U.S. Department of Homeland Security
20 Mass, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK DISTRICT OFFICE Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York. 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 34-year-old native and citizen of China. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraudulent use of a passport. The record reflects that the applicant is the spouse of a U.S. citizen, the father of one U.S. citizen child. The applicant last entered the United States in April 1993, through Hawaii, where he was inspected and admitted through the use of a fraudulent passport.

The District Director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly, on April 28, 2003.[1]

On appeal, counsel contests the finding of inadmissibility and contends that the applicant has demonstrated extreme hardship to his U.S. citizen spouse. In support of the request for waiver of inadmissibility, counsel submits a brief, a letter, and affidavits from the applicant and his wife.

Section 212(a)(6)(C)(i) of the Act provides:

> (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, or other documentation, or admission into the United States or other benefit provided under the Act is inadmissible.

8 U.S.C. § 1182(a)(6)(C)(i). Despite counsel's assertions that the applicant's fraudulent use of a passport was "quite minor," the applicant's admitted actions in this case render him inadmissible to the United States. *Letter of Wesley M. Read to New York District Office,* (March 4, 2003). The statement by counsel that, "it is my understanding that the said document was never actually used to gain into the United States," is neither addressed nor supported by the applicant's affidavit to this office. *Id. See also Affidavit of Ming Dong Zou* (June 5, 2003). In sum, the record indicates that the applicant admitted to the New York District Office that he fraudulentLY used a passport to gain admission to the United States, and there is no rebuttal testimony or other evidence that this ground of inadmissibility should not apply to the applicant. Therefore, the District Director's finding of inadmissibility is sustained and the remaining question becomes whether the applicant qualifies for a waiver.

Section 212(i) of the Act provides, in pertinent part:

> (i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the [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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in

[1] The underlying application for adjustment of status to that of a lawful permanent resident was also denied on April 28, 2003. The denial of that application is not before this office.

> extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ..

8 U.S.C. § 1182(i). Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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 AAO notes that the record contains references to the hardship that the applicant's U.S. citizen child would suffer if the applicant were refused admission. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant's child. In the present case, the applicant's spouse is the only qualifying relative under the statute, and hardship to the applicant's child will not be considered.

In support of counsel's claims of "[t]he sheer and perturbing scale of the hardship," and "the depth of desperation that would loom," there is very little on the record with respect to the applicant's spouse, to address the *Cervantes-Gonzalez* factors cited above. *See Brief in Support of Applicant's Appeal,* at 3 (June 19, 2003). Counsel's statements at times seem to be directed to the denial of the adjustment application, which the AAO lacks the authority to review.[2] Counsel further requests that the AAO require the District to

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[2] The authority of the AAO to adjudicate appeals was delegated by the Secretary of Homeland Security pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See Department of Homeland Security Delegation No. 01-50.1* (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO

defer adjudication of the adjustment application "*pending receipt of evidentiary material pertaining to the hardship waiver.*" *Brief in Support of Applicant's Appeal, supra* (italics in original). As noted above, the AAO has authority and jurisdiction only over the question of the waiver. During the over one-year intervening period between the filing of the brief and this decision, no further documentation has been received from counsel on the issue of hardship. Therefore, the record is considered complete and the AAO shall render a decision based on the evidence in the record at the present time.

The record contains no mention of significant health conditions of the applicant or his spouse. As to family ties, it appears that the parents of the applicant's spouse live in China. Form G-325, *Biographic Information,* (October 24, 1996). Other than her child, there is no evidence of U.S. citizen or lawful permanent resident family ties in the United States. Counsel does not address country conditions where the qualifying relative would relocate and family ties in that country. The AAO notes that the applicant's wife was born in China, in Fujian province, where the applicant was also born. The brief statement of the applicant in support of his 1993 asylum application mentions a fiancée having been forced to have an abortion for violation of China's family planning policies, but she is not mentioned by name and it is unclear whether the applicant's current wife is the same fiancée mentioned in the asylum application or someone else. *Request for Asylum in the United States* (July 6, 1993). The forced abortion and fear of returning to China or a hardship associated with possible relocation to China are not addressed in the record of these proceedings. The asylum application was withdrawn by letter of the applicant in November, 1996. *Letters of Applicant to Newark Asylum Office* (November 7, 20 1996).

As to the financial impact of departure, the applicant's affidavit addresses his financial assets and obligations, and states "[w]ithout my income, my wife and daughter would struggle to maintain even a subsistence standard of living . . .." *Affidavit of* [redacted] (June 5, 2003). While the applicant and his wife make statements regarding the figures of their income and expenses, there is no concurrent supporting evidence in the record. Reviewing their assertions and prior financial documentation filed in support of the application for adjustment of status to that of lawful permanent resident, the demonstrated financial difficulties alone appear to be typical results of separation of spouses and insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The applicant has not demonstrated an extreme hardship if the applicant's spouse relocated with him to China. Absent a finding of extreme hardship, the BIA has held, "[t]he mere election by the spouse to remain in the United States . . . is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *See Matter of Mansour,* 11 I&N Dec. 306, 307 (BIA 1965).

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *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); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). The record in this

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exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as it existed on February 28, 2003).

case is lacking in testimony and documentation to support a finding of other than the common difficulties and inconveniences of removal from the United States.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(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. 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.