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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: APR 17 2007

IN RE: [redacted]

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:

[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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation on February 17, 1987. The applicant is married to a lawful permanent resident and has two U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the assertions provided in the affidavit of the applicant's spouse and the evidence in the record did not support a finding that the applicant's spouse would suffer extreme hardship as a result of the applicant's removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated November 17, 2004.

On appeal, counsel asserts that the evidence in the record does establish that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States, the director failed to fairly consider the evidence of extreme hardship submitted by the applicant and the authority cited by the director in her decision does not support her decision. *Counsel's Brief,* dated December 13, 2004.

The record indicates that during a December 18, 2001 interview related to her application for adjustment of status, the applicant testified that she entered the United States from Mexicali, Mexico on February 17, 1987 after the driver of the car in which she was riding presented an American passport on her behalf. The applicant subsequently refused to make a sworn statement tot his effect. *Decision of the District Director*, dated November 17, 2004; *Form I-485*.

The applicant's spouse asserts in his declaration that his wife never entered the United States claiming she was a citizen, a resident alien or had a visa. He contends that at her adjustment interview she stated only that she was with people who had U.S. passports, that she did not have a U.S. passport or state she was a U.S. citizen at the time she entered the United States. *Spouse's Declaration*, undated. The AAO will not, however, give any weight to the statements made by the applicant's spouse as there is no evidence in the record that demonstrates that the applicant's spouse was present at the time of her 1987 entry and, therefore, knowledgeable about its circumstances. Thus, the AAO finds that the record establishes that the applicant entered the United States on February 17, 1987 by having a U.S. passport presented on her behalf.

Section 212(a)(6)(C)(ii) of the Act, as amended by the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) enacted on September 30, 1996, renders inadmissible any alien who falsely claims to be a U.S. citizen for any purpose or benefit under the Act or any other federal or state law, and no waiver of inadmissibility is available. However, the applicant's unlawful entry to the United States occurred prior to the date of IIRIRA enactment. Accordingly, her Form I-601, Application for Waiver of Ground of Excludability, will be considered by the AAO.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien herself experiences or her children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 (BIA 1999). 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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th

Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 extreme hardship to the applicant's spouse must be established in the event that he resides in China or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

In his brief, counsel states that the applicant's spouse will suffer difficulties in having to raise his two minor children alone if the applicant is removed from the United States. Counsel also states that the applicant's spouse will suffer financially as a result of being separated from the applicant because he would have to support his spouse in China and pay for childcare services. He contends that the economic burden would be insurmountable for the applicant's spouse. In addition, counsel asserts that like the children in *Matter of Kao*, 23 I&N Dec. 45 (BIA 2001), the applicant's children would suffer extreme hardship upon relocation. In *Matter of Kao*, the Board of Immigration Appeals found that adolescents would suffer extreme hardship as a result of relocating to a country where they do not know the culture or the language. In this case, the applicant's children were born and raised in the United States, they are adolescents at the ages of 12 and 14 years old and they do not speak Chinese. Counsel asserts that the applicant's spouse has suffered and will continue to suffer out of concern for his children and the possibility of them facing these extreme hardships. The AAO notes that relocating to China would be a hardship for the applicant's children. However, as stated above, hardship to the applicant's children is not considered in section 212(i) waiver proceedings unless it causes extreme hardship to the applicant's spouse. The applicant's spouse has not made any assertions about how his children's hardship upon relocation would cause him hardship. Neither does the psychological evaluation conducted by [redacted] a marriage and family therapist address the effect of his children's suffering on the applicant's spouse. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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). The AAO notes that the applicant's spouse does make the assertion, in his declaration, that his children cannot go with the applicant to China and that the applicant would not take them.

In his declaration, the applicant's spouse states that he is desperate for the fear he has for his children if they are separated from the applicant. He states that he will not be able to visit is wife in China because of the cost. He also states that he fears for his wife's well being if she is returned to China against her will, specifically that she will be sterilized because she has two children. The AAO notes that no documentation was submitted to support these claims. The record contains no country condition information that would indicate that the applicant would be in danger upon her return to China. In addition, no documentation was submitted to show that the applicant's spouse would suffer financially and would not be able to visit the applicant in China or be able to establish a life for himself in China.

As previously noted, the record includes a psychological evaluation from Ms. [redacted] who states that she interviewed the applicant's spouse and his two children on January 10, 2002. She concludes that the applicant's spouse and his two children are suffering from Acute Adjustment Disorder with mixed anxiety and depression. Ms. Fan expresses particular concern for the applicant's children and states that the damage to the psychological development of the two children and the family will be beyond measurement if the applicant is sent back to China. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between the applicant's family and Ms. [redacted]. The record fails to reflect an ongoing relationship with the applicant's family or any history of treatment for the problems suffered by the applicant's family. Moreover, the conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering Ms. [redacted] findings speculative and diminishing the report's value in determining extreme hardship.

The AAO recognizes that the applicant will suffer hardships as a result of the applicant's inadmissibility. However, the current record reflects that his situation is typical to individuals in his situation and does not rise to the level of extreme hardship.

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.

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 she 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.