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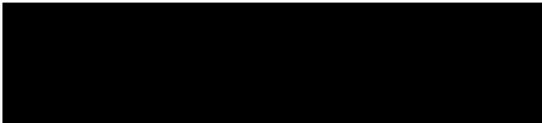


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 11 2007

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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the application will be denied.

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). The applicant seeks a waiver of his ground of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The director found the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were refused admission into the United States. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that the director misapplied legal case law, and that the evidence establishes that his U.S. citizen wife will suffer extreme hardship if he is denied admission into the United States.

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

[A]ny 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.

The record reflects that in 1995, the applicant presented fraudulent passport documentation to U.S. immigration officials in order to gain admission into the United States. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i)(1) of the Act provides that:

The Attorney General [now Secretary, Department 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.

The record reflects that the applicant married his U.S. lawful permanent resident wife in the United States on February 23, 1995. The applicant's wife became a naturalized U.S. citizen on September 29, 2006. The applicant's wife is therefore a qualifying relative for section 212(i) of the Act purposes. U.S. citizen or lawful permanent resident children are not included as qualifying relatives for section 212(i) of the Act purposes. Hardship to the applicant's U.S. citizen children may therefore only be taken into account insofar as it contributes directly to hardship suffered by the applicant's wife.

The applicant asserts, through counsel, that the director misapplied legal case law in his case, and that the facts and legal context of his case are different than in the legal cases cited to in the director's decision. The applicant asserts further that his wife will suffer extreme hardship if he is denied admission into the United States.

The AAO finds the applicant's assertion to be unconvincing. An AAO review of the legal cases cited to in the director's decision reflects that the cases all stated, or interpreted general definitions for the term, "extreme hardship." Citing to *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) and *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), the director stated in pertinent part that, "[a]ppellate authorities have been consistent in requiring that extreme hardship must be different and more severe than that suffered by the relatives of any individual who is removed from the United States or refused admission to the United States." Citing to *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), *Matter of Ngai*, 19 I&N Dec. 245 (Comm. 1984), and *Matter of W*, 9 I&N Dec. 1 (BIA 1960) the director stated, "[i]n determining what is meant by the term 'extreme hardship', it has been interpreted that common results of the bar, such as mere separation, financial difficulties, etc. in themselves are insufficient to warrant approval of an application unless combined with much more extreme impacts."

The AAO finds, upon review of the director's decision and the cited case law, that the legal cases cited to by the director were not used for purposes of a factual comparison between the cases and the applicant's circumstances. Rather, the cited language used in the director's decision was used to state accepted definitions for the meaning of the term, "extreme hardship." The AAO notes further that the fact that some of the cited cases were not waiver of inadmissibility cases is irrelevant in the present matter, as each cited case was referred to only to the extent that it defined general and accepted meanings for the term, "extreme hardship." Accordingly, the AAO finds the applicant failed to establish that the director misapplied legal case law in his case.

In addition to the extreme hardship definitions outlined in the director's decision, the AAO notes that in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) U.S. court decisions have repeatedly held that the common results of deportation (removal) or exclusion (inadmissibility) are insufficient to prove extreme hardship. See *Perez v. INS*, *supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

The applicant's wife (Mrs. [REDACTED]) asserts in an affidavit, that she and the applicant have been married for over ten years and that they have two young U.S. citizen sons. Mrs. [REDACTED] indicates that she and her husband run a discount store and a laundry, and that it would be too difficult to continue the business herself. She asserts that if her husband is denied admission into the United States, she would have to sell her business at a loss, and that she would lose her income and be unable to pay for her two houses. Mrs. [REDACTED] indicates that she does not have a high education and that she might not be able to find a job to support herself and her sons. She indicates further

that her husband would not be able to help her financially if he worked in China. Mrs. [REDACTED] additionally asserts that her family would be torn apart, and that she and her sons would suffer extreme emotional hardship if her husband were denied admission into the United States. The record contains no corroborative evidence to support Mrs. [REDACTED]'s extreme hardship claim.

The AAO notes that Mrs. [REDACTED]'s affidavit makes no assertions regarding hardship that she or her husband would suffer in China. However, on appeal counsel for the applicant submits a copy of a 2003 U.S. Consular Information Sheet on China. Counsel indicates that China has no freedom of religion, speech or press, and that China has coercive family planning policies which could subject the applicant or his wife to forced sterilization. Counsel additionally indicates that the applicant's children would be considered Chinese citizens in China.

The AAO finds, upon review of the totality of the evidence, that the applicant has failed to establish his wife will suffer extreme hardship if he is denied admission into the United States, and she remains in the United States. The hardship claims made by Mrs. [REDACTED] lack material detail, and the record lacks any corroborative evidence to illustrate or establish that the applicant's wife would suffer extreme financial hardship if the applicant were denied admission into the United States, or that she would suffer emotional hardship beyond that commonly associated with removal, if the applicant were denied admission into the United States. Furthermore, the Board held in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), that emotional hardship caused by severing family and community ties is a common result of deportation. The U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), moreover, that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The evidence in the record also fails to establish that the applicant's wife would suffer extreme hardship if she and her family moved with the applicant to China. The AAO notes that the Consular Information Sheet submitted on appeal was three years old at the time it was submitted. Moreover, the record contains no evidence to establish that the applicant's family would be subjected to any of the hardship claims made by counsel. The AAO notes that Mrs. [REDACTED] did not raise the issue of extreme hardship in China in her affidavit, and the record contains no extreme hardship statement by the applicant. In the present matter, the record reflects that the applicant's wife is familiar with the language, culture and environment in China, as she is originally from China. Furthermore, it has been held that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, do not rise to the level of extreme hardship. *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986.)

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. In the present matter, the applicant has failed to establish that his wife will suffer extreme hardship if he is denied admission into the United States. The appeal will therefore be dismissed, and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.