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

[redacted]
BROOKLYN, NY [redacted]

Date: AUG 16 2013 Office: NEW YORK FILE: A[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:

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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.

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. Specifically, the applicant attempted to procure entry to the United States in 1992 by presenting a photo-substituted Taiwanese passport. 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 and children, born in 1997 and 1999.

The district director concluded that 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. *Decision of the District Director,* dated November 16, 2012.

On appeal, counsel for the applicant submits the following: a brief; an affidavit from the applicant's spouse; medical documentation pertaining to the applicant's spouse; an affidavit from the applicant; an affidavit from the applicant's children; a psychosocial diagnostic evaluation; biographic and immigration documentation pertaining to the applicant and her family; copies of photographs of the applicant and her family; support letters from family members; financial documentation; and information about country conditions in China. 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.
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> . . . .
>
> (ii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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 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

> 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.

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 or the children 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-Moralez,* 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. I.N.S.*, 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.

The applicant's U.S. citizen spouse asserts that he will suffer emotional and financial hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he explains that he and his wife have been together since 1995 and they are an integral part of each other's life and long-term separation from her will cause him hardship. The applicant's spouse further notes that he works long hours as a cook and he has hepatitis B and he needs his wife to be by his side and take care of him and his daughters. He contends that he would not be able to raise his daughters on his own as his wife has been their primary caregiver. Moreover, the applicant's spouse details that his daughters need their mother on a daily basis, to guide them and support them. Finally, the applicant's spouse details that he and his wife both work to make ends meet but were his wife to relocate abroad, he would experience a financial shortfall and moreover, he would not be able to afford long-distance phone calls and trips to China to visit the applicant. *Translated Affidavit from* [redacted] dated December 11, 2012. In a separate statement, the applicant's daughters detail the hardships they and their father would experience were the applicant to relocate abroad. They outline the role their mother plays in their daily lives and in the family dynamics. *See Letter from* [redacted] *and* [redacted].

With respect to the emotional hardship referenced, the record contains a psychosocial diagnostic evaluation from [redacted] Ph.D., detailing that the applicant's spouse is suffering from Adjustment Disorder with Mixed Anxiety and Depressed Mood precipitated by his wife's immigration situation. [redacted] further states that the applicant is one of the chief designers and implementers of the family life, is essential to the close-knit family unit and vital to the lives of her husband and children. *See Psychosocial Diagnostic Evaluation from* [redacted], *Ph.D.*, dated December 11, 2012. In addition, medical documentation has been provided confirming that the applicant's spouse has been diagnosed with Hepatitis B and needs continued treatment. *See Letter from* [redacted], *MD*, dated November 20, 2012. Moreover, financial documentation has been provided establishing the role the applicant plays in the finances of the household, earning approximately $180 per week at [redacted] Supermarket. Finally, letters in support have been provided from the applicant's and her spouse's extended family members outlining the hardships the

applicant's spouse and children would face were the applicant to reside abroad as a result of her inadmissibility.

The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse would experience due to the applicant's inadmissibly rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship if he remains in the United States.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The applicant's U.S. citizen spouse asserts that he does not want to relocate to China as he and his children would suffer. To begin, the applicant's spouse details that he has been residing in the United States for over a decade and has numerous ties here, including the presence of his sister and his uncle. In addition, the applicant's spouse explains that he is a Japanese cook in the United States but Japanese food is not popular in China. Alternatively, he states that in order to get a job as a cook in China, he would have to obtain a license and to become a manager at a restaurant, he would need a college degree. Further, the applicant's spouse asserts that his daughters are fully assimilated to the U.S. lifestyle and educational system and were they to relocate to China, they would experience social and academic hardship, thereby causing him hardship. Finally, because the applicant and her husband have two daughters, the applicant's spouse explains that in China they would be fined and his wife would be sterilized due to the one child policy. Also, an additional fee would be imposed for their two daughters to attend school in China. *Supra* at 2-3.

The record establishes that the applicant's children, currently in their teens, are fully integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate to China would constitute extreme hardship to them, and by extension, to the applicant's spouse, the only qualifying relative in this case. In addition, the record reflects that the applicant's U.S. citizen spouse has been residing in the United States for many years. Were he to relocate to China to reside with the applicant, he would have to leave his gainful employment at [redacted] Sushi Restaurant, numerous family members and his community. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen husband would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on

the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face if the applicant were to relocate to China, regardless of whether they accompanied the applicant or stayed in the United States, the applicant's community ties, her gainful employment while in the United States, support letters, the payment of taxes, the apparent lack of a criminal record and the passage of more than twenty years since the applicant's attempt to procure entry to the United States by fraud or willful misrepresentation. The unfavorable factors in this matter are the applicant's attempted entry to the United States by fraud or willful misrepresentation, periods of unlawful presence while in the United States, her placement in removal proceedings and the in absentia exclusion order issued to the applicant in 1993.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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 been met.

ORDER: The appeal is sustained.