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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: JACKSONVILLE, FLORIDA Date:

FEB 04 2008

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 212(a)(9)(B)(v).

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Jacksonville, Florida, 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 pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A)(i) for entry without inspection. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the OIC denied, finding the applicant entered the United States without inspection, which cannot be waived. *Decision of the OIC*, dated September 29, 2005. The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility under the Act.

On appeal, counsel states that the applicant's inadmissibility is not for entry without inspection, but is based on misrepresentation, as stated by the applicant under oath.¹

The applicant's affidavit submitted on appeal conveys that the applicant departed from China on or about May 2, 2000 and arrived in the United States in Los Angeles, California, via China Eastern Airline. He states that he paid a "snakehead" US \$43,000 for the service and was given a fraudulent foreign passport with his photo and the name and information of another person. He states that upon his arrival at the airport he handed the passport to the immigration official for inspection and was granted entry into the United States. The applicant states that at his August 23, 2003 adjustment interview at the Orlando immigration office his attorney and wife were present when he testified under oath that he entered the United States by using a fraudulent passport, and he states that he gave the same testimony on July 26, 2005 at an interview at the Jacksonville immigration office. The applicant states that to his knowledge "entered without inspection" meant that he was not inspected under his own name when he entered the United States.

The AAO finds that Citizenship and Immigration Services (CIS) records reflect that at the Orlando, Florida, interview the applicant stated that he entered the United States via a Chinese airline on May 2, 2000 by using a photo substituted Chinese passport and nonimmigrant visa that was not in his name, and that he paid \$43,000 for the documents.

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.

The record conveys that the applicant used a fraudulent passport and nonimmigrant visa so as to gain entry into the United States. The AAO therefore finds that the applicant is inadmissible under section

¹ It is noted that although counsel states that the applicant's inadmissibility is not for entry without inspection, but is based on misrepresentation, in a July 17, 2003 letter to CIS counsel states that [REDACTED] entered without inspection into the United States in May 2000."

212(a)(6)(C)(i) of the Act for seeking to gain admission into the United States by fraud or willfully misrepresenting a material fact to immigration officials.

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 the applicant and his 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 his child will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED] the applicant's naturalized citizen wife. 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).

The record contains income tax records, life insurance contracts, a rental agreement, bank statements, declarations, an employment letter, a marriage certificate, a naturalization certificate, birth certificates, documentation on China, a business license for Lucky Garden Chinese Restaurant, and other documents. The AAO has carefully considered all of the documentation in the record in rendering this decision.

"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 joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The business license dated June 19, 2003 and issued to the applicant’s wife for Lucky Garden reflects a seating capacity of eight.

The amended income tax records for 2002 and 2001 reflect adjusted gross income of \$18,294 and \$15,079, respectively; and the 2000 income tax records show \$7,867 in wages, salaries, tips, etc. and indicate the applicant’s wife worked as a freelance delivery driver and cashier with Kings Chinese Buffet, Inc. The 1999 income tax return shows total wages, salaries, and tips of \$5,900.

The employment letter from King’s Chinese Buffet, Inc. conveys that [REDACTED] has been an employee since 1999, and that she earns a monthly salary of \$1,311.20 as of 2000 and 2001.

The Bank of America statement shows an ending balance of \$3,938.14 for the period ending July 22, 2003 for account number 0034 4450 1175 and \$32,911.73 for account number [REDACTED]

The rental agreement reflects monthly rent of \$750.00

The birth certificate in the record shows that the applicant and his wife have a daughter, who was born on [REDACTED]

The declaration of [REDACTED] indicates that she married the applicant on February 21, 2001 and is seven months pregnant with their first child. She states that they own a Chinese take-out restaurant, Lucky Garden, and her husband is its chef, operator, and manager and she is the cashier. [REDACTED] states that her husband is the family’s breadwinner and it would be a financial hardship for her and her unborn child if her husband is not allowed to remain in the country. She states that she does not know how to operate the restaurant and must care for the child, which would be impossible to do spending 12 hours a day at the restaurant. She asserts that she would have to close the restaurant as she does not know how to operate it, other than as a cashier. She states that she would be forced to work as a cashier, reducing her income, if her husband were not allowed to remain in the United States. She states that it is difficult to find employment while pregnant, and after she gives birth would not work for several months. She states that she would not be able to raise her child without her husband’s support. She conveys that all of her family members are in the United States: her father is a U.S. citizen and her mother is a lawful permanent resident and they live in Philadelphia and care for her brother, who attends college. She states that she has no close relatives or friends to help her with a newborn and that she is scared of driving and her husband drives her everywhere. [REDACTED] states that she has no family in China and her parents would be devastated if she were to move to China. [REDACTED] states that she and her husband would not find a decent job in China, as it is a communist country and the central government assigns every citizen a household account, a working unit, and an apartment and that her husband lost his account since he escaped from China and would not be assigned any work or apartment. She states that it is extremely difficult to open a privately-owned restaurant in China since most entities are government

owned. She states that she and her husband would only find temporary, part-time, low paying jobs as a "migrant worker" (a person without a household account) in construction or on a farm or in a factory and that income in China is extremely low, as shown in the submitted reports. She states that her husband's parents are old and retired and have no income and that she and her husband are supporting them. She states that her husband borrowed money to pay for his trip to the United States and they would not be able to pay off the loan if they worked in China. [REDACTED] states that with China's "one-child policy" she may have to undergo an involuntary insertion of an internal uterus device, which she states is inhuman, against her beliefs, and a violation of her rights as a U.S. citizen. She states that children of migrant workers often are not allowed to attend school, and if her daughter is allowed to attend, they would have to pay higher school fees. [REDACTED] states that she would have to become accustomed to primitive living conditions in China and would face difficulties in China alone, without family, relatives, or friends. She states that her parents in the United States would not be taken care of financially and physically.

The record reflects that [REDACTED] would experience extreme hardship if she remained in the United States without her husband.

[REDACTED] states that her husband provides the family's income, working as the chef, operator, and manager of their take-out restaurant. The AAO finds that the record fails to establish that Lucky Garden has generated any business income, as the most recent income tax return, which is for 2002, does not show any business income; it indicates that the business' equipment was sold in 2002 for a capital gain of \$10,000. The 2002 tax return shows wages, salaries, tips of \$7,867, but no W-2 Form or other documentation was submitted to show who earned this money. Nevertheless, the AAO finds that the record indicates that [REDACTED] would not earn sufficient income to support herself and a child; she would require financial assistance from her husband.

[REDACTED] would experience extreme hardship if she remained in the United States without her husband.

The present record, however, is insufficient to establish that the applicant's wife would endure extreme hardship if she joins the applicant in China.

The conditions in the country where [REDACTED] would live if she joins her husband, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

[REDACTED] indicates that she and her husband would be migrant workers in China because neither of them would have a household account. She states that it would be extremely difficult to open a privately-owned restaurant in China because the government owns most entities. The AAO finds that these statements are not consistent with the U.S. Department of State Country Reports on Human Rights Practices – 2002 for China, which states that the "country's transition from a centrally planned to a market-based economy continued." The report conveys that the government:

[P]rivatized many small and medium state-owned enterprises (SOEs) and allowed private entrepreneurs increasing scope for economic activity. Rising urban living standards, greater independence for entrepreneurs, and the expansion of the nonstate sector increased workers' employment options and significantly reduced state control over citizens' daily lives.

█ states that she may be forced to undergo an involuntary insertion of an internal uterus device due to the “one-child” policy; however, the applicant submitted no supporting evidence to establish this is the government’s current policy. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

█ is concerned about her child’s education in China. She states that her daughter may not be allowed to attend school if they do not pay required school fees, which are higher for a migrant worker than for a resident. The AAO finds that no evidence has been submitted to establish █’s daughter would not be able to attend school in China. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

█ states that she would have to become accustomed to primitive living conditions in China and that she would not have the support of family, relatives, or friends. Court decisions have shown that a lower standard of living is not sufficient to establish extreme hardship. *See, e.g., Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) (Even a significant reduction in the standard of living is not by itself a ground for relief); and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (a lower standard of living in the Philippines is not extreme hardship).

If she joins her spouse overseas, █ states that she would have to leave her parents and brother. Courts in the United States have held that separation from one’s family need not constitute extreme hardship. For instance, in *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families in *Guadarrama-Rogel v. INS*, 638 F.2d 1228, 1230 (9th Cir.1981) (separation of parents from alien son is not extreme hardship where other sons are available to provide assistance); in *Banks v. INS*, 594 F.2d 760, 763 (9th Cir. 1979) (separation of a mother from a grown son who elects to live in another country is not extreme hardship); and in *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985), the Third Circuit affirmed the BIA’s decision in finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the petitioner “is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child.” It is noted that the applicant’s wife has family ties in China: her in-laws and the applicant.

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 applicant establishes that his wife would experience extreme hardship if his wife remained in the country without him. However, the applicant fails to show significant hardships over and above the normal economic and social disruptions involved in removal so as to warrant a finding of extreme hardship in the event that his wife joined him 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).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.