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U.S. Citizenship  
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FILE:

Office: NEWARK, NEW JERSEY

Date: JUN 09 2008

IN RE:

Applicant:

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, Newark, New Jersey, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a passport and visa under a different name. The record indicates that the applicant is the son of lawful permanent residents of the United States and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 his lawful permanent resident parents and three United States citizen children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated May 22, 2006.

On appeal, the applicant, through counsel, asserts that the District Director's "conclusion amounts to a misstatement of the facts and forms an invalid basis on which the district director relied in reaching her decision." *Brief attached to Form I-290B*, filed June 20, 2006.

The record includes, but is not limited to, counsel's brief, affidavits and letters from the applicant, his parents, and brother, Ohio birth certificates for the applicant's three United States citizen children, letters from various doctors regarding the applicant's parent's medical conditions, and a psychological evaluation of the applicant's mother by [REDACTED]. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, 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 immigrant 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 AAO notes that the record contains several references to the hardship that the applicant's United States citizen children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's parents are the only qualifying relatives, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's parents.

In the present application, the record indicates that on June 9, 1992, the applicant entered the United States by presenting a British Dependent Territory – Hong Kong passport in someone else's name. The applicant filed a Request for Asylum (Form I-589). On October 16, 1994, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On November 15, 1994, an immigration judge denied the applicant's request for asylum and ordered the applicant deported from the United States. On November 23, 1994, the applicant filed an appeal of the immigration judge's decision with the Board of Immigration Appeals (Board). On March 2, 1995, the applicant's lawful permanent resident father filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On October 16, 1995, the District Director, New York, New York, denied the applicant's Form I-485. On October 17, 1995, the applicant's Form I-130 was approved. On August 24, 2000, the Board dismissed the applicant's appeal. The applicant failed to depart the United States as ordered. On August 9, 2002, the applicant's daughter, [REDACTED] was born in Ohio. On December 22, 2003, the applicant filed a second Form I-485. On January 9, 2004, the applicant's daughter, [REDACTED], was born in Ohio. On July 12, 2004, the applicant filed a Form I-601. On December 6, 2004, the District Director, Newark, New Jersey, denied the applicant's Form I-601. On January 5, 2005, the applicant, through counsel, filed a motion to reconsider the District Director's denial of the applicant's Form I-601. On January 10, 2005, the applicant's son, [REDACTED] was born in Ohio. On March 19, 2005, the District Director denied the applicant's motion to reconsider. On March 23, 2005, the applicant's second Form I-485 was denied. On April 22, 2005, the applicant filed a third Form I-485 and a second Form I-601. On May 22, 2006, the District Director denied the applicant's second Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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. Hardship the alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident parents. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a 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.

Counsel asserts that the applicant's parents would face extreme hardship if the applicant were removed from the United States. *Brief attached to Form I-290B, supra*. The AAO notes that counsel made no claim that the applicant's parents would suffer any hardship if they joined the applicant in China. The applicant's father states that "[they] don't have a home in China any more. [Their] sons and grandchildren are all in the United States. [They] don't have any relative[s] in China. Because [they] have not returned to China for more than a decade, [they] don't know what China is like now and [they] will not be used to life in China any more." *Letter from [REDACTED] and [REDACTED] undated*. The applicant's father states he has "high blood pressure, high blood sugar and high triglycerides" and dementia. *Id*; *see also letter from [REDACTED], M.D.*, dated June 16, 2006. The AAO notes that there was no documentation submitted establishing that the applicant's father could not receive treatment for his medical conditions in China or that he has to remain in the United States to receive his medical treatments. The applicant's brother states his parents "are not able to move to Ohio because [his] parents need to have Chinese-speaking doctors." *Letter from [REDACTED] dated December 28, 2004*. The AAO notes that if the applicant's parents joined the applicant in China, then finding Chinese-speaking doctors would not be an issue. [REDACTED] diagnosed the applicant's mother with Bipolar I Disorder and dementia. *See psychological evaluation by [REDACTED], Ph.D.*, dated December 29, 2004. Dr. [REDACTED] states that the applicant's mother is having "suicidal thoughts...[and] she is emotionally and psychologically disabled and that this extreme hardship is causally related to [her] son's application for adjustment of status." *Id*. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted psychological evaluation is based on a single interview between the applicant's mother and the psychologist. There was no evidence submitted establishing an ongoing relationship between the psychologist and the applicant's mother. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. [REDACTED] states the applicant's mother "relapsed from her mental disease. She was withdrawn, preoccupied with internal stimuli. She was mute appeared paranoid and suspicious. She could not take care of her basic needs and had to be taken care of by her son." *Letter from [REDACTED], M.D.*, dated December 20, 2004. The applicant's father states his wife "is also not feeling well because of [the applicant's] problems. She has been in low spirits when she is doing the households [sic], and often mumbles to herself.... Her medical condition is worsening.... Because [his] wife and [him] are both sickly, [they] can only depend on [the applicant] to accompany [them] to see the doctor and do shopping." *Letter from [REDACTED] and [REDACTED], supra*.

The AAO finds that, based partially on the applicant's mother's emotional and psychological problems, the applicant has demonstrated extreme hardship to his parents if they remain in the United States without the applicant; however, it has not been established that the applicant's parents could not join the applicant in China, which is their native country. Since the applicant's mother's depression is primarily caused by their separation, if the applicant's parents move to China then the depression would presumably no longer be an issue. The AAO notes that the applicant's parents rely on the applicant for most of their daily needs and his brother cannot help because of his employment situation and he resides in another state. The AAO notes that the applicant's parents failed to provide any evidence that they could not obtain jobs in China or evidence that they could not receive medical treatment in China for their medical and psychological conditions. The applicant's parents claim that the applicant's children would suffer extreme hardship if the applicant returns to China; however, as noted above, the applicant's children are not qualifying relatives so any hardship they would experience is irrelevant, except as it may affect their grandparents. *See letter from [REDACTED] and [REDACTED], supra.* Additionally, it has not been established that the applicant's children, who are 3, 4, and 5 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of China. Furthermore, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his parents if they accompany him to China.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant; however, they have not demonstrated extreme hardship if they were to return to China.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parents 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 212(a)(6)(C)(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.