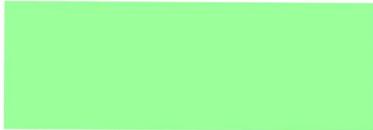




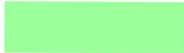
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 11 2015**

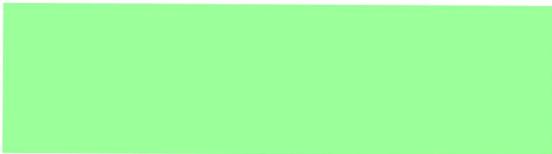
Office: NEW YORK

FILE: 

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 District Director, New York, New York, denied the waiver application 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 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 attempting to procure admission through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to remain in the United States.

The district director concluded the applicant had 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. *See Decision of the District Director*, March 24, 2014.

On appeal, filed on April 23, 2014 and received by the AAO on October 7, 2014, the applicant asserts he provided sufficient evidence to show that extreme hardship to his wife would result from his inability to remain in the United States and claims that positive equities outweigh the negative factors. In support, he offers his wife's updated statement, an updated psychological report, and documents previously submitted. The record contains documentation including: copies of birth, divorce, marriage, and naturalization certificates; financial information; a psychological evaluation and medical records; country condition information; prior benefits applications; records of an asylum proceeding, a removal order, and related documents; supportive statements; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part,

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)(1) of the Act provides:

The [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 that the applicant attempted to procure admission on December 3, 1994 using the altered passport of another person. The applicant was placed in exclusion proceedings, and the immigration judge denied his application for asylum and ordered him excluded on November 5, 1999. The applicant does not dispute that he is inadmissible under section 212(a)(6)(C) of the Act for fraud and misrepresentation and thus requires a waiver of inadmissibility.

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. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident spouse is the only qualifying relative in this case. 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).

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 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 v. INS*, 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.

Regarding the qualifying relative's hardship should she relocate abroad, the applicant asserts that his wife would experience psychological and medical hardship. The psychological hardship claim stems from past harm in China alleged to have occurred in connection with a second pregnancy, labor, and delivery which violated China's family planning policy, as well as the current unavailability of and social stigma associated with treatment for mental health issues, while the medical hardship claim rests on the alleged unavailability of treatment for her hypothyroid condition. The record reflects that the applicant left China in late 1994 and eventually was detained by U.S. immigration officials when he attempted to enter the country on a Taiwanese passport in December 1994. He was paroled into the country, denied asylum in 1999, and divorced by his wife in [REDACTED] due to their having been apart since 1994. She then married a U.S. citizen in China, immigrated as his spouse in [REDACTED], divorced her second husband in [REDACTED] and remarried the applicant in [REDACTED].¹

The applicant provides little evidence that relocating to China would impose on his wife any hardship associated with having given birth to a second child. There is no documentation of the claimed [REDACTED] birth or [REDACTED] death of the applicant's second child or that the applicant's wife was sterilized by local officials for violating family planning policy. In addition, although the applicant's wife lived in China with their son for nearly eight years while the applicant was in the United States, there is no evidence that she endured any other adverse consequences in her community during the time she remained there until her departure in 2002. We note that, when the applicant raised these issues in claiming asylum and stated he fled China for fear he would be subject to forced sterilization and other harm, the immigration judge specifically found the applicant's testimony to lack credibility as to the fact of a second child having been born to him and his wife and the consequences of having a second child. The judge stated the applicant's testimony conflicted with documentary evidence, specifically noted the absence of documentation

¹ Immigration records show the applicant's wife received lawful permanent resident status on [REDACTED], while married to her second husband, and a divorce certificate indicates the marriage terminated on [REDACTED].

that the applicant's wife gave birth to a second child, and cited the lack of evidence that the applicant and his wife were targeted for violating family planning policy.

The applicant further claims the qualifying relative would experience hardship in China because of her ailments, including hypothyroidism, severe depression, and insomnia, coupled with unavailability of treatment for these conditions. The record contains articles regarding difficulties obtaining in China the same medications with which the applicant is being treated here, as well as discussing cultural challenges to obtaining treatment for mental health ailments. While sensitive that medical practices in China differ from standard practices in this country, we note that the applicant has not shown his wife will be unable to continue her current treatments. Official U.S. government reporting indicates that U.S. medications can be obtained, provided proper procedures are followed, *see Country Information—China*, U.S. Department of State, December 3, 2014, and the applicant fails to show that the medications his wife takes are not available or are subject to importation limits. Although sensitive that she will have to find other care providers and acknowledging evidence of challenges in doing so, we observe the record fails to establish suitable treatment is unavailable in China. Notably, the applicant will be able to continue caring for his wife, cook her meals, make sure she rests, assist her physically, and be her companion, in general. Although claiming they will have difficulty earning a living in China, the applicant and his wife provide no evidence how they supported themselves before coming to the United States or that they could not resume doing so upon their return. Further, the record reflects that the qualifying relative's father still lives in China. The applicant's wife states she will miss her four siblings and 25-year-old son if she departs, but there is no further evidence concerning her relationship with her family members to establish that separation from them would result in hardship beyond the common results of removal or inadmissibility.² Considering the entire record, based on a totality of the circumstances, we conclude the applicant has not established that his wife would suffer extreme hardship were she to relocate abroad to reside with him.

The applicant claims that if he departs the United States and his wife remains without him, the impact of his absence upon his wife would exceed the common or typical consequence of removal and rise to the level of extreme, due to his role in helping her cope with depression and anxiety, as well as associated fatigue and headaches, along with symptoms of hypothyroidism. Although the qualifying relative's statements indicate that she is receiving psychotherapy from a psychiatrist who issued the psychological evaluations on record, the evidence shows only that the two evaluation sessions of unknown length were conducted via telephone and this doctor provided two forensic evaluations but no treatment.³ While her physical absence from the first interview is attributed to her presence in Florida to help a sister, no explanation is given for conducting the second interview telephonically. Further, there is no confirmation that the doctor provides her psychotherapy as

² Statements by the applicant's wife and her son indicate he will no longer be supporting his parents after the anticipated birth of his first child in [REDACTED]. While the birth of this grandchild is not on record, the evidence shows that the applicant and his wife no longer reside with their son and his wife.

³ There is evidence the psychiatrist prescribed several medications after the second evaluation, but the applicant fails to establish that his wife filled the prescriptions or followed up with her primary care doctor about them as recommended.

claims, nor any indication that he and the qualifying relative have ever met in his New York City office.

The psychiatrist's initial report states that the qualifying relative's concern about the applicant's immigration status and possible deportation is causing her symptoms consistent with depression, including insomnia, headaches, vision problems, fatigue, and bodily aches and pains. In an updated report six months later, the psychiatrist affirms his diagnosis. See *Psychological Evaluation*, October 7, 2013, and *Psychological Treatment Update*, April 14, 2014. These reports conclude that both medication and emotional support from family and friends are factors in effective treatment of depression, recommend follow-up treatment of her mental state by a psychiatrist, and advise monitoring of her thyroid condition and medication by her family doctor. We note the psychiatrist reports as factual claims the immigration judge found to be unsupported and which remain unsubstantiated: that the applicant's wife gave birth to a daughter, that local officials forcibly sterilized her, and that her husband went into hiding to escape arrest for violating family planning policy. Further, although a 2013 letter from her family doctor confirms the applicant's wife has received thyroid hormone replacement therapy since being diagnosed in 2009 with hypothyroidism, there is no indication in any of the medical records that the applicant's wife stated she was experiencing depression. Neither the doctor's letter nor his medical examination notes indicate the chronic physical symptoms of depression noted in the psychiatrist's reports.

The record reflects that the qualifying relative's four siblings live in the United States and that her only child (an adult son, who is the applicant's petitioner) lives nearby. The applicant and his wife state that, until recently, their son supported them. Further, there is no documentary evidence the applicant's wife has any health condition for which she requires care or assistance that only the applicant may provide. Based on the evidence on the record, we cannot conclude that separation from the husband she remarried less than two years ago will have the claimed consequences. Although sensitive that the applicant's return to China will cause a degree of hardship to his wife, the applicant has not shown she will experience hardship beyond the common or usual consequence of family separation.

Regarding possible financial hardship, the record contains no evidence the qualifying relative ever reported income before claiming \$7,000 on her 2013 joint tax filing with the applicant. The record contains no medical finding that the applicant's wife, who is 48, has a disability that makes her unable to work, and we note her own statement that she was working while married to her second husband. There is no documentation addressing how the qualifying relative supported herself after her 2007 divorce, except for the unsupported statement that at some point her son supported her. There is documentation the applicant earned about \$5,000 in both 2010 and 2011, and \$9,000 in 2012, and an April 2014 employment letter states the applicant's monthly salary as \$1,320, but the record contains no supporting evidence of wages actually received. In sum, the record fails to establish how the qualifying relative met her daily living expenses after the divorce from her second husband, when she reunited with the applicant and how they met their joint expenses, and how they have managed without their son's support. As the applicant fails to establish that he is supporting himself and his wife, he has not met his burden of showing that without his support she will become unable to meet her expenses.

Rather than establish that the applicant's wife depends on the applicant for financial support, the available evidence indicates that both have been largely dependent on others.

Based on the record, there is little indication that the applicant's departure will make his wife unable to meet her financial obligations. Therefore, while sensitive that her husband's departure will remove a wage earner from the household, there is no showing that his continued presence will spare her financial problems. Either way, documentation reflects that they have difficulty meeting expenses with their limited resources and the applicant's wife is thus likely to depend on assistance from other sources to pay her bills, whether or not the applicant is present.

For all these reasons, while we recognize that the applicant's absence would cause hardship to his wife, there is insufficient evidence that the cumulative effect of the emotional and financial hardships to her due to her husband's inadmissibility would rise to the level of extreme. We conclude based on the evidence provided that, were she to remain in the United States without the applicant due to his inadmissibility, his absence would not cause her hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has not established that his wife would suffer extreme hardship if the applicant cannot remain in the United States. The record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States or refused admission. Although we are not insensitive to the qualifying relative's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law. Having again found the applicant statutorily ineligible for relief, 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.