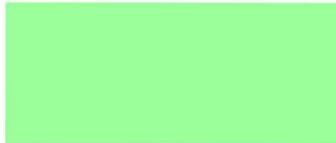




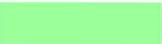
U.S. Citizenship
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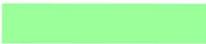


Date: **SEP 26 2013**

Office: GUANGZHOU, CHINA

FILE: 

IN RE:

Applicant: 

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, Guangzhou, China, denied the waiver application. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO) and the AAO affirmed this decision on motion. The matter is now again before the AAO on motion. The motion is granted and the prior AAO decision is affirmed.

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 attempting to procure admission to the United States through fraud or misrepresentation. The record reflects that the applicant presented a passport bearing a false date of birth in an attempt to obtain a U.S. visa. The applicant is the son of U.S. lawful permanent resident parents. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States.

The Field Office Director found that the applicant failed to establish that his qualifying relatives would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 23, 2010.

On appeal the AAO found that the applicant had failed to establish that his qualifying relative parents would experience extreme hardship due to separation from the applicant or if they were to relocate abroad to reside with the applicant. *See Decision of the AAO* dated July 24, 2012.

On motion the AAO found that the applicant failed to establish that his qualifying parents would suffer extreme hardship as a consequence of being separated from him or if they were to relocate to China. *See Decision of the AAO* dated May 29, 2013.

With the instant motion counsel asserts denial of the waiver request will cause extreme hardship to the applicant's parents. With the motion counsel submits a brief, a psychological profile of the applicant's parents, family registration documentation from China; medical records for the applicant's father, and country information for China. The record contains statements from the applicant's father, grandmother and mother; a medical note about his father and grandparents; affidavits from the applicant and family members; medical documentation for the applicant's grandparents; and pay and insurance information for the applicant's father. 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.

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 parents are the only qualifying relatives 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 (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 concluded that the emotional impact on the applicant’s parents due to separation from the applicant did not rise to the level of extreme hardship and that evidence was insufficient to establish that the impact on the parents if they were to relocate would rise above the common consequences of relocation to a degree of extreme hardship. On the prior motion the AAO found that the applicant failed to establish that his qualifying parents would suffer extreme hardship as a consequence of being separated from the applicant as the record did not establish that this emotional hardship was beyond the common results of separation to rise to the level of extreme. The AAO also found that the record failed to establish that the applicant’s parents would experience extreme hardship if they were to relocate to China. The AAO found that on motion the applicant did not address relocation, but that the applicant’s father had previously stated that if he relocated he would be unable to find employment or obtain health benefits, and that his own parents in the United States depend on him. The AAO determined that the record contained no documentation supporting the assertion that the applicant’s parents would have no medical benefits or otherwise be unable find support in China, and that given the number of immediate family members in the United States able to offer support for the grandmother, there was insufficient evidence on record to support this claim of hardship.

In the current motion counsel asserts that both of the applicant’s parents suffer emotional distress due to separation from the applicant, having feelings of hopelessness, diminished concentration, and insomnia. He states that both parents have lived in the United States more than a decade and have strong family ties here. Counsel asserts that the applicant’s parents have had their household registration cancelled since they emigrated from China and there is a likelihood the applicant’s father would not be able to obtain medical benefits in China for his medical conditions. Counsel further

contends that air and water pollution in China is so severe that it poses health risks and would exacerbate the mental and physical health conditions of the applicant's parents.

A report from a psychologist indicates that the applicant's mother has headaches, insomnia, and chest pains and told the examiner that she has recurrent suicidal ideation. It states that the applicant's father has a variety of physical complaints and is unable to work regularly. It states that both parents have feelings of hopelessness, diminished concentration, and insomnia, and that they feel responsible for the mistake that made the applicant unable to immigrate. It further states that the applicant's parents are living with other children and have encountered financial difficulties so they can no longer afford their own home.

A letter from a clinical social work states that medical records for the applicant's father indicate that he is diagnosed with diabetes, hypertension, and hyperlipidemia, for which he takes medication and has follow up visits. A note from a physician states that the applicant's father has hypertension.

The applicant's father states that his own father is deceased, that his mother suffers poor health, and that his own medical condition hampers his ability to work and support the family, and he thus needs the applicant. The applicant's father also asserts that he would be unable to find employment or health benefits if he relocated to China. The applicant's mother states her husband and his mother are in poor health and that she and her three children work to support the family, but they need the applicant to help provide care and support. The applicant states that his parents are unable to visit him often due to their age and that if they relocate to China the grandparents would be left unattended.

The AAO finds the record to establish that the applicant's parents would experience extreme hardship if they were to relocate to China. Counsel states the applicant's father has medical conditions and would be unable to get health care because his family registration has been cancelled. Significant conditions of 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. However, given the age of the applicant's parents and his father's medical condition, their residence in the United States since 2001, and their extensive family in the United States, the AAO finds that they would experience extreme hardship were they to relocate abroad to reside with the applicant.

However, the AAO finds the record fails to establish that the applicant's parents experience extreme hardship due to separation from the applicant. Counsel states that the applicant's parents are distressed, and a letter from a psychologist states that the parents are depressed, however the report provided does not establish that the hardships the applicant's parents experience are beyond the hardships normally associated when a family member is found to be inadmissible. The AAO recognizes that the applicant's parents experience some hardship as a result of long-term separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of inadmissibility and does not rise to the level of extreme hardship based on the record. Nor has it been established that the applicant's parents would be unable to travel to their native China to visit the applicant.

The psychological report states the applicant's parents face financial difficulties and are no longer able to afford their own home, requiring them to live with other children. However, no documentation has been submitted establishing the parent's current income, expenses, assets, and liabilities or their overall financial situation to establish that without the applicant's physical presence in the United States his parents experience financial hardship. Although the assertions 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)

Medical documentation in the record shows that the applicant's father has health problems, but does not explain the severity of his condition or how his condition or any treatment, necessitate the applicant's presence in the United States, particularly given that other immediate family members are residing with him.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

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. § 1361. Here, that burden has not been met.

ORDER: The motion is granted and the prior AAO decision is affirmed.