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U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

MAY 06 2009

FILE: [redacted] Office: HONG KONG Date:

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:

SELF-REPRESENTED

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 Officer in Charge (OIC), Hong Kong, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Taiwan 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 procured entry into the United States by fraud or willful misrepresentation. In August 2006, the applicant filed a Form I-601, Application for Waiver of Grounds of Excludability, seeking 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 U.S. citizen spouse.

On December 20, 2006, the OIC issued a decision denying the application for waiver, concluding that the applicant has failed to establish that extreme hardship would be imposed on a qualifying relative should she be removed from the United States.

The applicant filed a Form I-290B, Notice of Appeal, on January 19, 2007. In a statement accompanying the Form I-290B, the applicant expresses remorse for her act of misrepresentation and reiterates that her husband would suffer emotional, medical and financial difficulties due to the applicant's inadmissibility to the United States.

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that, in a sworn statement before a United States consular officer, the applicant admitted that in April 2004 and

November 2005, she provided false information regarding her employment when applying for non-immigrant visas to enter the United States as a temporary visitor for pleasure. The record further shows that the applicant had admitted to a United States immigration Officer that prior to entering the United States as a visitor for pleasure on a B1/B2 visa in December 2004, the applicant had made inquiries regarding employment at a hostess club in California, and subsequent to her entry, had entered into occasional employment there. The record shows that the applicant was arrested at the club in April 2005 and later served as a material witness in a trial involving the club. As the applicant had made willful misrepresentations in order to gain entry into the United States, the director correctly found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act. While the applicant has expressed remorse for her past actions, she does not contest this finding.

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 lawful permanent resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. Once extreme hardship to a qualifying relative 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).

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 (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant 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 U.S. 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.

> 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).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations

omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On her Form I-601, the applicant indicated that she is claiming eligibility for a waiver through her husband, [redacted], who is a citizen of the United States. In response to a request for further evidence dated September 27, 2006, the applicant submitted statements dated December 15, 2006 from the applicant and her spouse, and a letter from [redacted], dated November 30, 2006. In his statement, [redacted] stated that he is close to a breakdown as the consequence of the applicant's situation. He stated that he has had to put on a façade of optimism in order not to cause his elderly parents concern. He stated that having lived in the United States for over 20 years, and due to their age and frailty, his parents would not be able to adapt to living abroad. At the same time, he stated, it would be unthinkable for him to leave his parents to care for themselves. The letter from [redacted] stated that [redacted] "is newly diagnosed to have Diabetes Mellitus and anxiety." The doctor further stated that [redacted] "glucose level is fluctuating and difficult to control" and recommended two weeks of rest to stabilize the glucose level.

In denying the application for waiver of inadmissibility, the OIC concluded that the evidence failed to demonstrate that the applicant's spouse would experience extreme hardship upon the applicant's removal from the United States. The OIC found that the applicant has not shown that her spouse would suffer extreme hardship over and above the normal economic and social disruptions involved in the separation of a family member.

On appeal, the applicant submitted a statement in which she expressed her concern that the stress of her situation is affecting her spouse's medical condition and that he is finding it increasingly difficult to manage his glucose level. She stated that she fears he will have a severe nervous breakdown, and as he is unable to cope, it may lead him to contemplate suicide. The applicant expressed remorse for her previous immigration violations.

Upon review, the AAO finds that there is insufficient evidence to support the conclusion that the applicant's spouse would experience extreme hardship as the result of the applicant's inadmissibility to the United States.

The applicant submitted a physician letter confirming that her husband has diabetes and anxiety. The letter contains no detail as to either of these conditions, and no further evidence was

submitted to document the nature and severity of these conditions, or any treatment that has been applied. As such, it cannot be determined whether these conditions continue to exist or to what extent they should be factors in considering hardship to the applicant's spouse. The applicant claimed she fears that her husband's mental health would deteriorate due to stress resulting from her situation, such that a severe nervous breakdown or even suicide may be possible. However, the applicant has not submitted any supporting evidence that would elevate this claim beyond lay speculation on her part. Although her statements are relevant and are taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan,* 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

Other than emotional difficulties and the medical conditions discussed above, the applicant has not provided evidence of any other hardship to her spouse, such as financial or occupational, that could be factored into the consideration of whether he would suffer extreme hardship if the applicant is barred from joining him in the United States.

Moreover, while there is no requirement under the statutes or regulations that a qualifying relative must relocate or reside outside of the United States based on the denial of the applicant's waiver request, to establish statutory eligibility for a waiver of inadmissibility, the applicant must also establish extreme hardship to her spouse in the event that he relocates with her to Taiwan. With respect to this option, the applicant's spouse has stated that he would be unable to leave his parents in the United States to care for themselves, and they would be unable to adapt to life abroad due to their age and frailty. While the difficulty of his situation is noted, the AAO cannot find that it rises to the level of 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 spouse would face extreme hardship due to the applicant's inadmissibility to the United States. The AAO recognizes that the applicant's spouse will suffer as a result of separation from the applicant. However, based on the record, the AAO cannot conclude that the hardships he faces, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch,* 21 I&N Dec. 627 (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). 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. "[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).

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. 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(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.