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



U.S. Citizenship
and Immigration
Services

DATE: **MAY 08 2014** Office: NEW YORK, NEW YORK

FILE: [REDACTED]

IN RE: [REDACTED]

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 (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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting 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 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 having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a lawful permanent resident and is the beneficiary of an approved Petition for an Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his lawful permanent resident spouse and three lawful permanent resident children.

In a decision, dated September 3, 2013, the acting district director found that the record failed to establish that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility. Specifically, the acting district director found that the applicant's spouse gave no details as to the hardship she would suffer as a result of relocating to China, a country she left just two years ago, and that the record did not establish extreme hardship upon separation because the record indicated that the applicant and his spouse had been separated for twenty-two years prior with no current record of hardship.

On appeal, counsel submits a brief and states that the applicant has established that his spouse would suffer extreme emotional hardship as a result of his inadmissibility. Counsel states that no proper weight was given to the psychological evaluation submitted with the waiver and the applicant's spouse's history of depression. Counsel states further that given the applicant's spouse's lengthy separation from the applicant and her children, separating them now, after their reunification, would be extreme hardship.

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 [Secretary] may, in the discretion of the [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 [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 record reflects that the applicant attempted to enter the United States at the Los Angeles Port of Entry on November 29, 1990 by presenting a fraudulent nonimmigrant visa for admission. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's only qualifying relative is his spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 v. I.N.S.*, 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.

The record of hardship includes: financial documentation, a statement from the applicant's spouse, and a psychological evaluation.

The record indicates that the applicant and his spouse were married in China in 1980 and had three children. In 1990 the applicant came to the United States, voluntarily leaving his spouse behind in China. In 2000 the couple divorced. The divorce decree, dated September 30, 2000, indicates that the couple's oldest daughter was to be brought up by the applicant and the two youngest children by his spouse. The applicant's spouse came to the United States in January 2012 and remarried the applicant on September 12, 2012.

The applicant's spouse asserts that she will suffer extreme emotional hardship as a result of the applicant's inadmissibility because she suffers from depression and anxiety. The applicant's spouse states that she has a history of depression and even had thoughts of committing suicide in 1996 when she started having problems in her marriage. She asserts that she is now having symptoms of depression again at the thought of being separated from the applicant and her children after their recent reunification. The psychological evaluation, dated October 12, 2012, diagnoses the applicant's spouse with Major Depressive Disorder, Recurrent and Anxiety Disorder. The Beck Inventory Test, a self-reporting inventory of the applicant's emotional state and physical symptoms, was administered in making this diagnosis. The psychologist recommended that the applicant's spouse participate in ongoing supportive psychotherapy and be prescribed anti-depressant medication. There is no indication that the applicant's spouse followed the recommendation for ongoing psychotherapy or medication, or, if she did, if it was effective in treating her symptoms. The psychologist concludes that the applicant's spouse cannot relocate to China because she will have to separate from her three children and mental health illness is stigmatized in China, preventing the applicant's spouse from obtaining treatment for her symptoms. The psychologist who diagnosed the applicant's spouse does not provide supporting documentation regarding mental healthcare or societal views of mental health patients in China nor does he provide evidence of his expertise in the subject.

The current record does not support a finding of extreme emotional hardship to the applicant's spouse as a result of the applicant's inadmissibility. Except for the self-reporting statements of the applicant's spouse, no corroborating documentation of the applicant and his spouse's emotional ties has been submitted. The record does not include any statements from the applicant or the couple's three children to support assertions of emotional hardship or to document how she is currently supported emotionally by any of her family members. Nor does the record reflect that the applicant's spouse lacks family in China who could provide her support or whether any of her children could return to China with her to relieve the hardship of separation from the other children. The assertions of the applicant's spouse, whether in her affidavit, in her statements to the psychologist, and/or in her answers to the Beck Inventory Test are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. See *Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained 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 evidence generally 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). We recognize the significance of the couple's recent reunification, but also acknowledge their 22 year voluntary separation which minimizes the level of emotional hardship the applicant's spouse would face upon separation. We also recognize that the applicant's spouse may not have sought treatment for her previous symptoms of depression, but the record contains no corroborating evidence regarding her previous periods of depression.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident spouse as required under section 212(i) of the Act.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 he merits a waiver as a matter of discretion.

In proceedings for 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.