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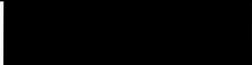
U.S. Citizenship
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Services

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FILE:



Office: ATLANTA, GA

Date: JUL 12 2006

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:



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, Atlanta, Georgia 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and has three U.S. citizen children. 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 his family.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the District Director*, dated February 5, 2004.

On appeal, counsel asserts that the district director did not consider all of the evidence offered by the applicant and his spouse. *Attachment to Form I-290B*, undated.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement and affidavit, medical records for the applicant's spouse and a psychological evaluation of the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States with a visa listing a different name on July 26, 1990. As a result of the prior misrepresentation, the applicant is inadmissible to the United States.

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 waiver is dependent first upon a showing that the bar imposes an extreme hardship to the applicant's U.S. citizen spouse. Hardship to the applicant's children is only relevant to the extent it causes hardship to the applicant's spouse. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 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 in the event that she resides in 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 first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in China. Counsel states that all of the applicant's spouse's family resides in the United States. *Brief in Support of Appeal*, at 7, dated April 27, 2004. It is not clear how many family members she has, however, the record indicates that her parents are residing in the United States. *Form G-325A, Biographic Information*, dated December 29, 1997. The record indicates that the applicant's spouse was born and raised in the United States and is close to her parents. See *Psychological Evaluation*, at 1, dated April 5, 2004. The record does not indicate that the applicant's spouse has any ties (besides the applicant) to China. The applicant's spouse states that she only speaks English and that her trip to China in 2000 was a horrible experience. *Applicant's Spouse's Statement*, at 1, dated April 19, 2004. However, there are no details of this experience which would lead to a conclusion that she would suffer extreme hardship. The record does not include information on country conditions, however, the psychological evaluation states that China is a communist country and the applicant's spouse does not understand the required cultural adjustments. *Psychological Evaluation*, at 2. The AAO notes that adapting to a new culture is a normal result of joining a spouse in a foreign country. In regard to financial hardship, the record does not indicate the job prospects of the applicant or his spouse.

Counsel submits evidence that the applicant's spouse has dealt with numerous medical problems including gall bladder removal, removal of a large fibroid tumor, polycystic ovarian syndrome and a miscarriage. The AAO notes, however, that these are past problems, many of which are related to her pregnancies, and there is no indication that she has any continuing medical problems or if she did, that suitable medical care is unavailable in China. After a thorough review of the record, the AAO finds that the applicant has not demonstrated extreme hardship to his spouse in the event that she resides with him in China.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. In regard to the financial impact of separation, the applicant's spouse states that she will not be able to take care of the restaurant and her children. *Applicant's Spouse's Statement*, at 2. However, there is no evidence that their employees cannot run the restaurant. The applicant's spouse states that the applicant is the sole provider for the family and he is paying for their bills, car payment, house payment, insurance, restaurant business expenses and her tuition. *Applicant's Spouse's Affidavit*, dated April 19, 2004. The record reflects that the applicant has been paying for his spouse's medical insurance at a rate of \$655.00 per month. *Letter from the Applicant's Spouse's Father*, undated. However, the record reflects that

the applicant's spouse is pursuing a nursing degree and there is no evidence that she could not work to support herself and her children. Also, the AAO notes that single parent households are not uncommon in the United States. Therefore, a thorough review of the entire record does not reflect that separation will result in extreme hardship to the applicant's spouse.

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.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion 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 spouse 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 he 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.