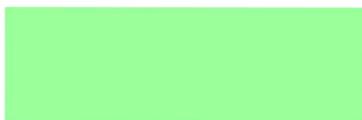




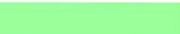
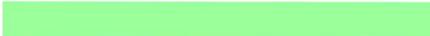
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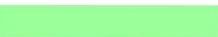
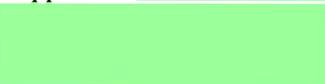


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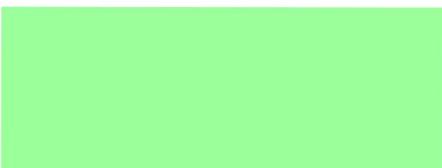
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IN RE:

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. 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 waiver application was denied by the Field Office Director, Indianapolis, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant is a native and citizen of [REDACTED] China, 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 admission to the United States through willful misrepresentation of a material fact. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside with her U.S. citizen spouse and children.

The Field Office Director determined the applicant had not established extreme hardship to a qualifying relative, her U.S. citizen spouse, if she were not allowed to remain in the United States and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated March 18, 2014.

On appeal, the applicant, through counsel, asserts U.S. Citizenship and Immigration Services (USCIS) applied an improper legal standard to evaluate extreme hardship and failed to consider all of the evidence and relevant hardship factors. The applicant also asserts that she has established that her husband would suffer extreme hardship upon her removal from the United States. *See Form I-290B, Notice of Appeal or Motion; see also Brief in Support of the Appeal*, dated May 2, 2014.

The record includes, but is not limited to: briefs; statements by the applicant and her husband; documents concerning identity and relationships; medical records; employment and financial documents; photographs; and documents on conditions in China. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6) of the Act also 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 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 record reflects the applicant arrived at [REDACTED] Airport at [REDACTED] Illinois, on or about November 15, 1999, with a fraudulent passport, and she requested asylum. An immigration judge denied her request, and the Board of Immigration Appeals dismissed her appeal and two subsequent motions. The applicant has remained here to date.<sup>1</sup> 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 her children 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 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 Matter of Cervantes-Gonzalez*, 22 I&N Dec. 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).

<sup>1</sup> The record reflects that the applicant earlier sought to enter the United States at [REDACTED] Airport on February 1, 1997, using a false passport. She was permitted to withdraw her application for admission and left the next day.

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.

The record contains references to hardship the applicant’s children would experience if her waiver application were denied. As noted above, Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

The first issue to be addressed is whether the applicant has established that her husband would suffer extreme hardship should they be separated. The applicant indicates that she and her husband have three children born in the United States and she is their primary caregiver. She further states that their youngest daughter has suffered from eye disease for a long time. She says that to leave her husband and children in the United States would be “too cruel.” She asserts that her spouse would not be able to care for their children alone. The applicant’s spouse says he relies heavily on the applicant to care for their children while he works at his restaurant.

To support claims that her family would experience financial hardship if her spouse remained in the United States, the applicant submits evidence of her spouse’s financial circumstances, including a tax return for 2013 showing their family’s adjusted gross income was \$44,614. She also provides W-2 forms showing that she earned \$12,000 and her husband earned \$26,400 in wages in 2011, in addition to U.S. federal tax documents from 2009 and 2010. The record also contains evidence of some of the applicant’s spouse’s financial obligations; however, it does not demonstrate his inability, as the family’s primary breadwinner, to meet those obligations in the applicant’s absence. Further, the record lacks sufficient evidence of expenses that the applicant would incur in China, and it also lacks evidence of

labor or employment conditions in China to address her own ability to assist her spouse in maintaining their households. 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)). Without further information, we are not in a position to reach a different conclusion concerning the severity of hardships that may be related to the applicant's spouse's financial circumstances.

Addressing the hardship their children would experience if separated from the applicant, the applicant's spouse states that their youngest daughter is still recovering from her 2013 eye surgery and that without the applicant, their youngest daughter would become anxious, and this would worsen her condition. The applicant submits medical documentation, including a May 2013 doctor's letter showing that their daughter was diagnosed with "accommodative esotropia (eye crossing due to farsightedness) and amblyopia of the left eye." The record includes evidence of their daughter's outpatient surgery on November 4, 2013 and, in a follow-up examination in January 2014, the doctor noted that the applicant's daughter had "excellent alignment." The applicant's spouse also states that he would not want to see their children suffer without the applicant.

The record includes limited information about the applicant's spouse's financial circumstances and other relevant hardship factors to address the hardship her spouse would experience if he remains in the United States. Though the record is sufficient to establish the applicant's husband would experience a degree of hardship in the applicant's absence, the evidence, considered in the aggregate, does not establish that the applicant's husband would suffer extreme hardship as a result of separation from the applicant.

To demonstrate the hardship her spouse would experience if he were to relocate to China, the applicant and her spouse state that they fear that they would suffer severe repercussions due to their failure to adhere to China's family planning policies. In her immigration proceedings in 2001, the applicant's wife testified that she lived in the village of [REDACTED] where family planning policies are more strictly enforced.<sup>2</sup> Both the applicant and her spouse assert that they would be denied a household registration because they violated family planning policies. However, the record is insufficient to establish that the family would be denied household registration. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof. *Matter of Soffici*, 22 I&N Dec. at 165. Reports the applicant submits indicate that those who violate family planning policies are fined and sometimes denied social services. However the reports are out-of-date. Moreover, one report states that couples who have been living in the United States and have children in the United States face only nominal fines. U.S. Department of State; Bureau of Democracy, Human Rights and Labor, *China: Profile of Asylum Claims and Country Conditions*, April 14, 1998, p. 31.

With respect to potential medical hardship to her spouse if he were to relocate to China, the applicant's spouse asserts that health care is less available in China than in the United States. He also expresses

<sup>2</sup> The record contains several country-condition reports, at least one of which states that the birth control policy is less strict in [REDACTED] and the policy is unevenly implemented within rural areas, thereby contradicting the applicant's assertion that family planning policies are more strictly enforced in rural areas.

concerns about food quality and pollution. The applicant submits reports generally addressing poor air quality and concluding that medical care standards are not equivalent to those in the United States. She does not submit evidence, however, of a significant medical condition affecting her spouse that could not be adequately treated in China.

The applicant states that finding work in China would be difficult without social connections, and her spouse expresses concerns about poverty there. The applicant, however, submits no evidence concerning current labor conditions in China and how they could affect the applicant's spouse.

The applicant refers to hardship that their children would experience if they were to relocate to China. Specifically, her spouse believes their children would suffer in China, as they do not speak, read or write Chinese. In addition, he asserts that if their youngest daughter accompanied the applicant to China, their daughter would be considered disabled. The applicant submits a 2009 article addressing discrimination against children with perceived disabilities to corroborate his claims that shows these children and their families face significant discrimination in China. The applicant, however, has not established that their daughter would be considered disabled, because the evidence she submits indicates that their daughter's condition was resolved with outpatient surgery in 2013. Moreover, children are not qualifying relatives under section 212(i) of the Act, and hardship to them may be considered only to the extent that it causes hardship to the applicant's spouse.

The record reflects that the applicant's spouse, a native of China, has lived in the United States since at least 2003 when he wed the applicant in New York, and that his parents are lawful permanent residents residing in the United States, establishing his close family ties in the United States. Though the record reflects that the applicant's spouse would experience some difficulties if he were to relocate to China, it does not establish that his hardship would be extreme.

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. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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.