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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: CHICAGO Date: JAN - 2 2009

IN RE: Applicant: [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).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, 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 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 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 and reside with her U.S. citizen son and permanent resident husband.

The district director concluded that the applicant 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 District Director*, dated April 27, 2006.

On appeal, counsel for the applicant contends that the applicant's husband will suffer hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel*, undated.

The record contains a brief from counsel in support of the appeal; medical documentation for the applicant's son; school records for the applicant's son; verification of the applicant's and the applicant's husband's employment; a copy of the applicant's husband's permanent resident card; a copy of the applicant's son's birth certificate; a copy of a birth record for the applicant; copies of tax records for the applicant; a copy of the applicant's passport, and; a copy of the applicant's marriage certificate. 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 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 or about April 11, 1996, the applicant entered the United States using a passport that she purchased for approximately $30,000 in a name other than her own. Thus, the applicant entered the United States by fraud, and making a willful misrepresentation of a material fact (her identity.) Accordingly, the applicant 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). The applicant does not contest her inadmissibility on appeal.

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. Hardship the applicant experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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, 565-566 (BIA 1999) provides a list of factors the Bureau 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 spouse or parent in 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.

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).

On appeal, counsel for the applicant contends that the applicant's husband will suffer hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel,* undated. Counsel states that the applicant's U.S. citizen son was born in the United States and he has been integrated into the American culture and educational system, thus he would have difficulty adapting to life in China. *Id.* at 2. Counsel provides that the applicant's son has been diagnosed with hyperactivity disorder, and the unavailability of advanced medical care in China would have an impact on his health. *Id.* Counsel contends that the applicant is currently working at a restaurant at a rate of $1,500 per month, and she earns approximately half of the household income. *Id.* Counsel asserts that the applicant's husband and son would not be able to maintain their standard of living in the applicant's absence. *Id.*

Upon review, the applicant has not established that her husband will experience extreme hardship if she is prohibited from remaining in the United States. Counsel primarily focuses on hardship to the applicant's U.S. citizen son. Direct hardship to an applicant's child is not a basis for a waiver in proceedings under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from

the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results of exclusion and deportation.

The AAO recognizes that the applicant's husband may endure emotional consequences as a result of separation from the applicant should he remain in the United States. The AAO further acknowledges that the applicant's husband's hardship will be compounded due to sharing in his son's loss of the applicant's daily presence. However, the applicant has not provided an explanation of how her son's hardship may affect her husband. The applicant has not stated whether her husband acts as a caregiver for her son, or asserted that her husband's responsibilities would change in her absence.

The applicant has not submitted a statement from her or her husband that direct addresses her husband's prospective hardship. While emotional consequences are a common result of family separation, the applicant has not shown that her husband's challenges can be distinguished from those ordinarily experienced by family members who are separated due to inadmissibility.

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. Thus, the applicant has not shown that her husband's emotional hardship will rise to the level of extreme hardship.

Counsel asserts that the applicant's earnings constitute approximately half of their household income, suggesting that her husband would experience economic difficulty should he be compelled to subsist on his earnings alone. Yet, the applicant has not provided an accounting of her household's regular expenses, such that the AAO can assess the consequences of her husband meeting his needs alone. Thus, the applicant has not shown that her husband would experience significant economic hardship should he remain in the United States without her.

Based on the foregoing, the applicant has not established that her husband would experience extreme hardship should he remain in the United States. Section 212(i)(1) of the Act.

The applicant has not presented an explanation of possible hardships her husband would experience should he return to China. Counsel asserts that the applicant's son would have difficulty adjusting to life in China, yet the applicant has not sufficiently shown that her son's challenges will create hardship for her husband that rises to the level of extreme hardship. The applicant has not asserted or shown that she and her husband would be unable to earn sufficient income in China to meet their needs. As a native and citizen of China, it is evident that the applicant's husband would not face the challenges of adapting to an unfamiliar language and culture should he return there to maintain family unity.

Accordingly, the applicant has not established that her husband will experience extreme hardship should he return to China. Section 212(i)(1) of the Act.

Based on the foregoing, the applicant has not shown that the instances of hardship that will be experienced by her husband should she be prohibited from remaining in the United States, considered in aggregate, rise to the level of extreme hardship. 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.