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FILE:

Office: SAN FRANCISCO, CA

Date:

MAY 15 2007

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:

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 District 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 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 procured admission into the United States by fraud or willful misrepresentation on May 1, 1991. The applicant is married to a U.S. citizen and has three U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In his decision, the district director states that the applicant previously applied for adjustment of status and had her waiver application denied and subsequent appeal dismissed. The district director found that no new evidence or argument was provided that would result in a different finding than what was previously decided by the district office and the AAO. The application was denied accordingly. *Decision of the District Director*, dated March 30, 2005.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. He states that the district director failed to consider that if the applicant is removed, her spouse would be fully responsible for their children. Counsel asserts that the hardship to the applicant's children should be considered insofar as it will affect the qualifying U.S. citizen spouse. Counsel also states that the district director abused his discretion because the applicant's only negative factor is her misrepresentation. *Addendum to Form I-290B*, dated April 27, 2005.

The AAO notes that subsequent to the submission of the appeal on April 28, 2005, the applicant retained new counsel who contends that prior counsel was both unethical and ineffective in representing her. The applicant's current counsel submits a brief and documentation in support of the applicant's Form I-290B, including a psychological evaluation for the applicant, supplemental declarations from the applicant and the applicant's spouse, statements from the applicant's children, medical reports related to the applicant's health, tax returns and earnings statements for the applicant and the applicant's spouse, and country conditions information on China.

The record indicates that on May 1, 1991, the applicant presented a photo-substituted passport from Panama with another's person's identity to gain entry into 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien herself experiences or her children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 alien 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. The BIA has held:

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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 notes that extreme hardship to the applicant's spouse must be established in the event that he resides in China or in the event that he resides in the United States, as he is not required to reside outside of

the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in China. Counsel states that applicant's spouse is unable and unwilling to accompany the applicant to China. *Counsel's Brief*, dated July 29, 2005. Counsel states that the applicant's spouse has an 82 year-old mother who lives in the United States and depends on him, he also has other siblings living in the United States from whom he does not want to be separated. Counsel states that the applicant's spouse does not have permission to legally live and work in China; does not speak Chinese and would be unable to find employment due to the language barrier. In addition, counsel states that as a worker in China, the applicant's spouse would face possible human rights abuses; his freedom of movement and ability to look for work would be restricted; and he would not be able to practice Catholicism freely. In support of his assertions regarding the country conditions in China, counsel submitted various human rights reports. Counsel cites parts of the 2004 State Department Country Report on Human Rights Practices to support his claims. The State Department report on China states that, "workplace safety remained a serious problem...The Chinese government continued to deny internationally recognized worker's rights." *States Department Report at page 3*. The States Department Report also states that, "Freedom of movement continued to be restricted...Many persons could not officially change their residence or workplace within country. Government and work unit permission were often required before moving city to city...Further, migrant workers were generally limited to types of work considered less desirable by local residents, and they had little recourse when subjected to abuse by employers and officials." *Id at page 26*. In support of his assertions regarding freedom of religion in China, counsel submitted a Human Rights Watch report, entitled *Freedom of Thought, Conscience, Religion and Belief*. The Human Rights Watch Report states that, "China's government, through a series of Party policies and government regulations including the March 1, 2005, 'Regulations on Religious Affairs,' sharply curtails both freedom of religious belief and the freedom to express one's belief." *Human Rights Watch Report*, dated July 21, 2005. The State Department also reports that the Chinese government in 2004, "...tried to control and regulate religious groups to prevent the rise of sources of authority outside the control of the Government and the Party....Overall, government respect for religious freedom remained poor...." *State Department Report at page 21*. The AAO finds that because of the restrictions on freedom of movement, employment and religious practice in China, the applicant's spouse's inability to speak the Chinese language, and his family ties to the United States, he would suffer extreme hardship as a result of relocating to China to be with the applicant.

However, the applicant has not established that her spouse would suffer extreme hardship in the event that he remains in the United States. Counsel states that the applicant's spouse will suffer emotionally and economically if the applicant is removed from the United States. *Counsel's Brief*, dated July 29, 2005. He explains that the applicant's spouse will suffer extreme emotional hardship, knowing the conditions the applicant is returning to in China. The applicant states that in China she lived in a harsh environment. She states that she had an abusive husband and was a child laborer. *Applicant's Declaration*, dated July 28, 2005. The applicant's states that in 1985, she became pregnant with her fourth child and was forced to have an abortion. The government then inserted a contraceptive device called an intrauterine device into the applicant's uterus. *Id*. The applicant states that if she returns to China she fears her ex-husband will still be living in her village. In 1987, the applicant states she went to live with her sister in Panama. In 1989, a war broke out in Panama and her sister's grocery shop, where the applicant was working, was looted. During this

looting, the applicant states that she was shot in the head, but the bullet only grazed her head. She states that she lost a lot of blood and suffers horrible headaches from the injury. After this incident the applicant states she decided to leave Panama and come to the United States. *Id.* The applicant also states that she has thoughts of suicide if she had to return to China and would not be able to receive psychological care in China. She states that her husband and children are the only people keeping her alive. For these reasons, the applicant's spouse states that he is fearful for his wife to return to China and that her emotional suffering would cause him great anxiety and sadness. *Spouse's Declaration*, dated July 28, 2005.

In support of these assertions, counsel submitted a psychological evaluation from [REDACTED] Ph. D., Dr. [REDACTED] evaluated the applicant in 2002 and then again on July 8, 2005. *Psychological Evaluation*, dated July 18, 2005. Dr. [REDACTED] states that if sent back to China, the applicant's depressive symptoms would likely exacerbate and the risk of suicide would also increase. She reiterates this point by stating that with the applicant's very poor coping skills, her already fragile psyche and her current psychological symptoms she will be more at risk for depression and suicidal ideation. *Id.* The evaluation also shows that in 2002 Dr. [REDACTED] strongly recommended that the applicant be referred for psychiatric treatment. The record contains no evidence suggesting that the applicant has had further psychological or psychiatric treatment for symptoms as serious as suicidal ideation. Furthermore, as stated above, hardship the alien herself experiences due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. The applicant's spouse states that the thought of the applicant's removal causes him heartache, as he fears that the applicant would become suicidal if he returned to China and, further, that she would not be safe from China's repressive government. *Spouse's Declaration*, dated July 28, 2005. Although counsel asserts that the applicant's spouse would suffer extreme hardship knowing the conditions his wife would face in China, the record contains no evidence to establish the effect of the concerns felt by the applicant's spouse on his mental and/or physical health.

The applicant's spouse also states that if the applicant is removed, he will be left to care for her children. *Spouse's Declaration*, dated July 28, 2005. The AAO notes that the applicant's children are ages 27, 25 and 23 and no financial documentation was provided to show that they are dependent on the applicant and/or her spouse.

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.

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.