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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 03 2007

IN RE: [redacted]

PETITION: 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 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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, a citizen of the People's Republic of China, was found 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her husband and daughter.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed on his spouse, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. On appeal, the applicant contends that his wife would suffer extreme hardship if he were required to return to China, and submits additional documentation in support of the application. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

> (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:

> 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.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant entered the United States using a passport issued to another individual. Thus, the applicant procured admission to the United States via fraud. Accordingly, the applicant is 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). A Form I-130, Immigrant Petition for Alien Relative, filed on behalf of the applicant, was approved on March 19, 2002. The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, on April 22, 2004.[1] He does not dispute his inadmissibility. Rather, he is filing for a waiver of his inadmissibility.

The record contains several references to the hardship that the applicant's daughter would suffer if the applicant were to depart the United States. However, section 212(i) of the Act provides that a waiver under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme

[1] An earlier Form I-485 on behalf of the applicant was denied on September 26, 1995.

hardship to his or her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant or his daughter cannot be considered, except as it may affect the applicant's wife.

Thus, the first issue to be addressed is whether the applicant's return to China would impose extreme hardship on his wife, the qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion in granting the waiver.

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, 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 *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States 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.

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 United States 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. In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

> 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.

The record reflects that the applicant's wife is a thirty-nine-year-old citizen of the United States. She has been a citizen since 2003. She and the applicant have been married since September 1, 1999, and have a six-year-old United States citizen daughter.

In her May 18, 2006 affidavit, the applicant's wife states that she was born in Taiwan; that she loves the applicant and their daughter very much; that she is very dependent upon the applicant for support; that, due to health conditions her skin color is pale and her hair is white; that she was constantly teased and tormented in Taiwan due to her physical differences; that, as a result of her physical differences and resultant ill treatment in Taiwan she was depressed and afraid of public exposure; that the applicant was

able to bring her out of her depression and sadness; that the applicant has always accepted her for who she is; that the applicant has protected her from verbal and mental abuse by the people around her; that the applicant has given her the strength to live; that she is now legally blind as a result of her physical problems; that she now depends upon the applicant for daily tasks since her eyesight has failed; that she cannot survive without the assistance of the applicant; that she has nightmares about losing the applicant; that she would have experienced permanent mental damage from the abuse she has experienced as a result of her physical differences had she not had the company of the applicant; that she depends upon the applicant for emotional, physical, and financial support; that she could not provide for the couple's daughter without the applicant; that due to the mental and verbal abuse she would receive as a result of her physical differences, and her failed eyesight, she could not live in another country such as Taiwan or China; that she has no friends or relatives in Taiwan or China; that, since her skills are limited, she could not procure gainful employment in Taiwan or China; and asks that the waiver applicant be approved.

In his May 15, 2006 affidavit, the applicant stated that his wife has significant physical problems; that her physical appearance is unlike that of typical Asians; that his wife was often shunned by other Asians due to her physical appearance; that his wife has begun losing her eyesight as a result of her physical problems, and that she is now legally blind; that he loves his wife very much and worries that without his presence, she would not survive; that no one but he understands his wife's problems; that he understands his wife's emotional needs, and wants to address those needs; that the couple's daughter experiences substantial emotional abuse at her school as a result of her mother's physical characteristics; that he calms his daughter when she is upset due to things other children have said about her mother's appearance; that his wife cannot live in China, due to her physical differences; that his daughter cannot live in China because she was born and raised in the United States; that relocating to China would be disastrous for his wife and daughter; and that he wishes to remain in the United States so that he can see to the health of his wife and daughter.

Affidavits from a family friend and the applicant's sibling, dated November 2003, and an affidavit from another family friend, dated May 16, 2006, attest to the applicant's good character.

The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy.

In the instant case, the applicant is required to demonstrate his wife would face extreme hardship in the event the applicant is required to return to China, regardless of whether his wife and daughter accompany him to China or remain in the United States.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"); *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); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife will face extreme hardship if the applicant returns to China. If she remains in the United States with the couple's daughter while the applicant relocates to China, the record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. As presently constituted, the record fails to establish that the financial strain and emotional hardship she would face would be greater than that normally be expected upon separation. The record contains no documentary evidence to verify the claims made by the applicant and his wife regarding the applicant's wife's medical condition, that she requires his assistance to manage her daily affairs, or that she would be unable to obtain employment to support the family in the applicant's absence. 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)). Nor has the applicant established why his wife's parents, who live in the United States, would be unable to assist his wife and daughter in his absence.

Nor does the evidence of record does support the claim that the applicant's wife would face any difficulty beyond the normal process of cultural adjustment if she were to accompany the applicant to China. Such adjustment is common and would be normally experienced by individuals in the applicant's wife's situation. The record contains no evidence, beyond the assertions of the applicant and his wife, to establish that the applicant's wife would experience hardship beyond that normally expected in this situation. Again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158 at 165.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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). Further, demonstrated financial difficulties alone are generally 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 AAO finds that the director properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's wife would suffer hardship beyond that normally expected upon the removal of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his United States citizen wife would suffer hardship that is unusual or beyond that normally expected upon removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. 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), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.