U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 2 7 2015 OFFICE: NEW YORK 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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the People's Republic of China (PRC) 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), for having procured admission into the United States through willful misrepresentation or fraud. The applicant, through counsel, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside with his lawful permanent resident parents, spouse, and children in the United States.

The District Director determined that the applicant had not established extreme hardship to his qualifying relatives and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, dated April 3, 2014.

On appeal, the applicant, through counsel, asserts U.S. Citizenship and Immigration Services (USCIS) made erroneous conclusions of law and fact and contradicted precedent decisions by failing to consider all relevant evidence of hardship to his qualifying relatives in the aggregate. The applicant also asserts USCIS should have favorably exercised its discretion upon balancing the equities against the adverse factors in his case. *See Form I-290B, Notice of Appeal or Motion*; *see also Brief in Support of the Appeal*, dated April 30, 2014.

The record includes, but is not limited to: briefs, motions, and correspondence; affidavits and statements by the applicant and statements by his parents; documents concerning identity and relationships; letters of support; academic, employment, financial, and medical documents; photographs; and documents on conditions in the PRC. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6) of the Act provides, in relevant part:

> (C) Misrepresentation.-
>
> > (i) 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.
> >
> > . . .
> >
> > (iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in relevant part:

> (1) The Attorney General [now Secretary of Homeland Security (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 applicant indicates he entered the United States near California, around March 1, 1990, upon presenting fraudulent documents to immigration officials. The record reflects that the applicant filed an affirmative asylum application on April 14, 1993, which USCIS referred to the immigration court. An immigration judge granted the applicant voluntary departure until May 16, 1999, with an alternate order of deportation to the PRC. The applicant did not timely depart; however, an immigration judge granted his motion to reopen deportation proceedings to pursue relief under the U.N. Convention Against Torture on September 21, 1999.

The record also reflects the applicant was ordered deported *in absentia* on January 13, 2000, and upon a joint motion to reopen the applicant's deportation proceedings, an immigration judge granted the motion and terminated the applicant's reopened proceedings on July 22, 2013, so that he could pursue adjustment of status before USCIS as the brother of a U.S. citizen. The applicant contends he has remained in the United States since his entry in March 1990. Based on the foregoing, we agree with the District Director's conclusion that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding of inadmissibility, and he requires a waiver under section 212(i) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant, his spouse, and children is not relevant under the statute and is considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident parents are qualifying relatives in this case. 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-Moralez,* 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re Pilch*, 21 I&N Dec. at 632-33; *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. at 246-47; *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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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. INS*, 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.

Addressing the hardship his parents would experience if he were not with them in the United States, the applicant indicates in a statement dated April 14, 2014: His father's medical and physical conditions include back pain, gastric cancer, and hypertension, and his mother's conditions include back pain, gastritis, and osteoporosis; his parents' physician monitors them every three months to ensure that his father's cancer has not returned and to run blood tests to determine the effectiveness of his father's hypertension medication; his parents are unable to care for themselves so he assists them daily by reminding them to take their medications, cooking them healthy foods, taking his father's blood pressure, massaging his mother because she has constant pain, and helping her to get into and out of the bathtub; because his parents do not drive, he takes them to their medical appointments and picks up their medications monthly; his siblings are unable to care for his parents as they live in Florida, Kentucky, and Canada; and his parents cannot live with his siblings as their physicians are in New York and it would be difficult for them to find Chinese-speaking physicians in Florida and Kentucky, and they do not have permission to live in Canada. The applicant also indicates his parents are too old and sick to

work, and as he is the primary breadwinner, his family depends on his monthly income of $1,950 and would otherwise require governmental assistance.

The applicant's father indicates in a letter dated June 20, 2013 that he and the applicant's mother are very dependent on the applicant as: It is a Chinese tradition for a son to take care of aging parents; they live with the applicant so their day-to-day needs are addressed, and the applicant's siblings live too far away to assist them; he loves watching his grandchildren grow, and it would "break his heart" to be separated from them; he sees a physician regularly because he has problems with his eyes and stomach as well as high blood pressure and insomnia; he is prevented from driving because of his poor vision; and he and his wife are retired and do not have their own income, but they do not need to worry financially because the applicant pays the bills and the majority of their expenses.

The applicant's mother also indicates in a letter dated June 20, 2013: she needs the applicant's daily assistance because her spouse is too sick to help her, and she is unable to bend well or to sit for long periods as she has back pain, osteoporosis, and stomach-related issues; the applicant takes her to her medical appointments and the pharmacy; she is unable to depend on the applicant's siblings because they live in Florida, Kentucky, and Canada; and her age and health problems prevent her from working, so she is lucky to have the applicant's willingness to support her economically.

To corroborate claims concerning his father's medical and physical conditions, the applicant submits copies of medical records, reports, letters, and progress notes from his father's treating physicians; in the most recent letter dated April 10, 2014, the physician indicates the applicant's father currently suffers from back pain, gastric cancer, and hypertension, and the applicant accompanies him to most of his appointments. According to the most recent progress notes dated January 4, 2014, the signing physician indicates the applicant's father should avoid certain foods and libations, and he should continue to monitor his blood pressure from home. The physician further indicates the applicant's father's medical history includes a partial gastrectomy in the PRC in 2013 due to gastric cancer.

To corroborate claims concerning his mother's conditions, the applicant submits copies of medical records, reports, progress notes, and letters from her treating physicians, the most recent of which is dated April 10, 2014; the applicant's mother's primary care physician indicates she currently suffers from back pain, gastritis, and osteoporosis, and the applicant accompanies her to most of her appointments. According to the most recent progress notes dated January 4, 2014, the physician indicates the applicant's mother should avoid certain foods and libations as well as lifting and carrying heavy objects, and standing, walking, and traveling for prolonged periods.

The applicant also submits Internet articles by the Mayo Clinic and National Institutes of Health that generally discuss cataracts, cholesterol, gastritis, hypertension, insomnia, and osteoporosis. He further submits articles from the Internet, which generally discuss various medications prescribed to his parents.

To address the District Director's concern regarding his ability to assist his parents while he worked in Kentucky part-time between 2003 and 2013, the applicant indicates on appeal that his employment there was seasonal and part-time; he worked only 20 days of the month from June through August and November through January, and the remaining days he was in New York, caring for his parents, spouse, and children; and he currently works full-time in New York so he is available to care for his parents and

to leave work immediately in case of an emergency. Also, to address the District Director's concern regarding his ability to sufficiently support his household of six people on his income, the applicant indicates his monthly expenses total $1,893.07, which include some fixed costs and other monthly expenses regardless of his household size; he is mindful of his expenses; and he uses his income tax refunds to help cover his family's expenses.

To corroborate these statements and other claims of financial hardship, the applicant submits letters of employment, verifying his employment as an assistant cook at a restaurant in , New York, where he earns a monthly salary of $1,950 and as a chef at in Kentucky, where he earns a monthly salary of $2,500; billing statements and copies of cancelled checks demonstrating monthly expenditures that include a mortgage bill totaling $1,117.42, a condominium association fee totaling $153.79, and utilities totaling $122.28; a self-reported expense sheet dated April 15, 2014, indicating a breakdown of the aforementioned expenditures as well as monthly costs for groceries totaling $500; a quarterly statement for property taxes totaling $767.74; letters and partial copies of statements concerning joint-bank accounts; and several years' worth of tax documents, which includes a tax return for 2013, indicating a household income of $25,500, a federal tax refund totaling $4,950, and a state tax refund totaling $1,222.

Although the record reflects the applicant works in Kentucky at his sister's restaurant various times throughout the year, the record also reflects the applicant's parents reside with the applicant, his spouse, and children, and the applicant's siblings live in other states and Canada. The record further reflects the applicant's parents do not work, and thereby depend on him as the primary breadwinner of the household. The record also establishes the applicant's parents have been treated for chronic health conditions, and assistance from the applicant is essential to their physical wellbeing. When evidence of hardship is considered in the aggregate, given the applicant serves as his parent's primary caregiver and their dependency on him for financial support, the record establishes the applicant's parents would experience extreme hardship as a result of separation from the applicant.

The applicant notes the District Director's decision does not address the hardship his parents would experience if they were to relocate to the PRC to be with him because of his inadmissibility. However, the applicant indicates that they would suffer emotionally from the severance of close family ties. They also would experience medical and financial hardships because: their physicians and pharmacies are in the United States, and they would have difficulties finding a doctor and medicines in the PRC; medicines in the PRC are often counterfeit and contain poisons or lack any medicinal value; and their health would prevent them from working, and he would be unable to obtain a good paying job there as he does not have a degree. To corroborate claims of his parents' potential hardship, the applicant submits a copy of the travel report issued by the U.S. Department of State on January 28, 2013, that generally discusses medical care and social conditions in the PRC. He also submits a copy of the *Country Reports on Human Rights Practices for 2013* issued by the U.S. Department of State, highlighting labor and employment conditions in the PRC.

Although the record reflects the applicant's parents are natives of the PRC and they may have some ties there as the applicant's father received medical care in 2013, the record also reflects they have strong family ties in the United States, including their lawful permanent resident and U.S. citizen daughters and son as well as their U.S. citizen granddaughters; they continue to receive medical care in the United

States for their ongoing conditions; the applicant's mother's treating physician has advised against prolonged travel due to her medical conditions; and they could jeopardize their lawful permanent resident status that they have maintained for over 13 years upon a prolonged absence from the United States. We thus conclude that were the applicant's parents to relocate to the PRC to be with the applicant due to his inadmissibility, considering their ties to the United States, their chronic medical conditions, and the normal hardships associated with relocation, the cumulative effect of the hardship the applicant's parents would experience as a result of the applicant's inadmissibility rises to the level of extreme.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. at 301. For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

Id. at 301.

The BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

The favorable factors in this case are extreme hardship the applicant's lawful permanent resident parents would experience; hardship his U.S. citizen children would experience, as he serves as the family's primary breadwinner; his close family ties as evidenced by his lawful permanent resident parents, two U.S. citizen children, and his U.S. citizen and lawful permanent resident siblings; his residence in the United States for over 25 years; his stable employment and payment of taxes; letters attesting to his good moral character; and the lack of a criminal record. The unfavorable factors include the applicant's misrepresentation and his periods of presence in the United States without authorization. Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted.

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 been met.

ORDER: The appeal is sustained.