



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: FEB 11 2015 OFFICE: LOS ANGELES

File: [REDACTED]

IN RE: Applicant: [REDACTED]  
[REDACTED]

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:  
[REDACTED]

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, Los Angeles, denied the waiver application. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on a motion to reopen. The motion is granted, and we affirm our prior decision.

The applicant is a native and citizen of the Republic of China (Taiwan), 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 sought to procure admission to the United States through willful misrepresentation. The record also reflects that, in a separate decision, the applicant was found to be inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for having been ordered removed from the United States and seeking admission within the proscribed period since the date of removal. The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied her Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. On appeal, we determined that although the applicant established her U.S. citizen spouse would experience extreme hardship if he relocated to Taiwan, she did not show his hardship would be extreme if he were to remain in the United States without her.<sup>1</sup> We affirmed the Field Office Director's decision and dismissed the applicant's appeal.<sup>2</sup>

On motion, the applicant asserts that additional evidence concerning her spouse's financial obligations and medical conditions demonstrates that he would suffer extreme hardship in her absence. *See Form I-290B, Notice of Appeal or Motion*, dated October 27, 2014; *see also Brief Submitted in Support of Motion*.

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has submitted new documentary evidence to support her claim, the motion to reopen will be granted.

In addition to the evidence described in our previous decision, the record also includes, but is not limited to: statements by the applicant, her spouse, mother-in-law, child, and ex-husband; medical and financial documents; and documents about conditions in Taiwan. The entire record was reviewed and considered in rendering a decision on the applicant's motion.

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<sup>1</sup> We also determined the applicant was not inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

<sup>2</sup> In a separate decision, the Field Office Director found that because the applicant's Form I-601 was denied, the applicant would remain inadmissible to the United States even if her Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) were approved, and she denied the Form I-212 as a matter of discretion. On appeal, we affirmed the Field Office Director's decision.

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 record reflects the applicant verbally indicated that she was a U.S. lawful permanent resident in order to gain admission to the United States at the [redacted] Port of Entry on [redacted] 2010. The record also reflects U.S. immigration officials placed her in expedited-removal proceedings pursuant to section 235(b)(1) of the Act and released her under an order of supervision. The applicant did not appear as required by her release order, and she was not removed; she remains in the United States. Based on the foregoing, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and she requires a waiver under section 212(i) of the Act. The applicant does not contest this finding of inadmissibility.

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 and other relatives is not relevant under the statute and is considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative 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-Morales*, 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. 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., 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.

In support of her motion, the applicant indicates that she financially depends on her spouse, and her father, who is retired and living “a very simple life” in Taiwan, would be unable to financially assist her; it would be difficult for her to find work in Taiwan due to her gender and lack of work experience, special skills, and a higher degree; her spouse would not maintain his present standard of living because of additional monthly costs, including a minimum of \$850 to support her comfortably in Taiwan and about \$1,500 to pay a personal aide to assist with the care of his elderly mother; he also intends to pay for his son’s medical-school education and support her daughter with her nursing school education; she assists her mother-in-law, who has various health problems, has fallen several times in the past year, and “needs someone with her all the time”; and she dreams of attending her daughter’s college graduation in two years. To corroborate her claims of financial difficulties she would experience in Taiwan, the applicant submits a letter from her sister who indicates she is unable to find a job as a registered nurse and pursuant to Taiwanese customs, their brother received their parents’ assets, so the applicant’s spouse would need to support the applicant in Taiwan. The applicant also submits evidence of expenses in Taiwan, as reported on a website that calls itself “the world’s largest database of user contributed data about cities and countries worldwide.” [http://www. \[REDACTED\]](http://www. [REDACTED]) (last accessed February 10, 2015). According to this source, the average monthly rent for a one-bedroom apartment in the city center is \$460.79, and outside the city center is \$300.37; the average monthly cost for utilities is \$81.79; a monthly pass via the transit system is \$32.91; and a meal at an inexpensive restaurant averages \$2.96. The applicant further submits an article discussing the employment of older Taiwanese workers, defined as 50 years old and above, and how gender and education levels may be disadvantageous factors for older workers.

The applicant also submits a statement from her spouse dated October 22, 2014, in which he indicates he cannot bear the idea of being separated from the applicant, because she is his balance and her attentiveness to him and their family has made his life “easier and more fulfilling”; he would not be able to visit her often in Taiwan due to his fear of flying; he is a heavy sleeper, and without her, he would not have realized that his 86-year old mother, sleeping in the room next to theirs, had fallen during the night; she assisted his mother after an earlier fall that had resulted in a fractured bone; his mother’s treating physician advised him that she needs someone to assist with her daily activities because of her age, medical conditions, and recent falls; he does not include his mother on his tax returns because he does not pay at least one-half of her expenses but he provides her with housing, food, and assistance with her daily activities, and she receives Medicare and Social Security benefits; he intends to pay for his son’s medical-school education, which will cost about \$250,000; and he financially assists the applicant’s daughter, as she is his daughter too, and she has a “distant relationship” with her biological father. The applicant’s spouse’s treating physicians indicate in a letter dated October 10, 2014, that he is currently under their care for allergic rhinitis, anxiety, diabetes, high blood pressure, hypercholesterolemia, hypertension, and panic disorder. They also indicate that he needs the applicant to take care of him, because more stress in his life caused by her absence would increase his anxiety and panic attacks.

The applicant’s mother-in-law indicates in a letter dated October 27, 2014, that she is grateful for the care that the applicant provides to her while her son is at work, and she would not feel comfortable with anyone caring for her other than the applicant and her son. The applicant’s mother-in-law’s treating physician indicates in a letter dated October 13, 2014, that she is currently under care for back pain, hyperlipidemia, hypertension, insomnia, osteoarthritis, and vertigo; in the past year, she has

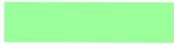
fallen several times, one instance which resulted in a fractured bone in her rib cage; and he has advised that she receive assistance with her daily activities while the applicant's spouse is at work. To corroborate the assertion of additional costs her spouse would incur to provide care for his mother in the applicant's absence, the applicant submits wage results obtained from the Foreign Labor Certification Data Center, indicating an hourly mean wage for a personal care aide in the applicant's metropolitan area is \$10.35.

The applicant's daughter indicates in a letter dated October 15, 2014, that her parents have been divorced since she was two years old, and the applicant alone has constantly supported her financially and emotionally; it is difficult for her to attend nursing school without having her parents nearby to comfort her; she would have to rely financially on her stepfather in the applicant's absence, becoming a financial burden to him; and she fears her biological father, who lives in Mexico, would not continue to support her financially, as he now has a son and traditional Chinese families favor sons.

The record is sufficient to establish that the applicant's daughter has been attending a nursing program and the applicant has served as her daughter's primary support system. The record is further sufficient to establish the applicant's stepson plans to attend medical school and that the applicant's spouse plans to financially assist him during his studies. However, the applicant's daughter and stepson are not qualifying relatives under the waiver provision of 212(i) of the Act, and the record does not sufficiently demonstrate the effect that their hardships would have on the applicant's only qualifying relative, her U.S. citizen spouse. The record does not include evidence to corroborate claims that the applicant's spouse financially supports the applicant's daughter. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Also, the financial impact on the applicant's spouse related to potential costs associated with his son's future medical-school education is speculative, as his son has not been accepted to a medical program, and the record does not establish that other means of financing his medical school education are unavailable.

The record sufficiently demonstrates that the applicant's spouse suffers from various medical conditions and serves as the family's primary breadwinner, with a self-reported monthly surplus of about \$2,400. The record also demonstrates the applicant shares a household with her spouse and mother-in-law and that she assists her mother-in-law, who receives monthly cash assistance of \$877.40 through the Supplemental Security Income federal program. The record further demonstrates some labor conditions in Taiwan and the effect that gender and education levels could have on workers there. The record reflects the applicant is 44 years old and did not pursue higher education. Although the record contains evidence of some of the applicant's spouse's financial obligations and additional costs he may incur in the applicant's absence, it does not demonstrate his inability, as the family's primary breadwinner, to continue to meet his financial obligations without the applicant's assistance.

Although the applicant's spouse may experience a degree of hardship in the applicant's absence, the evidence, in the aggregate, does not sufficiently establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.



In our decision concerning the applicant's appeal, we determined that the evidence established that the applicant's U.S. citizen spouse would suffer extreme hardship upon relocation to Taiwan to be with the applicant given his length of residency, steady employment, family and community ties, and his reliance on healthcare in the United States. The record continues to reflect the cumulative effect of the hardship the applicant's spouse, along with normal hardships upon relocation due to the applicant's inadmissibility, rises to the level of extreme.

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 in 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. In re Pilch*, 21 I&N Dec. at 632-33. 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.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find the applicant has not established extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act.

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. The prior decision of the AAO is affirmed, and the underlying motion is dismissed.