U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

H2

FILE: [redacted] Office: DETROIT, MI Date: AUG 11 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Detroit, Michigan 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is the son of a lawful permanent resident father and lawful permanent resident mother. 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 parents.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. The District Director further found that the applicant's case did not warrant a favorable exercise of discretion.[1] *Decision of the District Director,* dated July 27, 2006.

On appeal, prior counsel contends that the applicant has established extreme hardship to his qualifying relatives, as necessary for a waiver under 212(i) of the Act. *Form I-290B, Notice of Appeal to the Administrative Appeals Office,* dated August 25, 2006..

In support of the waiver, the record includes, but is not limited to, tax returns for the applicant and his siblings; a statement from the applicant's father; a statement from the applicant; a statement from the applicant's brother; medical letters and records for the applicant's father; a medical letter for the applicant; a police clearance letter for the applicant; bank statements; a life insurance policy for the applicant's father; letters from the applicant's Certified Public Accountant; and tax statements and articles of incorporation for the applicant's business. The entire record was reviewed and considered in rendering this decision.

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

[1] The AAO notes that the record contains a second Form I-601, denied by the Field Office Director (FOD) on December 22, 2008. The applicant's current counsel has filed a timely motion to reopen/reconsider with the FOD.

> 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 record reflects that on April 25, 1991 the applicant attempted to procure admission into the United States by presenting his true passport with a counterfeit visa. *Record of Sworn Statement*, dated April 29, 1991. Based on his presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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 the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience if his waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's father or mother if the applicant is removed. If 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, 565-566 (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 a 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 father or mother must be established whether his father or mother resides in China or 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 AAO will consider the relevant factors in adjudication of this case.

If the applicant's father joins the applicant in China, the applicant needs to establish that his father will suffer extreme hardship. The applicant's father was born in China. *Form G-325A, Biographic Information sheet, for the applicant's father.* The applicant's father suffers from poor vision, primary hypertension, and has been recommended for additional evaluations. *Statement from Jay I.* [redacted] dated August 29, 2006; *Statement from* [redacted]., dated September 1, 2006. While the AAO acknowledges these medical conditions, it notes that the record does not demonstrate that adequate health care would be unavailable to the applicant's father in China. The record does not address whether the applicant's father's language abilities, or lack thereof, would

affect his adjustment to China. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his father if he were to reside in China.

If the applicant's mother joins the applicant in China, the applicant needs to establish that his mother will suffer extreme hardship. The applicant's mother was born in China. *Form G-325A, Biographic Information sheet, for the applicant.* The record does not address how the applicant's mother would be affected if she resides in China. As the record does not address this aspect of the hardship claim, the AAO is unable to find that the applicant's mother would experience extreme hardship if she were to reside in China. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to either his father or mother upon relocation to China.

If the applicant's father resides in the United States, the applicant needs to establish that his father will suffer extreme hardship. The applicant's father states that since the time he stopped working in 1999, the applicant has been acting as head of the family. *Statement from the applicant's father*, dated August 25, 2006. He notes that in 1997, his health began to decline. *Id.* The applicant's father has a history of very poor vision in both eyes, with his right eye suffering the most. *Statement from* [redacted], dated August 29, 2006. As a result, glasses offer no improvement in his visual acuity. *Id.* The applicant's father also suffers from primary hypertension. *Statement from* [redacted], dated September 1, 2006. His physician has recommended additional evaluations, as the risk factors for hypertension include stroke and heart disease. *Id.* His physician further notes that the applicant's father requires assistance and that the applicant provides this assistance. *Id.* He also indicates that the applicant's father needs a family member for translation. *Id.* While the AAO acknowledges these statements, it notes that the applicant has two adult siblings who also live with the family. *Statement from the applicant's father*, dated August 25, 2006. The record does not establish that the applicant's siblings, either individually or together, would be unable to provide the assistance needed by their father. The applicant's younger brother notes that now that his sister is married, he will be the only child who can take care of his parents if the applicant returns to China. *Statement from the applicant's brother*, dated August 25, 2006. The applicant's brother states that he does not really know what to do, as the applicant is the one in the family who makes the important decisions. *Id.* While the AAO acknowledges these assertions, it does not find the record to demonstrate that the applicant's brother would be incapable of making the decisions that are currently the applicant's responsibility.

On appeal, prior counsel contends that, individually, the applicant and his siblings are unable to support their parents and submits tax returns for the applicant and his siblings. *Letter from the applicant's previous attorney*, dated September 25, 2006. Counsel also asserts that if the applicant were to be removed to China, he would have no means of supporting himself or his parents. Id. While the AAO notes counsel's claims, it does not find the record to include sufficient financial documentation, e.g., documentation of family financial obligations, to establish that the applicant's siblings would be unable to support their parents in the applicant's absence. Moreover, the record contains no published country conditions reports that demonstrate that the applicant would be unable to obtain employment in China and thereby provide financial assistance to his parents from outside the United States.

The applicant's father states that his family struggled for ten years to be together and that it is very sad to think they will be separated again. *Statement from the applicant's father*, dated August 25, 2006. While the AAO acknowledges the sadness felt by the applicant's father, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's father will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's father would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his father if he were to reside in the United States.

If the applicant's mother resides in the United States, the applicant needs to establish that his mother will suffer extreme hardship. As previously noted, prior counsel asserts that the applicant's parents would suffer financially in the applicant's absence. *Letter from the applicant's previous attorney*, dated September 25, 2006. The applicant contends that it would be very difficult for both his parents to be separated from him. *Statement from the applicant*, dated August 25, 2006. The applicant's brother indicates that his mother, who already cries each night over her oldest son's immigration problems, would continue to cry all the time if his brother were to be removed. *Statement from the applicant's brother*, dated August 25, 2006. Beyond these claims, the record does not address how the applicant's mother would be affected if she were to remain in the United States following the applicant's removal. In that the record does not provide sufficient documentation to establish prior counsel's claim of financial hardship or offer evidence, e.g., an evaluation by a licensed mental health professional, that the applicant's mother would experience extreme emotional hardship if he were to be removed, the applicant has failed to prove that his mother would experience extreme hardship if she resided in the United States.

Based on its review of the record, the AAO does not find that the applicant has demonstrated that the bar to his admission would result in extreme hardship to a qualifying relative, as required for a waiver under section 212(i) of the Act. 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(a)(6)(C) 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.