



U.S. Citizenship
and Immigration
Services



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FILE:



Office: INDIANAPOLIS, IN

Date:

NOV 10 2009

IN RE:

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: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and 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 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a citizen of the United States and 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 his spouse.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 18, 2004.

On appeal, the applicant lists several reasons for the appeal: severe financial difficulties; added significant health problems; lack of good medical care in China; separation from his spouse; separation from family in the United States; possibility that the applicant's spouse could be arrested for her religious beliefs and the possibility that the applicant could be arrested as a fugitive. *Form I-290B*, dated June 4, 2004. In support of these assertions, the applicant submits a letter, dated May 28, 2004, and several color photographs of the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that, on June 27, 1990, the applicant presented a photo-substituted passport to immigration officials in order to obtain admission into the United States.

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 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 section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to

section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

The applicant contends that if he returns to China he likely will be unable to earn a living comparable to the income he earns in the United States. *Letter from* [REDACTED] dated May 28, 2004. The applicant states that he suffers from several medical problems and fears that he is not in adequate physical condition to perform farm work in his native country. *Id.* The applicant asserts that he is seeking treatment for varicose veins in the United States and contends that he would be unable to obtain medical treatment for this condition in China. *Id.* The applicant states that people die from varicose veins in China because treatment is not available to counteract the condition. *Id.* In addition, the applicant indicates that he had gall bladder surgery and needs medication available in the United States to maintain his health as a result. *Id.* The applicant submits several color photographs evidencing a scar on his abdomen and the signs of varicose veins in his legs. The applicant states that his entire family is reunited in the United States and he would like to remain in this country with them. *Id.* While the AAO is sympathetic to the applicant's plight, section 212(i) waiver proceedings, as written by Congress, do not allow for consideration of hardship imposed on the alien himself.

The applicant further contends that hardship would be imposed on his spouse as a result of relocation to China. The applicant indicates that his spouse would be unable to obtain employment in the remote village of China from which the applicant hails owing to her inability to speak the difficult dialect. *Id.* The applicant states that he fears that his spouse would be unable to cope with the many differences in lifestyle that she would confront as a result of relocating to his village in China. *Id.* The applicant asserts that his spouse is Christian and that Christianity is illegal in China. *Id.* The applicant is fearful that his spouse would be arrested or jailed for her beliefs and in general, would be unable to practice her religion. *Id.*

The record fails to establish extreme hardship imposed on the applicant's spouse if she remains in the United States in the absence of the applicant in order to maintain her chosen lifestyle, access to adequate employment, and expression of her religious beliefs without fear of persecution. The applicant contends that hardship would be imposed on the applicant's spouse as a result of the loss of the applicant's earnings. *Id.* ("This would put a double hardship on my wife. First, it would take away the money I am currently able to contribute ... second, it would require that she send money to me in China ..."). The record fails to include documentation evidencing the specific financial situation of the applicant and his spouse. In the absence of documentation, the record fails to support a finding of extreme financial hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these

proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch* held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals confronted with deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.