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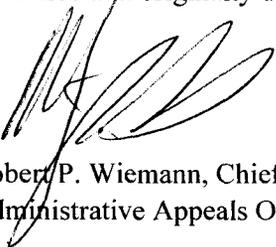
APPLICATION:

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:

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 Director, California Service Center, 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 procured admission to 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), in order to remain in the United States with her U.S. citizen spouse and child.

The record reflects that the applicant and her spouse, [REDACTED], a native of China who became a naturalized U.S. citizen on December 13, 1994, were married in the United States on March 17, 1997. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf in May 1997. The applicant, who had been granted voluntary departure by an immigration judge during deportation proceedings in 1995, simultaneously filed an Application to Register Permanent Resident or Adjust Status (Form I-485). The I-130 petition was approved in May 1998. On July 15, 2005, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601), which states "in the event the CIS finds the Applicant to have used fraudulent documents, the Applicant seeks waiver of excludability on the basis of extreme hardship to her US citizen husband and US citizen child."

The director determined that the applicant gained admission to the United States in 1995 by using a false passport bearing a different name than her own and found the applicant inadmissible pursuant to section 212(a)(6)(C)(i). *Decision of Director (I-485)*, dated April 24, 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 Director (I-601)*, dated April 24, 2006.

In a brief submitted on appeal, counsel contends that the director's determination that the applicant used a "false passport bearing a different name other than her own" to gain admission to the United States in 1995 is unsupported by any evidence in the record. Counsel observes that the applicant was never charged with fraud or willful misrepresentation when she was referred to deportation proceedings, and no allegations of fraud or willful misrepresentation were made against her during deportation proceedings. Citing *Forbes v. INS*, 48 F.3d 439, 443 (9th Cir. 1995), counsel asserts that the government is required to "produce evidence sufficient to raise a fair inference that a statutory disqualifying fact . . . actually existed," but that the director failed to meet this requirement by producing documentary evidence showing that the applicant attempted to procure admission to the United States by fraud or willful misrepresentation as alleged.

Counsel also asserts that the applicant's U.S. citizen husband will experience extreme hardship as follows if the waiver application is denied:

1. The applicant's spouse will face "mistreatment under China's mandatory one-child birth control policy, including involuntary sterilization, as he already has three children from a previous marriage."
2. Relocating to communist China will result in a "devastating change of lifestyle" for the applicant's spouse because he has been residing in the United States for the last twenty-three years.

3. The applicant's spouse will face severe financial hardship if he relocates to China because he will lose his house and restaurant and everything else he has worked for in the United States.
4. If the applicant's spouse does not relocate to China, he will experience the loss of his wife's consortium, love and care. He will be unable to operate his restaurant and also care for his son.

Finally, counsel summarizes the positive factors warranting a favorable exercise of discretion and contends that these factors outweigh the negative factors in this case.

The record includes counsel's brief; a joint statement by the applicant and her spouse; copies of bank statements, a residential lease, a life insurance policy, phone and utility bills for the applicant and her spouse; tax records and other financial documents for the applicant and her spouse; affidavits from friends attesting that the marriage between the applicant and her spouse is bona fide; and wedding photographs. The entire record was reviewed in rendering a decision on the appeal.

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.

Contrary to counsel's assertions, the record does contain sufficient evidence that the applicant procured admission to the United States in 1995 by fraud or willful misrepresentation of a material fact when she presented a passport and U.S. visa bearing another person's name. On her Application for Asylum and Withholding of Deportation (Form I-589), the applicant initially indicated that she entered the United States without inspection at Detroit, Michigan on April 1, 1995. However, during her asylum interview on July 10, 1995, this information was corrected to indicate that the applicant was admitted as a "visitor on someone else's passport and visa." The applicant acknowledged that this correction was made by her or at her request upon signing the Form I-589 at the interview. Therefore, there is sufficient evidence in the record to support the finding that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 and her child 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-Morales*, 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.

In their joint statement, the applicant and her spouse contend that the "loss of consortium, affection, family unity and financial contribution" from the applicant will cause severe disturbances and hardship. They also indicate that the applicant has not lived in China for many years and "will no longer be accustomed to the substandard living style and facilities in the rural Fujian China area." They assert that they will face mistreatment in the form of coercive sterilization under China's one-child policy because the applicant's

spouse has three children from a previous marriage. They state that the applicant will lose his restaurant if he relocates to China, or be unable to operate the restaurant if he has to care for the couple's child in the applicant's absence, which will cause him financial hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant if he chooses to remain in the United States. However, the applicant has submitted insufficient evidence showing that any psychological or emotional consequences would constitute extreme hardship when considered with other hardship factors. Rather, the hardship described by the applicant and her spouse is the typical result of removal or inadmissibility and it does not rise to the level of extreme hardship based on the record. The 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.

The applicant and her spouse have stated that they will face coercive sterilization in China, and that the applicant will lose his restaurant if he relocates there, or if he is forced to care for the couple's child alone in the United States. However, the applicant has failed to submit evidence to support either of these assertions. The applicant has submitted no evidence demonstrating that individuals similarly situated to her and her spouse face coercive sterilization in China. There is also no evidence showing that the applicant owns and operates a restaurant, or showing in any detail the financial impact denial of the waiver application would have on him. Although the statements by the applicant and her spouse are relevant and have been taken into consideration, little weight can be afforded them 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)). Likewise, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported 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 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 her U.S. citizen spouse as required under section 212(i) of the Act. 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 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.