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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO, CA

Date: AUG 13 2007

IN RE:

[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:

[REDACTED]

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Francisco, California, 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 procuring a visa by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen 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 her spouse.

The field office director concluded that the applicant 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 Field Office Director*, dated April 27, 2007.

On appeal, counsel asserts that the field office director erred in determining that the applicant failed to demonstrate extreme hardship to her spouse. *Brief in Support of Appeal*, at 2, dated June 26, 2007.

The record includes, but is not limited to, counsel's brief, a psychological evaluation of the applicant's spouse, the applicant's statement, the applicant's spouse's statement and a money wire receipt. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant misrepresented her marital status on a visitor visa application dated December 4, 2000. As a result of this prior misrepresentation, the applicant is inadmissible to the United States.

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

- (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 that:

- (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 a U.S. citizen or lawfully resident spouse or parent of the applicant. 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 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to China or in the event that he remains in the United States, as he is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to China. The applicant's spouse states that he is unable to read, write or speak Chinese, there is little or no market for an English-speaking contractor like himself, it is unlikely that the applicant would find employment, and he would not be able to financially provide for his daughter in college. *Applicant's Spouse's Statement*, at 1-2, undated. The AAO notes that there is no substantiating evidence that the applicant and/or her spouse would be unable to find employment in China in order to support themselves. In addition, hardship to the applicant's spouse's daughter is only relevant to the extent it causes hardship to the applicant's spouse.

Counsel states that the applicant's spouse has no ties to China, he would have to give up his livelihood, he would face daunting obstacles in obtaining employment in China, he would lose liberties and freedoms that he enjoys as a U.S. citizen and it is unlikely that he would be allowed to live in China due to the lack of a permanent immigration process. *Letter in Support of I-601 Application*, at 2-4, dated March 22, 2007. The AAO notes that several of these claims are not supported by documentary evidence. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, relocation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. After a thorough review of the record, the AAO finds that extreme hardship has not established in the event that the applicant's spouse relocates to China.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse's psychologist states that he presented depressive and anxious moods, his chronic foot and ankle pain has gotten worse, he complained about body soreness and his concentration has been poor. *Psychological Evaluation*, at 1, dated June 8, 2007. The psychologist states that the applicant's spouse has a strained relationship with his father, his stepfather emotionally and physically abused him, he was previously married three times for periods of six-months to two years and he has developed a long-term emotional bond with the applicant. *Id.* at 2. The psychologist states that the

applicant takes care of domestic matters, massages her spouse's painful feet, and supports him emotionally. The psychologist asserts that sustaining long-term relationships has been challenging for the applicant's spouse due to his unstable family background and trauma, and that he has been able to achieve stability with the applicant's support. *Id.* The psychologist states that the applicant's spouse is at high risk to be retraumatized and to develop post-traumatic stress symptoms if the applicant is deported. *Id.* at 3. However, the evaluation does not detail the specific symptoms and severity of the symptoms that the applicant's spouse would encounter should he remain in the United States without the applicant. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the generalized anxiety disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Based on the record, the AAO finds that extreme hardship has not established in the event that the applicant's spouse remains in the United States.

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* 21 I & N, Dec. 627 (BIA 1996) 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.

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.

The AAO notes that 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 she 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.