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U.S. Citizenship
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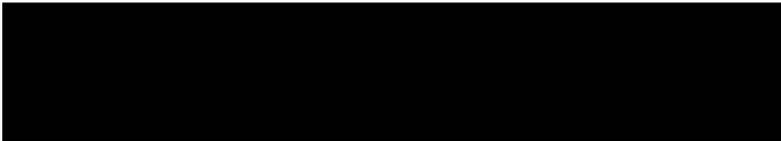
Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Baltimore, Maryland, 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 by presenting a false passport. The record indicates that the applicant is married to a naturalized United States citizen and 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 her United States citizen husband.

The Interim District Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Interim District Director's Decision*, dated December 19, 2003.

On appeal, the applicant, through counsel, contends that the “denial of [the applicant’s] admission to the United States would result in extreme hardship to her U.S. citizen spouse emotionally, financially, physically and with substantial economic losses, depression and anxiety.” *Form I-290B*, filed January 20, 2004.

The record includes, but is not limited to, counsel’s brief, affidavits from the applicant and her husband, and a psychological evaluation by Dr. Keith A. Erickson. 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 of the Act provides, in pertinent part, that:

- (i) (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...

In the present application, the record indicates that the applicant initially entered the United States in 1996, by presenting a false passport. On March 12, 2001, the applicant's husband, a United States citizen, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On October 22, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On April 18, 2002, the applicant filed a Form I-601. On October 6, 2003, the applicant's Form I-485 was denied. On December 19, 2003, the Interim District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her United States citizen husband.

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 herself 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 United States citizen husband. 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 of Immigration Appeals (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 United States citizen husband will suffer extreme hardship if the applicant is removed to China. The AAO notes that the applicant's spouse did not provide a statement or an affidavit regarding what, if any, hardship he would suffer if he joined the applicant in China. [REDACTED] states the applicant's husband is exhibiting "significant symptoms of depression and anxiety...[The applicant's husband] appears unusually dependent upon his wife and the threat of losing her is the greatest stressor and current contributor to his distress and internal disorganization... While his current functioning is being strongly affected merely by the threat of the loss of the relationship, actual prolonged separation is likely to be experienced as a profound loss and abandonment that will further overwhelm [the applicant's husband] ability to cope and function effectively." *Psychological evaluation by* [REDACTED], dated January 12, 2004. The AAO notes that since the applicant's husband's anxiety and depression are primarily caused by the threat of separation from the applicant, if the applicant's husband joins the applicant in China then the anxiety and depression would presumably no longer be an issue. Additionally, the AAO notes that the applicant's husband is a native of China, who spent his formative years in China, he speaks the native language, and it has not been established that he has no family ties in China. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he accompanies her to China.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his business and in close proximity to his family. As a United States citizen, the applicant's

husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states that "without [the applicant] [his] life will not have any meaning...[The applicant] is the most important person in [their] Spring Garden Restaurant...Without her present, [their] restaurant business will not be continued. It will cause a big financial problem to [him]." *Affidavit from* [REDACTED], dated January 14, 2004. The AAO notes that the applicant's husband has owned his restaurant since 1997, and there is no evidence in the record establishing that he could not run his business without the applicant. Additionally, the AAO notes that the applicant's husband has family members residing in the United States and it has not been established that they could not help him with the restaurant. *See psychological evaluation by* [REDACTED], *supra*. Further, the record fails to demonstrate that the applicant will be unable to contribute to her husband'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).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant's United States citizen husband will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 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)(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.