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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: JUN 19 2014

Office: COLUMBUS, OH

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Columbus, Ohio, denied the waiver application and the matter 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 for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, the applicant's husband contends he would suffer extreme hardship if his wife's waiver application were denied, particularly considering he currently earns enough income to support his family of five, including his two children from a prior marriage, and he has significant health issues that require adequate care and monitoring.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and her husband indicating they were married on April 9, 2010; a copy of the birth certificate of the applicant's U.S. citizen son, indicating he is currently eight years old; a letter and an affidavit from the applicant's husband; a medical record; a letter from the applicant's child; copies of pay stubs, tax returns, and other financial documents; copies of divorce decrees; a copy of the applicant's removal order; decisions by an Immigration Judge, the Board of Immigration Appeals, and the Second Circuit Court of Appeals; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

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

In general.—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) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien

In this case, the record shows that in June 2004, the applicant attempted to enter the United States using a fraudulent passport. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact in order to procure an immigration benefit. Inadmissibility is not contested on appeal.

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 at 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.

In this case, the applicant's husband states that he would miss his wife painfully if she departed the United States. He states he works in the casino business as a marketing executive to support his family and has health insurance. He contends he has suffered psychologically and will miss his wife's emotional support if she departs the United States. According to the applicant's husband, he is very close to his two children from his prior marriage as well as his parents and siblings, all of whom live a few hours away in Chicago. In addition, he claims he has developed a deep bond with his step-son who he supports and provides with health insurance. According to the applicant's husband, his step-son is in the second grade and does not speak, read, or write Chinese. The applicant's husband contends he cannot relocate to China to be with his wife because he would have to quit his job. He further states, he pays alimony and supports his two children from a prior marriage, and contends he would be unable to find employment in China, particularly considering he would have a language barrier. In addition, he contends he was diagnosed with a degeneration of disks and suffers from constant back pain. He claims these significant health issues are life threatening if not monitored and cared for appropriately, and contends that the Chinese healthcare system cannot adequately prevent further straining of his spine which could cause him to become disabled or even cause death.

After a careful review of the entire record, there is insufficient evidence to show that the applicant's husband will suffer extreme hardship if the applicant's waiver application were denied. If he decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Although we are sympathetic to the family's circumstances, the record does not establish that any hardship the applicant's husband would experience would be beyond that normally experienced by others in similar circumstances. There is no evidence in the record to corroborate his contention that he has a history of depression or the extent that any psychological or emotional hardship he is experiencing affects his life. To the extent the applicant's husband contends he has a potentially life-threatening back problem, the record contains a single page of his medical record showing he has disk degeneration. There is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of his back problem, no suggestion his condition is life-threatening or potentially disabling, and no allegation he requires his wife's assistance in any way. Without more detailed information, the record does not contain sufficient evidence to determine the severity of any medical condition or the treatment and assistance needed. Although the applicant's husband contends

in his statement that he is in “current financial despair,” at the same time, he states that he “make[s] an adequate income to support [him]self and [his] family of five,” and tax documents in the record show he earned \$47,189 in wages in 2012. He does not explain or describe how he is in financial despair and, in any event, according to the applicant’s Biographic Information form (Form G-325A), she has been unemployed since April 2012. To the extent the applicant’s husband contends that his step-son would suffer hardship under the statute, the applicant’s child is not a qualifying relative and therefore, his hardship cannot be considered. Although we may consider the step-son’s hardship insofar as it causes hardship to the applicant’s husband, neither the applicant nor her husband address how any hardship the step-son may experience causes hardship to the applicant’s husband. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that if the applicant’s husband remains in the United States, the hardship he will experience would be extreme, unique, or atypical compared to others separated from a spouse. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected).

With respect to relocating to China to avoid the hardship of separation, there is insufficient evidence in the record to show extreme hardship. Although the record shows the applicant’s husband has two children from a previous marriage, according to his divorce decree in the record, the children are currently nineteen and twenty-three years old. Although numerous pages from the divorce decree are missing from the record, contrary to the applicant’s husband’s contention that he pays alimony, page nine of the decree indicates that his ex-wife stipulated she was able to financially support herself and waived any and all rights to a financial claim against him. There are no letters from his children and no evidence corroborating his contention that he financially supports his grown children. Similarly, there are no letters from his parents and siblings in the record and, thus, nothing to show to what extent, if any, he regularly visits his family. There is also no evidence in the record to support his contention he would be unable to find employment in China. In addition, there is no evidence to support his contention that his back problem could not be adequately monitored or treated in China. In sum, the record does not show that the applicant’s husband’s relocation to China would be any more difficult than would normally be expected under the circumstances. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship the applicant’s husband would experience if he relocated to China amounts to extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s husband caused by the applicant’s inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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 appeal is dismissed.