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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: HONG KONG

Date: MAR 24 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:

SELF-REPRESENTED

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Hong Kong 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 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 lawful permanent resident and the father of a U.S. citizen son. He 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 spouse and U.S. citizen son.

The Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative or that he merited a favorable exercise of discretion. He denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated October 20, 2005.

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. *Form I-290B*, dated November 17, 2005. The AAO notes that, on appeal, the applicant appears to be represented by new counsel, who submits a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the applicant's U.S. citizen son.

An unfavorable decision in an immigration proceeding may be appealed to the AAO only by an affected party in that proceeding, i.e., a person or entity with legal standing, or the attorney or representative of the affected party. *See* 8 C.F.R. §§ 103.3(a)(1)(B) and (2)(i). As the applicant's son is not an affected party in this matter, his signature on the Form G-28 does not establish new counsel as the applicant's attorney. The AAO will, therefore, consider the applicant to be self-represented, although it will consider all representations made on his behalf.

In support of the waiver, the record includes, but is not limited to, a statement from prior counsel; statements from the applicant's spouse; a psychological evaluation of the applicant's spouse; a medical letter and records for the applicant's spouse; a statement from the applicant's son; a statement from the applicant's brother; a statement from the applicant; and a medical certificate for the applicant. 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 on or about March 28, 1971, the applicant was admitted as a non-immigrant crewman authorized to remain in the United States for the period of time his vessel remained in port, not to exceed 29 days. The applicant remained in the United States for a longer period of time than permitted. *Order to Show Cause*, dated September 20, 1971. On September 21, 1971 the applicant was granted voluntary departure and was required to leave the United States by December 21, 1971. *Decision of the Special Inquiry Officer*, dated September 21, 1971. The applicant failed to comply with the order of voluntary departure thereby rendering it a final order of removal. On March 3, 1972 the applicant was removed from the United States and returned to Hong Kong. In 1979 the applicant used a false Singapore passport to gain admission to the United States. *Consular interview notes*, dated March 30, 2005. He was arrested and released on bail. *Id.* The applicant stated he voluntarily departed the United States for Hong Kong in 1984. *Id.* In 1992, the applicant submitted fraudulent employment documents to obtain a tourist visa to the United States. *Id.* On August 9, 2004 the applicant submitted a Form DS-230, Application for Immigrant Visa and Alien Registration in which he did not disclose every period of time that he had stayed in the United States, nor did he truthfully answer the question regarding whether he had ever been arrested. *Id.* The applicant did not disclose his arrest for using a false Singapore passport until after his waiver interview at the U.S. Consulate. *Id.* The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

The AAO notes that on October 4, 1997 the applicant filed a Form I-601, Application for Waiver of Ground of Excludability, as he was eligible to apply for an immigrant visa as an alien who was "following to join" his lawful permanent resident spouse who had obtained her status under the Chinese Student Protection Act of 1992. *Form I-601*. The waiver was denied and the applicant appealed to the AAO which also denied the case, finding that the applicant had not demonstrated extreme hardship to his lawful permanent resident spouse. *Decision of the AAO*, dated April 2, 1998. On March 23, 2004 a Form I-130, Petition for Alien Relative was approved on behalf of the applicant through his naturalized U.S. citizen son. *Form I-130*. On March 29, 2005 the applicant filed a second Form I-601 waiver, which was subsequently denied by the Officer in Charge, Hong Kong. *Decision of the Officer in Charge*, dated October 20, 2005. The denial of the Form I-601 waiver is the basis for this appeal.

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 or his U.S. citizen son would experience if the applicant's waiver request is denied 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 if the applicant is removed. 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 must be established in the event that she resides in China or the United States, as she is 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 his spouse will suffer extreme hardship. The applicant's spouse was born in China. *Form G-325A, Biographic Information Sheet for the applicant*. The record does not state what family members, if any, the applicant's spouse may have in China. The applicant's spouse suffers from chronic active hepatitis/chronic hepatitis B carrier, moderate to severe insomnia, gastritis, and neck and shoulder osteoarthritis pain. *Statement from [REDACTED]*, dated September 23, 2005; *See also medical records for the applicant's spouse*. While the AAO acknowledges the health issues of the applicant's spouse, the physician treating her does not indicate the severity of her medical conditions or that they impair her ability to function on a daily basis. There is nothing in the record to document that she would be unable to receive adequate treatment in China. The applicant's spouse has been living in the United States with her naturalized U.S. citizen son, his spouse, and their children for the past ten years. *Statement from the applicant's son*, dated July 30, 2005. The applicant's spouse assists in taking care of her grandchildren in the United States. *Id.* Without her help, the applicant's son is unable to concentrate on his work and suffers financially. *Id.* While the AAO recognizes these difficulties, it notes that the applicant's naturalized U.S. citizen son is not a qualifying relative in this case. Furthermore, the record fails to explain whether there are other family members who could assist with the responsibilities of taking care of the applicant's grandchildren in the United States. When looking at the aforementioned factors, the AAO finds that the applicant has not demonstrated extreme hardship to his spouse if she were to reside in China.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse has lived in the United States for the past ten years with her naturalized U.S. citizen son, his spouse, and their children. *Statement from the applicant's son*, dated July 30, 2005. The record contains a psychological evaluation of the applicant's spouse that reports he suffers from Adjustment Disorder with Depressed Mood of serious nature, apparently precipitated her separation from her spouse. *Statement from [REDACTED], Clinical Social Worker*, dated September 24, 2005. Although the input of any mental health professional is respected and valuable, the AAO notes that the conclusions in the submitted letter are based on interviews of the applicant's spouse over the course of two consecutive days. Accordingly, they do not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional, thereby rendering them speculative and diminishing their value to a determination of extreme hardship. The AAO finds no

other evidence related to the mental health of the applicant's spouse, nor any history of treatment for the depression identified in the September 24, 2005 evaluation. The applicant's spouse stated she does not like to fly on a plane and it is difficult for her to travel long distances for she is not in a healthy condition. She states that she needs her husband to live with her and look after her because she has heart and liver problems and weak nerves. *Statement from the applicant's spouse*, dated September 23, 2005. The AAO observes that there is no medical documentation in the record that states the applicant's spouse is unable to fly due to her conditions. Furthermore, the record does not demonstrate that the applicant and his spouse are unable to meet in a location closer to the United States. The record also fails to establish that the medical conditions from which the applicant's spouse suffers require someone to care for her. The applicant's spouse states that while she has been separated from her husband for over ten years, she misses him very much. *Statement from the applicant's spouse*, dated September 23, 2005.

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. The AAO recognizes that the applicant's spouse will endure hardship as a result of continued separation from the applicant. However, the record does not establish that her situation, if she remains in the United States, is different from that of other individuals separated as a result of removal and rises to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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.

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.