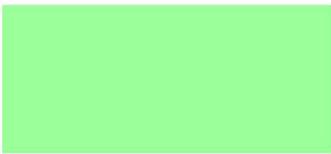




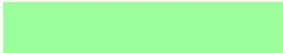
U.S. Citizenship
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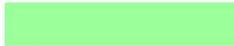


DATE: **MAR 18 2014**

OFFICE: GUANGZHOU

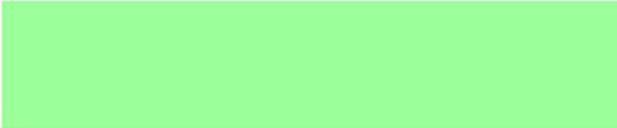


IN RE:



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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO) and the appeal decision was appealed two times on subsequent motions. This matter is now before the AAO on a third motion to reopen and reconsider. The motion will be granted and the prior decision of the AAO will be affirmed.

The applicant 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), for procuring an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident parents.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated June 23, 2010. On appeal, the AAO also determined that the applicant had not demonstrated extreme hardship to his qualifying relative and dismissed the appeal accordingly. *See Decision of the AAO*, dated July 24, 2012. On motion, the AAO affirmed its prior decision. *See Decision of the AAO*, dated May 29, 2013. On a second motion, the AAO determined that the applicant demonstrated extreme hardship to his qualifying relatives upon relocation, but not separation. *See Decision of the AAO*, dated September 26, 2013.

The applicant has submitted a third motion to reopen or reconsider the dismissal of his appeal. In the applicant's motion to reopen or reconsider, counsel for the applicant asserts that the applicant has submitted updated evidence concerning the applicant's mother's medical condition and the resulting effects on the financial hardship suffered by his parents.

In support of the applicant's motion to reopen and reconsider, the applicant submitted a letter from the applicant's parents, financial documentation, identity documents, and medical documentation concerning his mother. The entire record was reviewed and considered in rendering this decision.

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:

- (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

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 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...

The AAO, in its July 24, 2012 appeal decision, previously found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking an immigrant visa through fraud or misrepresentation. The applicant does not dispute this finding of inadmissibility on motion.

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, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident 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-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 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.

The record reflects that the applicant is a 36-year-old native and citizen of China. The applicant’s mother is a 63-year-old native of China and lawful permanent resident of the United States. The applicant’s father is a 63-year-old native of China and lawful permanent resident of the United States. The applicant is currently residing in China with his son and his lawful permanent resident parents are residing in Brooklyn, New York.

The AAO, in its September 26, 2013 decision, determined that the applicant has demonstrated that his lawful permanent resident parents would suffer extreme hardship upon relocation to China. The AAO noted counsel’s assertions that the applicant’s father would be unable to receive health care for his documented medical conditions upon relocation, due to the cancellation of his family registration. The AAO also noted the age of the applicant’s parents, their residence in the United States for over a decade, and extensive family ties in the United States.

On motion, counsel for the applicant asserts that the applicant’s parents have demonstrated that they are suffering from financial hardship in the absence of the applicant. The applicant’s

parents submitted a letter asserting that the applicant's mother is suffering severe back pain that has rendered her unable to continue with her position as a home attendant. The applicant's mother contends that she subsequently lost her full-time income and is relying on a social security check of \$319 per month. The applicant's mother asserts that her husband earns less than \$400 a week and with their earnings and the rental of a part of their home to a tenant for \$800 a month, are able to cover their mortgage payment. The applicant's mother contends that they still need \$1200 additional per month to survive and cannot expect a home or much financial assistance from their other children, as they have their own families and problems. As such, the applicant's parents assert that they need the applicant in the United States to provide them with financial assistance and physical care.

The record contains medical documentation dated October 14, 2013 indicating that the applicant's mother has a history of back problems since 2009 with increasing pain in the last six months and has not been able to work as a home attendant due to her unstable lower back. However, previous medical notes concerning the applicant's mother indicate no pain issues as recently as June 21, 2013. As noted in prior decisions, the applicant's father suffers from physical ailments including hypertension, type 2 diabetes mellitus, and hyperlipidemia. However, the record does not contain any indication that the applicant's parents' physical conditions require care from the applicant.

A psychological letter concerning the applicant's parents, dated June 14, 2013, states that the applicant's parents were living with their two children and their families, as their financial difficulties would no longer allow them to afford their own home. The applicant's father submitted an affidavit, dated April 15, 2010, asserting that he specifically purchased a home in 2007 to accommodate his entire family, including his spouse, parents, and children. As noted, the applicant's parents indicate they are still making mortgage payments and there is no indication that they have been unable to keep up with this monthly expense and the ownership of their property. The applicant's mother submitted an affidavit, dated August 17, 2012, asserting that she and her three children work very hard to support the family. The applicant's father further asserts that his mother is receiving social security benefits and food stamps and they are all working hard to support the family. Despite the applicant's parents' current assertions concerning their three children, their previous statements demonstrate that their family members reside together and have the intent to work collectively for the family unit. There is no indication that the applicant's parents' two other children and the applicant's grandmother are unable or unwilling to share a home or finances with the applicant's parents, especially given their current shared residence.

Counsel for the applicant asserts that the applicant's parents are suffering severe emotional distress and depression due to separation from the applicant. The record contains a psychological letter stating that the applicant's parents are experiencing symptoms of a dysthymic disorder, clinical depression, manifested by feelings of hopelessness, diminished concentration, insomnia, and ruminations of their role in their son's inability to reside in the United States with his family. The applicant's mother reported recurrent suicidal ideation and both parents reported symptoms affecting their ability to work. It is noted that in a recent

affidavit from the applicant's parents, dated October 23, 2013, the applicant's father continues to work and the applicant's mother asserts that her inability to perform in her job is due to severe back pain, which is not mentioned in the psychological letter. Further, the psychological letter concerning the applicant's parents is dated June 14, 2013. Medical notes for the applicant's mother, dated June 21, 2013, indicate no depressed mood upon depression screening. It is also noted that the psychological interview of the applicant's parents took place on one date and despite a clinical depression diagnosis, the letter does not contain any further recommendations for treatment.

The applicant's mother also asserts that due to her back pain, she is unable to visit the applicant in China. It is noted that the record does not contain supporting documentation concerning her inability to travel. The record reflects that the applicant's mother stays in touch with the applicant through phone conversations and there is no indication that she would be unable to continue this mode of contact. It is also noted that the applicant provided a letter asserting that his father visited him in China nearly every year after his departure to the United States, but does not make any similar assertions concerning his mother.

It is acknowledged that separation from a child nearly always creates a level of hardship for both parties and the record indicates that the applicant's parents are experiencing hardship upon separation from the applicant. However, in the aggregate, there is insufficient evidence in the record to find that the applicant's parents are suffering from a level of hardship beyond the common results of separation from a child.

In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relatives, in the aggregate, would rise to the level of extreme hardship if they relocated to China. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relatives upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 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 relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident parents 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 balancing positive and negative factors to determine whether the applicant merits this 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 motion is granted and the prior decision of the AAO is affirmed.