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U.S. Citizenship  
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FILE:



Office: SAN FRANCISCO, CA

Date: JUN 14 2005

IN RE:



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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on a Service motion to reopen and reconsider. The appeal will be dismissed.

The applicant is a native and citizen of 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 attempted to procure other documentation and/or admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a lawful permanent resident of the United States 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 and children.

The district director concluded 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 District Director*, dated September 29, 2003.

On appeal, counsel states that Citizenship and Immigration Services (CIS) failed to follow precedent in analyzing the applicant's assertion of extreme hardship imposed on his spouse as a result of his inadmissibility to the United States. Counsel further asserts that the decision of the district director misinterprets the holding in *Carnalia-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980). *Form I-290B*, dated October 31, 2003.

In support of these assertions, counsel submits a brief, dated October 31, 2003. The record also contains a statement of the applicant's spouse; a letter from Dr. [REDACTED] MD; copies of the United States birth certificates of the applicant's children; letters verifying the employment of the applicant and his spouse and copies of financial and tax documents for the applicant and his spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant provided false information to the United States Government regarding his affiliation with the Communist Party in his application for asylum.

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

- (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:

- (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.

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 alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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 (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 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.

The AAO acknowledges counsel's assertion that the decision of the district director incorrectly applies the standard articulated in *Carnalia-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980). *Brief in Support of Appeal*, dated October 31, 2003. Counsel contends that the applicant's marriage should not be considered to result in an after-acquired equity because it did not occur after the issuance of an order of deportation. *Id.* at 6-7. The AAO finds merit to counsel's contention and as such, the equities of the applicant's spouse are not discounted in this opinion's consideration of the application.

While counsel methodically addresses the factors identified in *Matter of Cervantes-Gonzalez*, the AAO notes that counsel conflates the alleged hardship suffered by the applicant's spouse as a result of relocation to China and the hardship the applicant's spouse would face as a result of remaining in the United States in the absence of the applicant. Counsel contends that the applicant's spouse has two United States citizen children and that, in addition, her parents and four of her siblings reside in the United States. *Brief in Support of Appeal*, dated October 31, 2003. Counsel asserts that economic and health conditions in China are poor compared with the conditions witnessed in the United States. *Id.* at 4.

Counsel contends that the applicant's spouse would face hardship because she has many family members in the United States; her children are United States citizens; she would face financial hardship and she suffers from chronic depression. Counsel fails to establish that the applicant's spouse would suffer extreme hardship if she remains in the United States in order to maintain proximity to her family members residing in this country, access to sufficient health care and employment. Counsel indicates that the applicant's spouse will endure financial hardship in attempting to provide for her children in the absence of the applicant. *Id.* The record demonstrates that the applicant and his spouse are both employed and that their combined earnings fail to place them above the poverty line. *Id.* at 4-5. However, no evidence is presented in regard to the spouse's

monthly expenses and whether her family members can assist her with these expenses. Counsel further asserts that the applicant's spouse suffers from chronic depression. *Id.* at 5. The AAO notes that counsel's contention that the financial and psychological impacts suffered by the applicant's spouse combine to amount to extreme hardship is compelling. The AAO finds, however, that the physician letter submitted to evidence the depression suffered by the applicant's spouse is cryptic and fails to offer probative documentation of an extreme psychological condition. The letter fails to establish if the evaluating physician is familiar with the applicant's spouse beyond one visit; fails to indicate whether the applicant's spouse has a continuing relationship with any mental health professional and fails to substantiate whether or not her "multiple medications" alleviate her symptoms and/or are prescribed as a component of a larger treatment plan. The letter's statement that the applicant's spouse "should qualify [sic] long-term disability" is completely unclear in the context of the narrative and its indication that she requires constant care at home is without elaboration. The letter constitutes the only evidence of psychological hardship offered by the record and the AAO is unable to make a determination of extreme psychological hardship based on its contents standing alone. *See Letter from Frank Y. Zhang, MD*, dated September 4, 2003.

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* 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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The AAO acknowledges counsel's assertion that the decision of the district director conflates the discussion of extreme hardship with consideration of whether discretionary waiver is merited. *Brief in Support of Appeal* at 7-8. The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 he 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.