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



U.S. Citizenship  
and Immigration  
Services

Date: **JAN 08 2015**

Office: SAN JOSE

FILE: [REDACTED]

IN RE: Applicant: [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:

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 Field Office Director, San Jose, California. 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 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 by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

The field office director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 29, 2010. The decision to deny the Form I-601 was affirmed on motion by the Field Office Director. *Decision of the Field Office Director*, dated March 28, 2011.

On February 27, 2013, this office remanded the matter to the field office director due to an incomplete Record of Proceeding. *See Decision of the AAO*, dated February 27, 2013.

On September 16, 2014, this office received the Record of Proceeding, including all documentation relating to the applicant's Form I-601 application. 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 record establishes that the applicant misrepresented herself when she applied for asylum in the United States. She admitted under oath that most of the events and claims listed in her asylum declaration were fabricated and were untrue. The applicant is thus inadmissible under section

212(a)(6)(C)(i) of the Act, for having attempted to procure admission to the United States by fraud or willful misrepresentation.

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 or parent of the applicant. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant, her child, or her mother-in-law can be considered only insofar as it results in hardship to a qualifying relative. 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). 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 Ige*, 20 I&N Dec. 880 (BIA 1994)

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, 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 applicant's U.S. citizen spouse contends that he will suffer extreme hardship were he to remain in the United States while his spouse relocates abroad due to her inadmissibility. The applicant's spouse stated that his wife is primary caregiver to their young child and were she to relocate abroad he would not be able to properly care for his child on his own and continue developing his career in investment management. The applicant's spouse also contends that his elderly mother, who lives with him and his wife, needs constant medical attention and that his wife cares for her on a daily basis. The applicant's spouse maintains that were his wife to relocate abroad, he would not be able to provide his mother with the care that she needs. He asserts that he is employed in San Francisco, which is about 1.5 hours away from his home. Finally, the applicant's spouse asserts that he is deeply in love with his wife and separation from her is unthinkable.

The mental health documentation submitted by the applicant on behalf of her husband is from July 2010, almost a year prior to the appeal filing. While we acknowledge the applicant's spouse's contention that he will experience emotional hardship were he to remain in the United States while his wife relocates abroad, the record does not establish the severity of this hardship or the effects on the applicant's spouse's daily life.

As for the financial hardship referenced, the applicant has not submitted documentation establishing her and her husband's complete financial picture, including income and expenses and assets and liabilities. The most recent financial documentation provided is from 2009, almost two years prior to the appeal filing. The applicant has thus failed to establish that her husband would be unable to make alternate employment arrangements for the care of their child while he is working. Moreover, while the applicant's spouse contends that his mother and stepfather are reliant on him for their healthcare and daily life, the applicant has not submitted any supporting documentation establishing their current financial situation, including income and expenses and assets and liabilities, and what, if any, financial contributions they make to the applicant and her spouse's household. Nor has the applicant submitted any documentation from her mother-in-law's treating physician establishing her medical conditions, the treatment plan, and the hardships she would experience were the applicant specifically to relocate abroad. The record indicates that the applicant's brother-in-law visits with his mother every weekend; it has not been established that he would be unable to provide assistance to his mother were the applicant to reside abroad. 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)). The applicant has thus not established that her spouse would experience extreme hardship were he to remain in the United States while she relocates abroad due to her inadmissibility.

In regard to relocating abroad to reside with the applicant as a result of her inadmissibility, the applicant first explains that he has severe allergies and when he has travelled to China in the past, his symptoms have worsened and he has experienced trouble breathing. The applicant's spouse further maintains that he would not be able to transfer his expertise to China because job opportunities for portfolio managers do not exist. He further maintains that he would lose his retirement and healthcare benefits if he relocated abroad. The applicant's spouse also contends that were he to relocate abroad, he would suffer due to long-term separation from his mother, who he maintains is in poor health, and his stepfather. He contends that they are dependent on him for their healthcare and their daily life. Finally, the applicant's spouse asserts that were he to relocate abroad, he would have to sell his properties at a loss and he would not be able to keep up with his financial obligations, including his mortgages, his line of credit and the car payment.

The applicant has failed to establish that her husband would not be able to obtain gainful employment in China. The documentation submitted regarding salaries in China does not establish that the applicant's spouse specifically, with a bachelor's degree in physics, and two Master's degrees, one in Financial Engineering and one in Business Administration, would be unable to obtain gainful employment abroad. Further, the applicant has not provided supporting documentation regarding her mother-in-law's financial and medical situation, to establish that she is unable to visit her son or relocate abroad to be with her son. Alternatively, the applicant has not established that her spouse would be unable to visit his mother regularly and assist in whatever support she may need. Finally, no supporting documentation has been provided establishing that the applicant's spouse would have to sell his properties at a loss and would not be able to keep up with his financial obligations were he to reside abroad. The applicant has thus not established that her spouse would experience extreme hardship were he to reside abroad.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although we are not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law.

The burden of establishing eligibility for the waiver rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.