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

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: PHOENIX, AZ (LAS VEGAS, NV) Date: JUL 01 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, Phoenix, Arizona 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 married to a naturalized 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 reside in the United States with his spouse.

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. *Decision of the District Director,* dated January 29, 2007.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that his spouse would not suffer extreme hardship, as necessary for a waiver under 212(i) of the Act. *Form I-290B.*

In support of the waiver, the record includes, but is not limited to, statements from the applicant's spouse; statements from friends; tax statements for the applicant and his spouse; W-2 Forms and earnings statements for the applicant's spouse; a statement of employment verification for the applicant's spouse; a police report; a home loan payment statement; a mortgage statement; a utility bill; bank statements; and an apartment lease. 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 December 7, 1996 the applicant attempted to procure admission into the United States under the Visa Waiver Pilot Program by presenting a false Dutch passport. *Immigration and Naturalization Service Memo to File*, dated December 7, 1996; *False passport and false Form I-94W, Departure Card; Form I-485, Application to Register Permanent Resident or Adjust Status*. The applicant admitted to the use of the false documents during secondary inspection. *INS Memo to File*, dated December 7, 1996. He was refused admission and returned to Frankfurt, Germany under the provisions of the Visa Waiver Pilot Program. *Id.* The applicant returned to the United States on January 15, 1997. *Form I-485, Application to Register Permanent Resident or Adjust Status*. The record is unclear as to how the applicant entered the United States. 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 the applicant's 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 spouse 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 spouse must be established whether she resides in China or the United States, as she 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.

If the applicant's spouse relocates with the applicant to China, the applicant needs to establish that his spouse will suffer extreme hardship. **The applicant's spouse was born in China.** ***Birth certificate.*** The brother and sister of the applicant's spouse reside in China.[1] *Statement from the*

[1] The record is not clear as to whether the applicant's spouse's mother may also reside in China. Although the applicant's spouse claims that her parents died many years ago, her Form G-325, Biographic Information, dated May 16, 2005, states that her mother lives in Beijing.

applicant's spouse, dated October 7, 2006. The applicant's spouse states that after living in the United States for more than 11 years, she would have a difficult time adjusting to life in China. *Statement from the applicant's spouse*, dated March 29, 2007. The applicant's spouse also states that the applicant suffers from a degenerative eye condition for which he had surgery in 2001, and that he relies upon her. *Statement from the applicant's spouse*, dated October 7, 2006. While the AAO acknowledges the statements of the applicant's spouse, it notes that the record does not include documentation from a licensed healthcare professional regarding the applicant's health. The record is also unclear as to the effects of the applicant's eye surgery and whether the applicant continues to need follow-up care. Furthermore, the applicant's spouse does not elaborate as to how the applicant relies upon her and how this dependency would affect her if she resides in China. Friends note that if the applicant's spouse were to reside in China, she would lose her job, home and her car. *Statement from* [redacted] *and* [redacted] dated October 4, 2006. The applicant's spouse states that she would be unable to find work as a casino dealer in Beijing because there are no casinos there. *Statement from the applicant's spouse*, dated March 29, 2007. While the AAO acknowledges the preceding claims, there is nothing in the record to demonstrate that the applicant's spouse would experience significant difficulty in adjusting to life in China or that she would be unable to obtain some type of employment. Neither does the record establish that the applicant's spouse would be unable to have a home and car in China. The record does not include published country conditions reports documenting employment opportunities or the economic situation in China. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in China.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in China. *Birth certificate*. The applicant's spouse has no family in the United States. Her brother and sister live in China. *Statement from the applicant's spouse*, dated October 7, 2006. The applicant's spouse states that she and the applicant have purchased a new home in the United States and that the applicant's income is necessary to assist with the mortgage payments. *Id.; Mortgage Statement*. She notes that in China, the applicant would earn approximately $200.00. *Statement from the applicant's spouse*, dated October 7, 2006. While the AAO notes the applicant's spouse's assertions, it does not find the record to support them. There is insufficient evidence to determine the applicant's and his spouse's financial situation and the extent to which the applicant's removal would affect his spouse's ability to meet her financial obligations, including mortgage payments. The record also fails to provide published country conditions reports documenting employment opportunities or the economic situation in China that would address whether the applicant would be able to earn sufficient income to assist his spouse financially from outside the United States. Going on record without supporting documentary evidence will not meet the burden of proof of 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 applicant's spouse states that the applicant is her soul and inspiration, and that his removal from the United States would inflict unnecessary pain upon her. *Statement from the applicant's spouse*, dated October 7, 2006. The AAO acknowledges the emotions of the applicant's spouse. However, 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 spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she 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 spouse 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 spouse if she were to reside in 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(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.