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**U.S. Citizenship  
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Services**

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FILE: Office: CALIFORNIA SERVICE CENTER Date: **JUN 11 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 Director of the California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], is a native and citizen of China who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the director denied, finding that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative. *Decision of the Director*, dated November 21, 2006. Counsel filed a timely appeal.

The AAO will first address the finding of inadmissibility at section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

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.

In the Record of Sworn Statement in Affidavit Form, dated August 19, 1992, the applicant indicates that he arrived in the United States by Northwest Airline- [REDACTED]. He claimed that [REDACTED] is his true and complete name and that he is a citizen of the People's Republic of China. The applicant claims that he did not know the type of passport that he used to board the flight, the name on the passport, or whether the passport contained a U.S. visa. The applicant claims to have thrown away the travel document in the plane. The applicant states that he obtained the travel document in Wenzhou, China from a Mr. [REDACTED] and that the whole trip cost \$30,000. The applicant states that he is coming to the United States to "seek for freedom and to look for work. I am hoping to stay in America forever."

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

The Board of Immigration Appeals (BIA) in *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991), held that outside of the transit without visa context, an applicant is not excludable for fraud or willful misrepresentation of a material fact if no evidence indicates that "the alien presented or intended to present

fraudulent documents or documents containing material misrepresentations to an authorized official of the United States Government in an attempt to enter on those documents.”

Here, the record of sworn statement reveals that the applicant entered JFK International Airport in New York City as a passenger on Northwest Airlines on August 19, 1992. The applicant did not have a passport, ticket, or other document at the time of arrival in the United States as he claimed to have thrown them away in the airplane. The applicant indicated that he purchased the travel document in China for \$30,000 USD. Based on the applicant’s sworn statement, the fact that he boarded an American airline bound for the United States, and the holding in *Matter of D-L- & A-M*, the AAO finds that the applicant intended to present to U.S. immigration officials the fraudulent passport and other documents that he used to board the airplane in order to gain admission into the United States. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact so as to procure admission into the United States or a benefit provided under the Act. The applicant has not contested his inadmissibility.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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 the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and to his U.S. citizen stepdaughter will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s naturalized citizen 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's wife must be established in the event that she remains in the United States without the applicant, and in the alternative, that she joins the applicant to live in China. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains letters, affidavits, photographs, billing statements, divorce decrees, a naturalization certificate, a Certificate of Authority for Show and Entertainment Vendors issued by the New York State Department of Taxation and Finance for J&C New York Trading, Inc., and other documents.

In her affidavit submitted on appeal, the applicant's wife states that she is under a physician's care and works in a very limited capacity. She states that the applicant owns a business and provides nearly all of the family's income and that she will not be able to support herself and pay for medical treatment without him.

In the August 27, 2006 letter, the applicant's wife conveyed that she and her daughter have a close relationship with the applicant. She stated that the applicant takes her daughter to school, cooks for her after school, and treats her as his daughter. She stated that she has been diagnosed with high blood pressure, diabetes, and high cholesterol and that she see the doctor monthly and takes medicine every day. She states that she relies on her husband mentally and financially.

The letter dated December 5, 2006 by [REDACTED] M.D., conveys that the applicant's wife has been under his care for a couple of years. He stated that the applicant's wife has hypertension, impaired glucose tolerance, hypercholesterolemia, and fatty liver disease, and that she smokes. He indicated that at the November 29, 2006 office visit her blood pressure was not well controlled, but the rest of her physical exams were unremarkable. He stated that her recent blood test showed mildly elevated glucose, a normal cholesterol profile, and normal kidney and liver function. He stated that she is currently taking Toprol XL 50mg once a day and Lipitor 10mg once a day. She was instructed to diet and reduce weight and exercise and quit smoking.

The letter dated August 22, 2006 by [REDACTED], CPA, conveyed that the applicant's wife earns gross weekly wages of \$450 with J&C New York Trading, the applicant's company.

The letter dated August 22, 2006 by Metropolitan (Brother)Laundry Service, Inc., conveyed that the applicant is a driver earning gross wages of \$500 bi-weekly.

The income tax records for 2005 show income of \$16,500 and business income of \$4,963 from a flea market. The W-2 Forms for 2005 show the applicant as earning \$5,500 with Metropolitan (Brother) Laundry Service, Inc., and \$500 with J&C New York Trading, Inc. His wife earned \$10,500 with J&C New York Trading, Inc.

The affidavit by the applicant, which was sworn and subscribed on April 26, 2006, and that of his wife of the same date, conveyed that they have a close relationship.

In the affidavit sworn on March 3, 2005, the applicant's wife stated that she shares the same house as the applicant, and that they work and raise a child together. She indicated that her daughter has a stable home because of the applicant, who is her father figure and provides for her.

The KeySpan Energy Delivery billing statement reflects charges due of \$666.48 for December 2, 2005 to February 2, 2006, and \$88.06 for August 3, 2005 to October 5, 2005. The Allstate automobile insurance bill reflects an amount due of \$194.75 for March 2006 and November 2005. The Verizon invoices reflect various amounts due each month.

The record reflects that the applicant's wife has a mortgage with Emigrant Mortgage Company, Inc.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

The AAO finds that the record fails to establish extreme hardship to the applicant's wife in the event that she were to remain in the United States without the applicant.

Though the record indicates that the applicant's spouse was earning a minimal amount of money working for her husband's company in 2005, there is no evidence that she would be unable to obtain other employment in order to support herself and her daughter. Further, no evidence was provided to establish that her husband would be unable to obtain employment in China which would provide sufficient income to assist his spouse. None of the medical conditions noted by the applicant's spouse indicate that his presence is necessary for her to conduct her daily activities.

The applicant makes no claim of extreme hardship to his wife if she were to join him to live in China.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

The AAO has found that the applicant's wife would not experience extreme hardship if she remained in the United States without him or if she were to join him to live in China. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in

this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

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.

The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.