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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 3 1 2015

FILE #:
(consolidated therein)
APPLICATION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director of the Fairfax, Virginia, Field Office (the director) denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, 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, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the country by the willful misrepresentation of a material fact. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien. The applicant contests the finding of inadmissibility. In the alternative, he seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The director determined that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, and that the applicant did not establish that extreme hardship would be imposed on his wife if he is denied admission to the United States. The application was denied accordingly. *Decision of the Director*, dated November 4, 2014.

On appeal the applicant asserts, through counsel, that the record does not demonstrate that he attempted to procure admission into the United States by willful misrepresentation of a material fact, and he is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act. In the event that he is found to be inadmissible, the applicant asserts that the evidence in the record establishes that his wife would suffer extreme hardship if he is denied admission into the country and she either remains in the United States without him or she relocates with him to China. *Brief accompanying Form I-290B, Notice of Appeal or Motion,* filed December 3, 2014

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant, his wife, family, and friends; medical documents; insurance and financial evidence; and documents establishing relationships and identity. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> (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 chapter is inadmissible.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation, and states that:

> (1) The Attorney General [now the 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 asserts, on appeal, that he did not attempt to gain admission into the United States with a false passport The applicant asserts that, although he handed a photo-substituted Japanese passport with a different name and date of birth to U.S. immigration officials when he arrived in the United States, he instead told them at the first available opportunity that the document was not his, gave his true identity, and asked for political asylum.

The applicant's assertions, however, are not corroborated by the record. The record contains a Form I-546, Order to Appear for Deferred Inspection, dated January 1, 1992, which states that the applicant arrived at JFK International Airport in New York on December 31, 1991, and "presented" to U.S. immigration officials a photo-substituted Japanese passport with a different date of birth under another individual's name. The Form I-546 also states that the applicant claimed that he was assisted by a Peruvian individual, who charged him $6000 for the passport and that the applicant asked for political asylum in the United States.

The record also contains the applicant's Record of Sworn Statement in Affidavit Form, dated January 1, 1992, which reflects that he stated, among other things, that he cannot earn a living in China, that he paid an individual $6000 for a passport, and that he came to the United States to look for work and for political refuge.

The Form I-546 and the applicant's sworn statement do not reflect that the applicant told the U.S. immigration officers that the photo-substituted Japanese passport was not his at the time that he presented the document to immigration officials. In addition, statements submitted by the applicant about when he told immigration officers that the Japanese passport was not his are materially inconsistent.

The applicant states in a March 11, 2014, statement, that upon landing at JFK on December 31, 1991, he and six or seven passengers were "taken into a secondary inspection to be questioned." The applicant states that he was the second or third person to be questioned and that, before the immigration officer started questioning him, he "immediately turned over the passport" and told the officer that the passport was photo-substituted and not his. He states that the immigration officer "then asked [him] to wait," and when a Chinese-American officer later questioned him, he told the officer that he came to the United States to seek political asylum. He also indicates that he refused to sign his statement because it was written in English and he could not understand it.

The applicant indicates similarly, in a statement dated October 6, 2014, that he and a few other people were taken into custody by U.S. immigration officers when he arrived in the United States on December 31, 1991, and that "by the time an officer came to question" him, he told the officer that the passport he carried was not his and that the photo was substituted. He was then told to wait, and about an hour later "a Chinese speaking immigration agent" came to interview him. The applicant again states that he refused to

sign his sworn statement because it was written in English, upon review there are many errors in the statement, and he does not know how his signature was added to the sworn statement.

The applicant states in a third statement, dated December 2, 2014, that upon arrival all passengers boarded a bus that took them to the immigration customs area. He indicates that when the bus door opened, U.S. immigration officers asked him and several other passengers from Asia to "turn over [their] passports," and that "it was at this time that [he] turned the photo-substituted passport to the [immigration] officers." The applicant states that the immigration officers then took him and several other passengers to a room for questioning, and that "at the time . . . [he] told an officer that the passport was a photo-substituted passport" and that he was "a Chinese national, not Japanese." The applicant indicates also that, because of a language barrier, the officer had him wait to discuss his claim with a Cantonese-speaking immigration inspector. The applicant discusses the rapport he had with the immigration inspector and indicates that, when the officer took his sworn statement, he gave his true identity and told the officer that he came to the United States because he feared political persecution in China.

The applicant asserts that information in his record is unreliable, because he claims that he did not tell the Cantonese-speaking officer that he came to the United States because he could not earn a living in China, or that his cousin, with whom he planned to stay, lives in New York. He indicates further that he explained his asylum claim first to the Cantonese-speaking officer and later to a Spanish-speaking supervisory immigration officer. He also submits a document indicating that the Cantonese-speaking immigration officer who interviewed him on December 31, 1991, was under investigation for wrongdoing by the U.S. Justice Department, Office of Inspector General. The document states, however, that the investigation was closed and no action taken. The document therefore does not corroborate the applicant's assertions that his record is unreliable because this particular Cantonese-speaking officer took his statement.

In addition, discrepancies exist between the applicant's explanatory statements. In his March and October 2014 statements, the applicant indicates that he gave his passport to immigration officers when they began to question him during secondary inspection, and that he told the officers at the time of turning over his passport that it was false and not his. In his December 2014 statement, however, the applicant indicates that immigration officials took his passport as he exited an airport bus, and that he subsequently revealed that the passport was not his when he was questioned by immigration officers in another room. The discrepancies are not addressed or resolved by the applicant.

The Board of Immigration Appeals decisions, *Matter of Y–G–*, 20 I&N Dec. 794 (BIA 1994) and *Matter of D–L & A–M–*, 20 I&N Dec. 409, 412–13 (BIA 1991), cited by the applicant on appeal, also do not support the applicant's assertion that the record in his case does not establish inadmissibility under section 212(a)(6)(C)(i) of the Act.

The BIA held in *Matter of D-L- & A-M-* that:

> [O]utside of the transit without visa context, an alien is not excludable for seeking entry by fraud or willful misrepresentation of a material fact where there is no evidence that the alien presented or intended to present fraudulent documents or documents containing material misrepresentations to an authorized official of the United States Government in an attempt to enter on those documents.

20 I&N Dec. at 412. A similar finding was made in *Matter of Y-G,* 20 I&N Dec. at 797. The cases are distinguished from the applicant's case, in that the record of proceedings in the BIA cases demonstrated that the respondents immediately stated that false passports were not their true passports when they presented to documents to U.S. immigration officers. In *Matter of Y-G-,* the record contained a Form I-110 signed by the immigration inspector, stating that the respondent immediately told U.S. officials that the document he was presenting was a false document. In *Matter of D-L- & A-M-,* an immigration judge determined that evidence established that respondents immediately surrendered their false documents to immigration officials and revealed their true identities when they attempted to enter the United States.

The evidence in the applicant's case, however, does not reflect that when the applicant presented his false passport to immigration officers, he immediately revealed that the document was false and stated his true identity. Rather, as discussed above, the evidence reflects that the presented the false passport to immigration officers to gain admission into the country and only later admitted to the officers that the passport was photo-substituted and false. The Form I-546 in the record states that upon his arrival in New York on December 31, 1991, the applicant presented a photo-substituted Japanese passport under another person's name with a different date of birth to U.S. immigration officials. Moreover, his subsequent statements, submitted to establish that he did not attempt to use the false document to gain admission, contain unresolved discrepancies. Upon review the evidence in the record demonstrates that the applicant attempted to gain admission into the United States on December 31, 1991, by misrepresentation of a material fact.

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, in the applicant's case, his U.S. citizen spouse. Moreover, 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 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 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 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., 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 1292, 1293 (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 applicant asserts that his wife will experience extreme hardship if he is denied admission into the United States and she remains here without him. In support of his assertions, the applicant submits statements and affidavits from himself, his wife, family members, and friends. He also submits medical and financial evidence, and a psychological evaluation for his wife.

The applicant's wife indicates, in a statement dated October 6, 2014, that she suffers from anxiety, panic attacks, and depression. She states that she has had many car accidents due to her mental stress; she has trouble sleeping; and she is in poor health due to severe headaches, anemia, and irregular blood pressure. The applicant's wife indicates further that the applicant cares for her when she is not well, he is her sole source of companionship and emotional support, and she depends on him for daily support.

The applicant asserts, in a statement dated October 6, 2014, that his wife "suffers greatly" from emotional distress and that his wife's mental and physical issues have caused her to have multiple car accidents. He states that he supports and cares for his wife. He states further that his wife will experience emotional and physical hardship in her daily life if he returns to China and she remains in the United States.

In his August 15, 2012, letter, the applicant's wife's doctor states that she suffers from chronic medical conditions, including dizziness, headaches, anemia and arthritis. The doctor indicates that the applicant's wife also has a severe form of hereditary thalassemia anemia that needs to be monitored by a physician, and the doctor states that the applicant's wife "will likely" need nutritional counseling, rest, possible prescriptions, and possible blood transfusions in the future. The doctor notes that the applicant's wife reports that her dizziness and severe headaches cause her to become incapacitated, and that it is his understanding that she depends on the applicant during these episodes. The doctor notes further that severe and possibly lethal harm could result if the applicant was not able to help his wife.

Although the doctor's letter lists the applicant's wife's medical conditions, the doctor does not explain the basis of his conclusions that she may need certain treatments in the future. The record contains no evidence that the applicant's wife currently requires nutritional counseling, rest, prescriptions, or blood transfusions, or that she has received such treatment in the past. In addition, although the applicant's wife's doctor states that it is his understanding that the applicant's wife becomes incapacitated from headaches and dizziness and that she is dependent upon the applicant during these episodes, the applicant submits no documentary evidence to establish this; the doctor appears to derive this information from the applicant's wife's statements to him. The record lacks medical documentation demonstrating that the applicant's wife has received medical treatment for severe headaches, dizziness, or other ailments. The applicant, moreover, provides no employment or other type of documentation to demonstrate that his spouse's daily activities have been hindered by her medical conditions.

The record contains general medical laboratory testing documentation for the applicant's wife and an article on thalassemia. The evidentiary value of the article and laboratory documentation is limited, as the article is general and does not discuss the applicant's wife's specific condition and symptoms, and the laboratory documentation contains no explanation regarding the purpose or results of the medical tests. A July 2007 medical letter reflects that the applicant's wife underwent testing for headaches and visual changes; however the letter indicates that test results were "unremarkable" and "normal." The medical documentation does not demonstrate that the

applicant's wife would experience physical or medical hardship if she lived separately from the applicant.

The record also contains evidence that the applicant's wife's auto insurance was not renewed in October 2014 due to "an increase in hazard" based on two at-fault accidents that occurred on January 22 and January 23, 2014. The insurance document does not, however, reflect the reasons or circumstances for the accidents, or demonstrate that the accidents occurred due to the applicant's wife's emotional or physical conditions. Further, a letter from the Virginia Department of Motor Vehicles, dated March 11, 2014, reflects that although the applicant's wife was required to submit a medical report to the department, the 2014 medical report was deemed acceptable, and the applicant's wife continues to hold her Virginia driver's license.

A September 18, 2014, psychological evaluation prepared by a licensed clinical psychologist reflects that the applicant's wife suffers from chronic major depressive disorder and panic disorder. The psychologist notes that the applicant's wife has a history of severe headaches, stomach pain, extreme anemia, and dizziness. The psychologist also notes that the applicant's wife's relies on the applicant for emotional, financial, and practical support, and that her health and stress are exacerbated by the applicant's immigration status. The psychologist concludes that the applicant's wife's mental health would worsen if the applicant is excluded from the country, and treatment for depression is recommended.

While the psychological evaluation is helpful in its descriptions concerning the applicant's spouse's hardship if she remains in the United States, the value of the evaluation is limited, in that it is based on one interview session, and the record lacks evidence that she has received other counseling or therapy. The record also does not corroborate that the applicant's wife depends on the applicant to complete daily activities, or for financial and practical support.

Although the applicant submits financial evidence in the form of joint federal income tax returns and employment earnings statements, bills, and mortgage and credit card statements, the applicant does not specify how this evidence establishes financial hardship to his wife. Moreover, the evidence reflects that both the applicant and his wife work. The evidence does not demonstrate who bears responsibility for household expenses or that the applicant's wife is financially dependent on the applicant such that she would experience financial hardship beyond that normally experienced upon removal or inadmissibility of a family member.

Overall, considering the evidence in the aggregate, the record does not establish that the applicant's wife would suffer extreme hardship if the applicant is denied admission into the country and she remains in the United States. The record does not corroborate assertions that the applicant's wife suffers from severe health or emotional conditions that cause her to be dependent upon the applicant for her daily activities. The record also does not demonstrate that the applicant's wife is financially or otherwise dependent upon the applicant such that she would experience extreme hardship if she remained in the United States.

The applicant has also not established that his wife would experience extreme hardship if he is denied admission into the United States and she relocates with him to China.

The applicant states in his October 6, 2014, statement, that going to China is not a viable option for his wife due to her poor health and depression, and because she has no immediate relatives there. The applicant also asserts, through counsel, that he and his wife would be unable to find work in China due to their age and their lack of higher education. The applicant, however, provides no country-conditions evidence to corroborate his employment-related claims. Further, as discussed above, the applicant has not established that his wife suffers from medical conditions that affect her ability to work or to relocate. The psychological evaluation also does not demonstrate that the applicant's wife would experience extreme emotional hardship due to her depression if she relocated with the applicant to China.

The applicant's wife indicates in her October 6, 2014, statement, that she is a native of China who came to the United States at age 37. The applicant's wife is therefore familiar with the language and culture in China. The applicant's wife also indicates in her statement that her parents and brother live in Hong Kong. Although the record contains a document reflecting that there are specific immigration requirements for Chinese and non-Chinese citizens to reside in Hong Kong, the applicant does not address whether his wife meets the requirements for such immigration. The document alone does not demonstrate that the applicant's wife could not relocate with the applicant to Hong Kong to be near her family. Moreover, the record does not demonstrate that the applicant's wife would suffer hardship if she relocated with the applicant to his area of China, rather than to Hong Kong.

Upon review, the evidence in the record, considered cumulatively, does not establish that the applicant's wife would experience hardships in China that would rise above the common results of removal or inadmissibility to the level of extreme hardship. The applicant did not establish that he and his wife would be unable to find work in China, or that his wife would suffer physical, emotional, financial or other hardship that is beyond that normally experienced upon relocation. The applicant has therefore not established extreme hardship to a qualifying relative, as required under section 212(i) of the Act. Having found the applicant ineligible for relief, we find no purpose would be served in discussing whether the applicant 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.