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

PUBLIC COPY

[REDACTED]

H2

FILE: [REDACTED]

Office: BALTIMORE

Date:

JUL 23 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), 8 U.S.C. section 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Baltimore, Maryland, 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 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 admission to the United States by fraud or willful misrepresentation. The applicant does not contest this finding. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The record reflects that the applicant attempted to procure admission to the United States using a photo-substituted Japanese passport with no visa on January 27, 1993. The applicant was placed in exclusion proceedings and ordered excluded under sections 212(a)(6)(C)(i), 212(a)(7)(A)(i)(I), 212(a)(7)(B)(i)(I) and 212(a)(7)(B)(i)(II) of the Act upon failing to attend his scheduled hearing on January 28, 1993. The record also contains an apparently unadjudicated Form I-589 Request for Asylum in the United States filed by the applicant on March 5, 1993.

The applicant and his wife, [REDACTED], were married in the New York City on December 28, 2000. They have two U.S. citizen daughters. In a letter dated December 12, 2006, [REDACTED] has indicated that she is pregnant with the couple's third child. [REDACTED] a native of China who became a naturalized U.S. citizen on February 14, 2003, filed a Form I-130, Petition for Alien Relative, on the applicant's behalf that was approved on March 3, 2005. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on April 1, 2005 and an Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 25, 2005. The applications were denied on May 11, 2006 because the applicant failed to submit documentation showing extreme hardship would be imposed on the applicant's spouse by his removal from the United States. The applicant filed a new Form I-485 adjustment application and a new Form I-601 waiver application on June 10, 2006.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of Acting District Director Gregory L. Collett*, dated January 9, 2007.

On appeal, counsel contends that the director failed to adequately consider all the evidence of hardship submitted by the applicant. Counsel asserts that the applicant's spouse will lose her only means of income if the applicant returns to China, as she would be forced to close the small restaurant they own and operate together. Counsel also observes that the applicant's spouse suffers from depression and depends on the applicant for emotional support. Counsel states that if the applicant's spouse returned to China with the applicant, she would suffer emotionally from being separated from her parents and siblings and living in the country where her father was tortured. Counsel also notes that the applicant and his spouse wish to have a son, and could face persecution in China for attempting to have additional children.

The record contains a copy of the marriage certificate of the applicant and her spouse; an affidavit from the applicant's spouse dated June 5, 2006 and letters from the applicant's spouse dated October 1, 2006 and December 12, 2006; a psychological evaluation of the applicant and his family from [REDACTED]

copies of the birth certificates of the applicant's daughters [REDACTED] born in Leon County, Florida on January 11, 2000, and [REDACTED], born on October 11, 2002 in Baltimore, Maryland; copies of home and car loan documents; and copies of financial and tax documents for the applicant and his spouse. The entire record was reviewed and considered in rendering this decision.

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 waiver of inadmissibility under section 212(a)(6)(C) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or to his children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

Matter of O-J-O, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

U. S. courts have stated, “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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if her husband is not granted a waiver of inadmissibility. In his decision, the director determined that the applicant’s spouse would experience extreme hardship in China but stated that “[t]hough there is the concern of economic, health, and psychological issues if [the applicant’s] spouse returned to China with you, she still has the option of not facing those difficulties by remaining in the United States.” The AAO concurs with this determination.

The applicant has asserted that his removal from the United States would result in psychological hardship to his spouse, who would be compelled to raise their children alone, and in economic hardship due to the closure of the applicant’s restaurant, which supplies the only means of income for his family. The director determined that “there was no information given as to what were the roles or duties [the applicant] provide[s] in the business that make it so that if [the applicant] were removed from the United States it would result in the loss of the restaurant.” Tax documents submitted by the applicant reveal that the applicant is the sole proprietor of the “China Garden” restaurant and do not list additional employees, but counsel has failed to adequately address the director’s concerns on appeal. Rather, counsel in essence requests that the AAO infer from the scant evidence submitted that neither the applicant’s spouse nor hired employees could maintain the restaurant in the applicant’s absence, and that the closure of applicant’s restaurant is therefore inevitable should the applicant not be granted a waiver of inadmissibility. Although the statements by the applicant, his spouse and counsel are relevant and have been taken into consideration, little weight can be afforded it in the absence of supporting evidence. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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 AAO recognizes that [REDACTED] would suffer emotionally as a result of separation from the applicant if she chooses to remain in the United States. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter from [REDACTED] 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. There is insufficient evidence showing that [REDACTED] situation is different from most individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.