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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: PHILADELPHIA, PA Date: MAY 07 2010

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the People's Republic of China (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 having entered the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the daughter of a naturalized United States citizen and a lawful permanent resident of the United States, and the mother of two United States citizen children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 her parents and children.

The Acting District Director found 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 Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated August 9, 2006.

On appeal, counsel for the applicant states that "[t]he decision should be overturned because of the extreme hardship the applicant's father would suffer if [the applicant] here [sic] not admitted." *Appeal brief*, dated September 5, 2006.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant, her father and her mother; and a letter from [redacted] regarding the applicant's father's medical conditions. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) In general.-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.
>
> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

> (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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...

In the present application, the record indicates that on October 29, 1997, the applicant's then lawful permanent resident father filed a Form I-130 on behalf of the applicant. On February 20, 1998, the Form I-130 benefiting the applicant was approved. On July 9, 1999, the applicant entered the United States on an F-2 nonimmigrant visa. On May 21, 2002, the applicant's father became a United States citizen. On November 17, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On April 13, 2005, the applicant married her husband, a native and citizen of China, in Pennsylvania. On June 27, 2006, the applicant filed a Form I-601. On August 9, 2006, the Acting District Director denied the applicant's Form I-485 and Form I-601, finding that the applicant had entered the United States through fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative.

In a letter dated August 11, 2005, the applicant claims that she obtained her visa to enter the United States through a travel agency. She claims that she supplied the travel agency with "[her] Birth Notarial Certificate, Household Register and [her] photos so that they could go through the formalities. They took care of everything." The applicant states that the travel agency returned her passport to her, with her photograph, name and date of birth, and she traveled to the United States. She claims that the only question she was asked when entering the United States, was how long she was staying. The record establishes that the applicant entered the United States on July 9, 1999, as an F-2 nonimmigrant, i.e., as the dependent of an F-1 student spouse or parent. The applicant was not, however, eligible to receive an F-2 visa as, at the time she entered the United States, she was 27-years-old, unmarried, and neither her mother or father were students. As the applicant presented a fraudulently-procured F-2 visa to an immigration inspector at the port of entry, the AAO finds the record to support a determination that the applicant willfully misrepresented a material fact in order to gain admission to the United States. Accordingly, she is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) 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 as a result of her inadmissibility is not directly relevant to a determination of extreme hardship in a section 212(i) waiver proceeding. The AAO also notes that the record contains references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(i) of the Act provides a waiver solely where the applicant establishes extreme hardship to a citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's children will not be considered in this proceeding except to the extent that it creates hardship for their grandfather or grandmother, the only qualifying relatives. 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).

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 *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. The BIA has also held:

> 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.

The AAO notes, however, that the courts 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). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (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). Only "in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

Extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

Counsel claims that the applicant's father will suffer extreme hardship if the applicant is not allowed to remain in the United States. *See appeal brief, supra.* Counsel states that both of the applicant's parents are "elderly, and her father is paralyzed on the left side of his body due to a brain hemorrhage – induced stroke, and thus relies on a wheelchair." *Id.* In a letter dated June 15, 2006, the applicant's father states that he is ill. In a letter dated June 15, 2006, [redacted] states that the applicant's father "suffered a left parenchymal hemorrhage with resultant right hemiparesis in March 2002. He is bed and wheelchair bound, has only minimal movement on the right side of his body . . . . He is unable to care for himself . . . [and] can't get from bed to the wheelchair or back without major assistance." While the AAO acknowledges [redacted] statement, the record does not address how the applicant's father's condition affects his ability to travel to China. Further, no documentation has been submitted to establish that the applicant's father would be unable to obtain adequate medical care in China or that he has to remain in the United States to receive medical treatments. The record also fails to indicate that the applicant's mother has a medical condition, physical or mental, that would preclude her from joining the applicant in China. Additionally, the AAO notes that the applicant's mother and father are natives of China who speak Chinese and who spent their formative years in China. Further, the record does not establish that the applicant's parents have no family ties in China. Based on the record before it, the AAO does not find the applicant to have established that either of her parents would suffer extreme hardship if they returned to China with her.

In addition, the record also fails to establish extreme hardship to either of the applicant's parents if they remain in the United States, in close proximity to their other children and with access to healthcare. Counsel states that the applicant is her father's "sole caregiver." *Appeal Brief, supra.* Counsel states the applicant's "father's condition is primarily of a physical, but emotional and mental condition as well, that is permanent and requires ongoing treatment." *Appeal Brief, supra.* [redacted] states that the applicant's continued support of her father "is essential to his well-being" and that "he depends on his daughter to provide for his total needs." While the AAO notes these claims, it also observes that the applicant indicates that her siblings live in different locations and that her parents "spend some time with each one of [them]." The AAO also notes that the record fails to indicate that the applicant's siblings are unwilling or unable to help care for their father or that the applicant's mother is unable to care for her husband. Accordingly, the AAO does not find the record to establish that the applicant is her father's sole caregiver and that he is totally dependent on her for his care. The record also contains no medical documentation, e.g., professional psychological evaluations, that establishes that the applicant's father is suffering from any emotional and/or psychological problems. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In a letter dated June 15, 2006, the applicant's mother states that she hopes that the applicant can continue to live in the United States so that she is able to see her. The record includes no other claims of hardship on behalf of the applicant's mother as a result of her separation from the applicant. Based on the record before it, the AAO does not find the applicant to have established that either of her parents would experience extreme hardship if her waiver application were to be denied and they remained in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parents 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 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)(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.