



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JAN 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.

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 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 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 is the spouse of a U.S. citizen and 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.

The 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 Director*, dated November 28, 2006.

On appeal, counsel asserts that the applicant has met the required qualifications and discretionary factors to be granted a waiver. *Form I-290B*, received December 27, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statement, several letters of support and a psychosocial evaluation of the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on April 2, 1993, the applicant attempted to enter the United States by presenting a fraudulent employment authorization card to an immigration officer. As a result of this prior misrepresentation, the applicant is inadmissible to 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.

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 extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. As the applicant's children are not qualifying relatives, their hardship is only relevant to the extent that it causes hardship to the applicant's spouse. 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 non-exclusive 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 lawful permanent resident or United States citizen spouse or parent in 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 she relocates to China or in the event that she remains in the United States, as there is no requirement 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 his spouse in the event of relocation to China. The record reflects that the applicant's spouse's father, mother, brother, sister and children reside in the United States. *List of the Applicant's Spouse's Relatives*, undated. Counsel states that the applicant's spouse has very few family ties in China, she will have trouble adjusting in China due to her assimilation into American culture and she will face stiff penalties for violating China's one-child policy. *Brief in Support of Appeal*, at 3, undated. Counsel states that the applicant's spouse came to the United States in 1995 at the age of 18 and was often persecuted in China as her father was a dissident. *Response to RFE*, at 3, dated July 15, 2006. The applicant states that he and his spouse have no job prospects in China and there is no hope in opening a Chinese restaurant in China. *Applicant's Statement*, at 1, dated July 14, 2006. The AAO notes that the record does not contain evidence sufficient to substantiate that China's family planning requirements would be imposed on a U.S. citizen whose children were born in the United States. Neither does it offer country conditions information to demonstrate that the applicant and his spouse would be unable to find employment that would allow them to support their family. The AAO notes counsel's claims regarding the past mistreatment of the applicant's spouse in China and the applicant's spouse's claim that she was bullied and oppressed because her father was a member of the June Fourth Civilian Movement and that this situation would be worsened if she returned. However, the record contains no evidence that indicates that family members of those associated with the events of June 4, 1989 in Tiananmen Square are currently the subject of discrimination or oppression. 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)). As such, the AAO finds that extreme hardship has not 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 his spouse remains in the United States. Counsel states that the family's income comes from the applicant's restaurant and it will cease to exist if he is returned to China. *Brief in Support of Appeal*, at 3-4. Counsel also contends that there is no means for the applicant to support his family from China due to his present status and background. *Id.* at 4. Counsel's assertions regarding the financial impact of the applicant's removal are

not supported by the record. No evidence has been submitted to establish that the applicant's spouse would be unable to continue the operation of the family restaurant or that the applicant would be unable to find employment in China that would allow him to assist his family financially. *See Matter of Soffici, supra*. The applicant's spouse was evaluated by a licensed clinical social worker who states that the applicant's spouse is in a depressive state and that separation would result in severe emotional and psychological problems for the family members. *Psychological Evaluation*, at 1, 4, dated July 6, 2006. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on two interviews of the applicant's spouse. Accordingly, the conclusions reached do not reflect the insight and analysis commensurate with an established relationship with a mental health professional and thereby diminish the evaluation's value to a determination of extreme hardship. The AAO notes that separation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. The record does not distinguish the hardships facing the applicant's spouse from those confronting other individuals who have been separated from family members by removal. After a thorough review of the record, the AAO finds that extreme hardship has not established 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.

The AAO notes that a review of 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 he 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.