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U.S. Citizenship
and Immigration
Services

H3

FILE:

Office: NEW YORK, NEW YORK

Date:

JUL 03 2008

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(h)

ON BEHALF OF PETITIONER:

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 District Director, New York, New York, 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude (trademark counterfeiting in the third degree). The applicant is married to a Lawful Permanent Resident and is the beneficiary of an approved Petition for Alien Relative. The applicant initially entered the United States with an L-1 visa on October 1, 1997 with permission to remain in the United States until October 1, 1998. The applicant remained in the United States after his authorized stay expired and filed an application for adjustment of status on December 3, 2004. In 2005 he departed the United States and reentered with advance parole on August 27, 2005. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain in the United States with his spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of District Director* dated April 4, 2006.

On appeal, counsel asserts that the evidence in the case, including additional documentation submitted with the appeal, supports a finding of extreme hardship to the applicant's wife should the applicant be denied a waiver of inadmissibility. Specifically, counsel maintains that the financial and emotional hardship that would result if the applicant is removed would constitute extreme hardship to the applicant's wife. Counsel states that the applicant's wife would suffer extreme financial hardship whether she remained in the United States or relocated to China with the applicant because the loss of his income would prevent them from repaying their mortgage and several "community loans" made by friends and relatives to assist in the purchase of a house in Brooklyn, New York. *See Brief in Support of Appeal* at 2. Counsel states that in addition to losing their home, they would face serious consequences if they fail to pay back the community loans, including disgrace and loss of friendships and relationships with family members, constant harassment, and possibly physical harm. *See Brief* at 3.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
- (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

- (v) Waiver. – The Attorney General [now Secretary, Homeland Security, “Secretary”] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part:

- (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

- (i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

The AAO notes that the record contains several references to the hardship that the applicant's son would suffer if they were to relocate to China. Section 212(a)(9)(B)(v) of the Act provides that a waiver of section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. The applicant is also seeking a waiver of inadmissibility under section 212(h) of the Act, which can be granted if extreme hardship to a U.S. Citizen or Lawful Permanent Resident child is established. The applicant's spouse is, however, the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's son will therefore not be separately considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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 BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel states that there are several factors that, when considered in the aggregate, would amount to extreme hardship to the applicant's wife if he were denied admission to the United States. In support of the appeal, counsel has submitted copies of the applicant's marriage certificate and his wife's permanent resident card, a copy of their son's birth certificate, court dispositions for the applicants' three convictions for trademark counterfeiting in the third degree, copies of the applicant's 2005 tax return and IRS Form 1099, IRS Form 1098-T for the applicant's son, a copy of the deed for the home they purchased in 2003, notarized letters from their creditors stating the amount owed by the applicant, and information on economic conditions in China. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant has resided in the United States since September 1997 and married his wife on June 5, 2000. The applicant and his wife have a son together who was born in China on November 30, 1987, before they were married. The record further reflects that the applicant's wife is a native and citizen of China who has been a Lawful Permanent Resident since May 2000. She and the applicant live in New York with their son, who is pursuing a degree in criminal justice. See affidavit of [REDACTED] dated May 30, 2006. The applicant and his wife purchased a house in Brooklyn in 2003 and state that they renovated the house and now earn rental income from it. See affidavit of [REDACTED]. The applicant and his wife further state that they borrowed a total of \$300,000 from relatives and neighbors who came from the same area of China. The applicant's wife further states that they are currently repaying these "community loans" at a rate of \$10,000 per year and will need to start repaying them at a rate of \$25,000 per year after about two years. See affidavit of [REDACTED].

Counsel asserts that if the applicant is removed from the United States, he and his wife will be unable to repay the community loans they owe and will face disgrace, harassment, and possibly bodily harm as a result. Counsel states that this potential harm would rise to the level of extreme hardship. In support of this assertion, counsel submitted a copy of the deed for the property purchased by the applicant and his wife, indicating that they paid \$255,000. *See Bargain and Sale Deed* dated June 6, 2003. Counsel also submitted affidavits from five individuals stating that the applicant and his wife borrowed money from them. The affidavits each consist of one sentence and state, "I [name] reside at [address] hereby certify that [redacted] and [redacted] have borrowed a loan in amount of [amount] from me." The affidavits contain no more detail about when the loan was made, the term for repayment, and how much, if any, has already been repaid. Further, the total amount borrowed, according to the five affidavits provided, is \$38,600. *See affidavits from creditors dated May 26, 2006 and May 31, 2006.* The evidence on the record does not support the claim made by the applicant's wife that they owe a total of \$300,000 in "community loans" to friends and relatives. 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)).

Counsel asserts that the applicant's wife would experience extreme financial hardship if the applicant were removed because his portion of their joint income "will not be replaceable" and the lost income would prevent them from meeting their obligations and repaying their creditors. *Brief* at 3. Counsel submitted copies of a 2005 income tax return and IRS Form 1099 that indicate the applicant earned \$7500 in 2005 and their total reported income was \$11,328. It appears that even if the applicant and his wife owe the amount of money in "community loans" that they claim, the applicant's income is insufficient to repay the loans even if he were to remain in the United States. The claim that the loss of the applicant's income would result not only in financial hardship but also additional harm from their creditors because they would no longer be able to repay their loans is undermined by the income tax return and other evidence submitted.

Counsel additionally asserts that if the applicant were removed to China, he would not likely earn more than 1000 Yuan (about \$125) per month, and would be "unable to help or support his wife in paying off their obligations." *Brief* at 4. Counsel further states that the applicant's spouse would have about the same earning potential as the applicant if she moved to China with the applicant. *Id.* In support of these assertions counsel submitted an article stating that workers at a General Motors plant in Shanghai earn up to 1000 Yuan per month and evidence of the exchange rate and approximate value of the Yuan. No additional evidence was submitted to document the income and expenses of the applicant and his wife and their earning potential in China, or otherwise establish the effects of his removal on his family's economic situation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, even if it were established that the loss of the applicant's income would have a negative impact on his wife's financial situation, this economic detriment would be insufficient to warrant a finding of extreme hardship. Although it appears likely the applicant's wife would suffer a decline in her standard of living if they relocated to China, this is the type of hardship to be expected as a result of deportation or exclusion. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The applicant's wife further states that if she does not relocate to China with the applicant, she "will lose the love of [her] life," and if she relocates with him, she will lose the chance of ever becoming a U.S. Citizen. Aside from these statements, no other evidence was submitted to establish that the applicant's removal would result in hardship to her beyond the common results of deportation. The evidence does not establish that the applicant's wife would experience hardship that is more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her distress over the possibility of being separated from her husband is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship and familial and emotional bonds exist.

The record reviewed in its entirety does not support a finding that the applicant's spouse faces extreme hardship if the applicant is removed from the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The emotional and financial difficulties that the applicant's wife would suffer appear to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.