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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2

[REDACTED]

FILE:

Office: SAN FRANCISCO, CA

Date:

APR 03 2008

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)

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 Field Office 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 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 to procure admission into the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen and she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her family.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 30, 2007.

On appeal, counsel asserts that the applicant has established that her spouse would suffer extreme hardship and the acting district director abused her discretion in denying the waiver application. *Brief in Support of Appeal*, at 9, dated May 29, 2007.

The record includes, but is not limited to, counsel's brief, the applicant's statements, the applicant's spouse's statement, the applicant's medical records, the applicant's daughter's medical records and tax return for the applicant and her spouse.

The record reflects that on May 25, 1991, the applicant attempted to procure admission into the United States with a fraudulent Panamanian passport. As a result of this prior misrepresentation, the applicant is inadmissible under 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.

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 a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant's children is a permissible consideration only to

the extent that such hardship may affect the qualifying relative. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include, but are not limited to, the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he relocates to China or in the event that he remains in the United States, as he is not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse upon relocation to China. The applicant's spouse states that he is an experienced Chinese chef, his skills are specialized in the Bay Area, he does not have formal training like the chefs in China, he would not be competitive in the Chinese job market, jobs are difficult to obtain, he would likely be unemployed and become extremely depressed. *Applicant's Spouse's Statement*, at 2, undated. The applicant's spouse also states that her daughter would not be able to go to China as she must live where she can receive excellent and fast medical treatment. *Id.* The applicant further asserts that her children could not relocate to China because the family could not afford medical care there. *Applicant's Statement*, at 4, undated. However, there is no evidence that the applicant's spouse would be unable to find work in China or that her daughter could not receive adequate medical treatment in China. The AAO notes that there is no substantiating evidence of financial hardship or any other relevant type of hardship should the applicant's spouse relocate to China. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)). After a thorough review of the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse relocates to China.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel states that the applicant and her spouse have been married for more than 15 years and have two seven-year old children. *See Brief in Support of Appeal*, at 3. As evidence of his emotional attachment to the applicant, the applicant's spouse states that the applicant has had two gynecological operations, she has had other medical problems, she has been through a lot of physical pain and he has been her source of emotional support. *Applicant's Spouse's Statement*, at 1. The applicant's spouse states that if the applicant is removed he would have to work even longer hours than he already does to pay for his household here and a household in China and to hire a nanny as he has no family in the United States who can help with childcare. *Id.* at 2. The applicant's spouse also asserts that he relies on the applicant for emotional support and without her would feel completely alone. *Id.* The applicant states that she currently

cares for the children, and that if she is removed, her spouse would have to hire someone to care for them eight hours a day. *Applicant's Statement*, at 3. She contends that this would be too expensive for him as he earns slightly more than \$10,000 per year, and he also sends money to her parents in China. *Id.* at 3-4. Although the applicant's spouse claims he works very long hours, seven days a week, and could not afford child care, the record includes an employer letter which reflects that the applicant's spouse is only working part-time and is paid \$800 a month (which is approximately \$10,000 per year). *Letter from Applicant's Spouse's Employer*, dated November 16, 2006. Therefore, the applicant's spouse's financial state and the level of his proposed financial hardship is not clear from the record. In addition, the record does not include evidence that the applicant would not be able to find work in China in order to support herself and her parents.

The applicant states that she has a close relationship with her children, they would be saddened by living apart and this would bring great hardship to her spouse. *Applicant's Statement*, at 3. The applicant states that she would not be able to treat and comfort her asthmatic daughter and that this would bring great pain to her spouse. *Id.* at 4. The record does not include substantiating evidence of the emotional hardship that the applicant's spouse would encounter in this situation. In addition, the submitted medical records do not establish that the daughter's problem is so severe that a single parent could not deal with it or would be traumatized in trying to deal with it.

The AAO notes that separation as a result of removal commonly creates emotional stress and financial and logistical problems. The record reflects that the applicant's spouse would encounter difficulties without the applicant. However, the AAO finds that the record contains insufficient evidence to establish extreme hardship in the event that the applicant's spouse remains in the United States.

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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative 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. Therefore, counsel's contentions in regard to this aspect of the application (such as whether the applicant is an "absconder") will not be addressed.

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.