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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: CLEVELAND, OH Date: OCT 09 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Cleveland, Ohio. The matter 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's spouse and child are U.S. citizens and he 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 field office 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) accordingly. *Decision of the Field Office Director*, dated July 30, 2007.

On appeal, counsel asserts that the field office director abused her discretion in concluding that the applicant had not met his burden of proof regarding extreme hardship. *Form I-290B*, received August 29, 2007.

The record includes, but it not limited to, counsel's brief, employment letters for the applicant and his spouse, a medical note related to the applicant's child, the applicant and his spouse's 2005 and 2006 tax documents, the applicant's spouse's statement and country conditions information on China.

The record reflects that on January 15, 1999, the applicant entered the United States using a fraudulent visa. As a result of this misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant's child is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. 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 there is no requirement 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 of relocation to China. The record reflects that China's birth planning policies are harshly coercive, the law permits married couples the right to one birth, the law restricts the rights of families to choose the number of children they have, the penalties for violating the law are strict and reports of forced sterilization and abortions continue to be documented. *Department of State, 2006 Country Reports on Human Rights Practices*, at 9-10, dated March 6, 2007. Counsel asserts that any attempt of the applicant and his spouse to have a second child would result in the applicant's spouse being forced to undergo sterilization, and that the applicant is from the Fujian province which has reportedly forcibly sterilized women. *Brief in Support of Appeal*, at 5. Counsel references the country reports in stating that the government punishes those who violate the population control policy through threat of job loss, demotion and social compensation fees. *Id.* Counsel also references the country reports in stating that women in China frequently encounter serious obstacles to enforcement of laws and 47 percent of laid-off workers are women, which is significantly higher than their representation in the labor force. *Id.* at 5-6. The record is not clear as to whether the applicant or his spouse would be able to obtain employment in China in order to support their family. However, based on the issues related to China's family planning policies, the AAO finds that the applicant's spouse would face extreme hardship in the event of relocation to 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. Counsel states that the applicant earns $13,500 per year, the entire family income is $29,725 and the applicant's spouse would face financial hardship if forced to rely solely on her salary of $16,225. *Id.* at 6. The AAO notes that the most current tax documents in the record reflect a joint income of $25,310, applicant income of $14,850 and spouse income of $10,460. *Applicant and Applicant's Spouse's 2006 Federal Tax Return and Form W-2's.* Counsel states that the applicant's son was born with a high fever condition which has caused him to have seizures. *Brief in Support of Appeal*, at 6. The record contains a brief, handwritten note from a medical doctor, which states that the applicant's child has a high fever causing seizures. *Note from* [redacted] dated September 12, 2007. Although the AAO notes [redacted]s statement, it does not find it to establish the nature or severity of the medical condition of

the applicant's child, including whether it is a chronic condition and requires specialized care. In addition, the record fails to indicate what effect the child's medical condition will have on the applicant's spouse, the only qualifying relative. The applicant's spouse states that she will suffer extreme emotional and financial hardship because she would not be able to support herself and her child without the applicant's income. *Applicant's Spouse's Statement*, dated April 25, 2007. The AAO notes that going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)). The record reflects that the applicant's spouse would face difficulty without the applicant, however, the record does not include sufficient evidence of financial, emotional or other relevant hardship that would support a finding of extreme hardship should the applicant's spouse remain in the United States.

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 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.