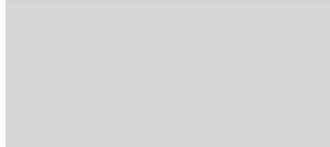


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUN 23 2015

FILE: [REDACTED]

APPLICATION RECEIPT: [REDACTED]

IN RE: Applicant: [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:  
[REDACTED]

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](http://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 New York District Director (director) denied the waiver application. 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 the People's Republic 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 sought admission to the United States through fraud or misrepresentation. The applicant is married to a lawful permanent resident and is the beneficiary of an approved Petition for 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 U.S. relatives.

The director determined that the applicant had not established extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Director*, dated June 19, 2014.

On appeal, the applicant, through counsel, asserts that new evidence establishes his wife will suffer extreme hardship if his waiver application is denied. *See brief filed in support of appeal*, dated July 16, 2014.

The record includes, but is not limited to: briefs; identity and relationship documents; statements of the applicant's son, wife and daughter; reports on employment and the availability of health care in China; medical documentation; and financial documentation. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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 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.

In the present case, the record reflects that on September 17, 1992, the applicant attempted to enter the United States using a fraudulent Taiwanese passport with a counterfeit U.S. visa.<sup>1</sup> The applicant was paroled into the United States for exclusion proceedings. An immigration judge denied his request for asylum and ordered him removed *in absentia* on September 14, 1996. The applicant has not departed from the United States since 1992. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act, for seeking to procure admission to the United States through fraud or misrepresentation. The applicant concedes he is inadmissible under section 212(a)(6)(C) of the Act. The applicant's qualifying relative is his lawful permanent resident wife.

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-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 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

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<sup>1</sup> In his Form I-601 and in accompanying documents, the applicant and his wife now assert that the applicant had no documents when he sought entry into the United States. This assertion, however, is unsupported by the record.

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 at 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.

We will first address hardship the applicant’s qualifying wife would experience if she relocated to China with the applicant. The applicant asserts that his wife’s psychological issues prevent her from relocating to China. He states that she cannot receive the proper psychological care she needs there. In support of his assertions, the applicant provides two reports from a psychologist, stating that the applicant’s wife clearly needs more therapy and that without adequate care, she will suffer progressively worse depression. He notes that she says her life is meaningless and she suffers irritability and severe insomnia. Finally, he concludes that she needs a supportive environment, such that her family can provide. The applicant provides an article, which states that China has a shortage of psychiatrists, to support his claim that his wife would be unable to obtain adequate mental-health care in China. The applicant also provides a statement from his son, indicating that the applicant’s qualifying spouse is emotionally unstable.

The applicant asserts that his spouse has no friends or family in China. In support of this assertion, he submits a statement from his spouse, stating that if she relocated to China, she would be separated from her adult children and grandchildren and that this would tear their family to pieces. She says that she has no family remaining in China. According to evidence in the record, the applicant’s wife has resided in the United States since 2012. She and the applicant married in 1975 and divorced in 1995, three years after he left China to seek asylum in the United States. They remarried in the United States in 2013. The evidence also shows that their two adult children reside in Texas.

The applicant’s wife states that she would experience an additional emotional hardship upon relocation to China, because the applicant is a failed asylum seeker and he would be persecuted in China. She asserts that if the applicant suffers persecution, she will suffer too. In support of her

claim, the applicant submits a copy of his asylum application, filed in 1993, with supporting documentation. One article concerning migrants who were forcibly repatriated to China indicates that many were jailed and fined. This article, however, is from 1993, and therefore is of limited value, given that it is over 20 years old. The applicant provides no other, more current evidence describing the treatment of repatriated Chinese asylum-seekers.

Concerning financial hardship she would experience upon relocation to China, the applicant's qualifying wife asserts that because she and the applicant are undereducated and older, it would be impossible for them to find work in China. She also expresses concern about their ability to find housing. She says that they could not rely on their government for support. To support this claim, the applicant submits an article about the difficulty college graduates in China currently face finding employment. The record, however, does not include evidence to corroborate her claims concerning the lack of government support for elderly citizens and the lack of housing.

It is reasonable to conclude that the applicant's wife may experience some emotional difficulties if she were to return to China with the applicant, taking into account her separation from her adult children and grandchildren. However, evidence in the record indicates that they live in different states in different parts of the country, and the applicant has not shown the frequency of their contact in the United States or that their children would be unable to visit them in China. The record indicates their son traveled to China for surgery and recuperated there for three weeks in 2013. Moreover, the article the applicant submits concerning the availability of mental-health care in China reports some positive changes in the training of mental-health professionals. Though according to the article, China has far fewer psychiatrists than the United States, the applicant has not shown that he and his spouse would live in an area that lacks mental-health professionals. With respect to claims of financial hardship, the applicant has not shown that he would not be able to find employment to support his spouse or that his family in the United States would be unable to assist them financially, if needed. The record also lacks information concerning the applicant's spouse's ability to financially support herself during her 12-year separation from the applicant and their children, which ended when she immigrated to the United States three years ago. The evidence, considered in the aggregate, therefore, does not establish that the applicant's spouse would suffer extreme hardship as a result of relocation.

Addressing the hardship she would experience if she remained in the United States while the applicant returned to China, the applicant's wife writes that she would have difficulty functioning alone because she is illiterate and cannot speak English; she therefore totally depends on the applicant. The applicant's wife also asserts that she could not rely on their two adult children, who live in Texas. Their son is married with two young children and owns a restaurant. He says in his declaration that, given his responsibilities and health issues, he can barely take care of his immediate family, let alone his mother. The record includes evidence to corroborate claims that their son suffers from back problems. The applicant also submits his son's 2013 federal tax return, which lists the applicant's spouse as a dependent.

The applicant's daughter, in a letter, writes that she too is married with two young children and runs her own restaurant in Texas. She does not provide corroborating evidence of her familial and financial situation. She notes that the applicant and her mother tried to live in Texas but had

difficulty adapting there. She asserts that her mother likes living in [REDACTED] because it is more convenient and that the applicant is best suited to care for her mother.

Concerning the emotional hardship the applicant's spouse would experience if they were separated again, a psychologist states that the applicant's wife suffered for many years following their divorce but that her mood improved when she was reunited with the applicant in 2013. The applicant's wife and children also state that the applicant's wife suffered emotionally in China while separated from the applicant and that she would suffer emotionally again if they part. The psychologist states that the applicant's wife suffers from major depressive disorder and a recurrent anxiety disorder. He states that the applicant's wife has reported suicidal ideation.

The applicant does not provide evidence concerning any other types of hardship his spouse may experience if she remains in the United States and he is removed to China.

While the record establishes that the applicant's wife will experience a degree of emotional hardship if she remains in the United States, the applicant does not provide evidence to establish that, considered cumulatively with other types of hardship, including financial hardship, her hardship would be extreme. The record indicates that the applicant's spouse attempted to live with their children in Texas but chose to live in [REDACTED] out of convenience. The applicant has not shown that his spouse's living with their children would cause her emotional or financial hardship or that their children cannot care for her while managing their own family and business responsibilities. The evidence, therefore, considered in the aggregate, does not establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Although the depth of concern over the applicant's inadmissibility is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 applicant has not established extreme hardship

to his U.S. lawful permanent resident spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.