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FILE:

Office: HO CHI MINH CITY, VIETNAM

Date: JUL 18 2007

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:

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 waiver application was denied by the Officer-in-Charge (OIC), Ho Chi Minh City, Vietnam, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], is a native and citizen of Vietnam 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The OIC denied the waiver application, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the OIC*, dated April 18, 2006.

Counsel submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

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.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

The OIC's decision conveys that the applicant misrepresented her employment history to immigration officials so as to obtain an E3 employment visa. The misrepresentation was material: it shut off a line of inquiry that would have shown the applicant was not eligible for the E3 employment visa.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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 the citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and her child is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the present case is the applicant's husband who is a naturalized citizen of the United States. 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).

The AAO agrees with counsel in that the term "extreme hardship" is not a term of "fixed and inflexible meaning" and that establishing extreme hardship is "dependent upon the facts and circumstances of each case." *See, e.g., Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 564 (BIA 1999). The AAO also agrees with counsel's statement that many factors are considered in determining extreme hardship. For example, the Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 564. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

In applying the factors to determine whether there is extreme hardship here, the applicant must establish extreme hardship to her husband in the event that he joins her; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Counsel states the following on appeal. [REDACTED], the applicant's husband, has lived in the United States since 1992. His parents are lawful permanent residents in the United States and his four siblings are U.S. citizens who reside nearby; he spends time regularly with his family; and he has no immediate family outside the United States. It would be financially prohibitive to visit his family in the United States if he lived in Vietnam. [REDACTED] parents are elderly and his mother who has survived breast cancer requires constant monitoring. His parents are assisted financially by their adult children, including [REDACTED] who takes them to medical appointments and the Buddhist temple. [REDACTED] and his present wife have a child together; it would

be a great sorrow to him to raise their child away from his family in the United States. [REDACTED] and his former wife have a son together who he spends weekends with and supports financially. Vietnam's economic and political conditions are appalling; it is an authoritarian government that is corrupt and restricts individual rights and liberties. If [REDACTED] joined the applicant, he would be forced to sell his business, which is his livelihood; he could not find a similar business in Vietnam. [REDACTED] does not possess any specialized skills or knowledge and will not be able to obtain gainful employment in Vietnam. As a foreigner, his rights to employment or starting a business are restricted. [REDACTED] his ties to the community in the United States: he regularly attends temple with his parents and donates time and money to the temple. [REDACTED] is stressed about his family's future; his mental wellbeing and health have been impacted. He has met the standard of "extreme hardship,;

The record contains the affidavit of [REDACTED] and the affidavit of his parents; the content of the affidavits is essentially stated by counsel on appeal. The affidavit of [REDACTED] parents indicates that he lives with them and supports them emotionally and financially. The record contains the applicant's statement, and copies of naturalization and birth certificates, an income tax return, a business license, medical records, a divorce decree, airline tickets, bank statements, receipts of money sent, photographs, and permanent resident cards of [REDACTED] [REDACTED] parents.

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that an applicant has a U.S. citizen child is not sufficient, in itself, to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship)). The Ninth Circuit in *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.

The record is sufficient to establish that the applicant's husband would endure extreme hardship if he joined his wife in Vietnam.

The conditions in Vietnam, the country where [REDACTED] would live if he joins his wife, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted). Even a significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986).

Economic hardship claims of not finding employment in Mexico do not reach the level of extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985). In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship." In a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit found that difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship.

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" Carrete-Michel's claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang*, 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa*, 644 F.2d at 1356-57."

The AAO finds unpersuasive [REDACTED]'s claim of extreme hardship due to economic hardship stemming from an inability to find work in Vietnam and the loss of his business in the United States. As shown in the aforementioned decisions, difficulty in obtaining employment does not constitute extreme hardship. Courts have held that the loss of an investment does not constitute extreme hardship. See, e.g., *Chokloikaew v. INS*, 601 F.2d 216 (5th Cir. 1979) ("Economic detriment, including a loss of investment, does not compel a finding of "extreme hardship."); *Asikese v. Brownell*, 1956, 97 U.S.App.D.C. 221, 230 F.2d 34 (citing loss of investment in luncheonette).

Although hardship to the applicant's child is not a consideration under section 212(a)(9)(B)(v) of the Act, the hardship endured by [REDACTED] as a result of his concern about the well-being of his child, is a relevant consideration. Counsel's June 24, 2005 letter indicates that [REDACTED]'s child in Vietnam "will grow up in a society where his is not treated on an equal bases [sic] because of his derivative U.S. citizenship. He will not have equal access to education and rights of other Vietnamese children." The AAO finds that there is no supporting evidence in the record to substantiate counsel's assertion that [REDACTED] child will endure discrimination on account of his U.S. citizenship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record contains the Final Decree of Divorce between [REDACTED] and his former spouse. This document conveys that [REDACTED]'s son, who is 13 years old, will reside with his mother; and [REDACTED] will have the right to possession of his son as set forth in the provisions in the Standard Possession Order.

The AAO finds similar facts were considered in *Mejia-Carrillo v. INS*, 656 F.2d 520 (9th Cir.1981), a case in which the Ninth Circuit found the BIA failed to consider noneconomic facts bearing on extreme hardship. The noneconomic facts were the separation of a teenage son from his divorced father and his completion of high school in the United States. Similarly, in *Bastidas v. INS*, 609 F.2d 101, 105 (3<sup>rd</sup> Cir. 1979), a case involving the divorced father of a young child, the Third Circuit found that the non-economic, emotional hardship which would result from the separation of [REDACTED] and his young son from each other had not been sufficiently considered.

With the situation here, [REDACTED] states that he has a close and affectionate relationship with his son who he spends time with on weekends. It is noted that if [REDACTED] joins the applicant in Vietnam, he would be separated from his 13-year-old son who resides with his mother in the United States in accordance with the divorce decree. Based on these facts, the AAO finds that [REDACTED] would endure extreme hardship if separated from his son given that his right to possession of his son is governed by the provisions in the Standard Possession Order.

As previously stated, the applicant must also establish extreme hardship to her husband in the event he remains in the United States without her.

The evidence in the record is insufficient to establish that [REDACTED] will endure financial hardship if he remains in the United States without his wife. Presently, [REDACTED] pays \$280 in child support in accordance with a divorce decree; he provides some financial assistance to his parents with whom he lives; and he sends money to his wife and child in Vietnam. [REDACTED]'s federal income tax return for 2005 reflects business income of \$21,284. Since the record contains no information about [REDACTED] monthly expenses, the applicant is unable to establish that her husband is unable to meet monthly expenses.

Furthermore, U.S. courts have universally held that economic detriment alone is insufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9<sup>th</sup> Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider).

The record reflects that [REDACTED] is very concerned separation from his wife and child who was born on January 4, 2005. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. After carefully considering all of the evidence in the record, it finds that [REDACTED]'s situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship to be endured by [REDACTED] while separated from his wife and child, is unusual or beyond that which is normally to be expected upon deportation. *See Hassan and Perez, supra*.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the

cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.