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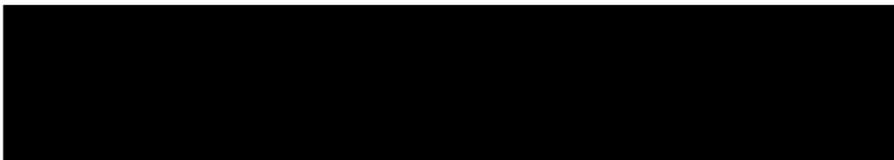
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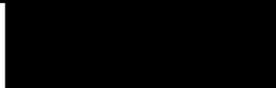
U.S. Citizenship
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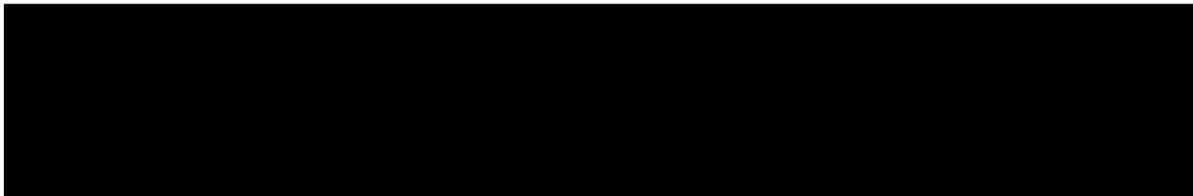
Date: FEB 21 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Phoenix, Arizona and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the People's Republic 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and is the daughter of a lawful permanent resident. 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 spouse, mother and children, one of whom is a United States citizen and the other is a lawful permanent resident.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, undated.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(i) of the Act. *Attorney's brief*; dated March 15, 2006.

In support of his assertions, counsel submits a brief. The record also includes, but is not limited to, an affidavit from the applicant, affidavits from the applicant's spouse, an affidavit from the applicant's mother, school report cards and certificates for the applicant's children, tax statements, and photographs. 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.

The record reflects that the applicant used a sham business letter in order to acquire a United States visa through the United States consulate in Shenyang, China. *See Form I-485, Application to Register Permanent Residence or Adjust Status; Consular Memorandums*. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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. The plain language of the statute indicates that hardship that the applicant's child or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse or the applicant's mother if the applicant is removed. Hardship to the applicant's children will be considered only to the extent that it affects a qualifying relative. If 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, 565-566 (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 the presence of a 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.

The AAO notes that extreme hardship to the applicant's spouse or mother must be established in the event that they reside in China or the United States, as they are 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.

If the applicant's spouse travels with the applicant to China, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a naturalized United States citizen from Iran. *See naturalization certificate*. The applicant's spouse has lived in the United States since 1983. *Affidavits from the applicant's spouse*, dated October 24, 2005 and March 7, 2006. He does not speak Chinese, nor has he ever visited China. *Affidavit from the applicant's spouse*, dated March 7, 2006. The applicant's spouse is concerned that he would be unable to find any meaningful employment in China and would thus be unable to provide adequately for his family. *Id.* While the AAO acknowledges the concerns of the applicant's spouse, it notes that the record fails to provide country conditions information concerning employment in China, specifically the employment of individuals who are not citizens of China. There is nothing in the record to show that the applicant would be unable to contribute to her family's financial well-being in China. Furthermore, the record fails to document the education level of the applicant's spouse and what skills he may or may not possess that would affect his marketability in China. The record also does not demonstrate what expenses the applicant and her spouse have. While the applicant's spouse stated that he bought a house in the United States (*See affidavit from the applicant's spouse*, dated March 7, 2006), the record does not address the various expenses the applicant's spouse has, such as mortgage payments, which would be affected should he accompany the applicant to China. The applicant and her spouse own a massage parlor business in the United States. *See tax statements; affidavits from the applicant's spouse*, dated October 24, 2005 and March 7, 2006. The business is their sole source of income. *Affidavit from the applicant's spouse*, dated March 7, 2006. As previously mentioned, there is nothing in the record to show that the applicant would be unable to

contribute to her family's finances from China or that the applicant would be unable to secure some type of employment in China. Additionally, while the applicant and her spouse have a young son who was born in the United States, the record does not demonstrate that the applicant's spouse has any other family members living in the United States. When looking at the aforementioned factors, the AAO finds that the applicant has not demonstrated extreme hardship to her spouse if he were to reside in China.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The AAO observes that the applicant and her spouse have a United States citizen son who was born on May 20, 1999. *See birth certificate*. Although United States or lawful permanent resident children are not qualifying relatives for this particular case, the AAO, as previously noted, will consider the effect of such children upon the qualifying relative. While the record notes that the applicant has almost exclusively cared for their United States citizen son since his birth (*See affidavit of the applicant*, dated October 24, 2005), the record does not document how the applicant's spouse would be affected if he were to assume responsibility for the care of their son in the United States while the applicant resided in China. With regard to the massage parlor business that the applicant's spouse co-owns with the applicant, the applicant's spouse states that he is highly dependent upon the applicant in communicating with their employees, as all of the employees only speak Chinese as they were trained at Chinese massage schools in China. *Affidavit of the applicant's spouse*, dated March 7, 2006. While the AAO acknowledges this concern, it notes that the record does not explain why the applicant's spouse would be unable to hire employees trained at Chinese massage schools who also speak English or why the applicant's spouse would be unable to hire an interpreter to assist him with the business. According to the applicant's spouse, if the applicant were to return to China, the massage parlor would soon go out of business. *Affidavit from the applicant's spouse*, dated March 7, 2006. The AAO notes that the issue is not whether the applicant would be returned to her native country, but whether the applicant's qualifying relative would suffer extreme hardship. Furthermore, as previously noted, there is nothing in the record to demonstrate that the applicant would be unable to contribute to her family's finances from China. The applicant's spouse states that he loves his wife and it would be the saddest moment in his life if the applicant were forced to go back to China. *Id.*

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. Separation from a loved one is a normal part of the removal process. In this particular case, the applicant has not shown that his emotional hardship is beyond the normal results that one endures. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not demonstrate that the hardship that would be experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the United States.

While counsel is correct in asserting that both United States citizen and lawful permanent resident parents are qualifying relatives in Form I-601 waiver proceedings (*See attorney's brief*), the AAO notes that the record in the present case fails to include evidence of the lawful permanent resident status held by the applicant's mother, apart from a written statement from the applicant's mother indicating that she acquired her permanent residency in 1993. 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)). As the record fails to demonstrate that the applicant's mother is in fact a lawful permanent resident, the AAO will not conduct an analysis of the hardships she would suffer as a result of the applicant's inadmissibility.

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(a)(6)(C) 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.