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U.S. Citizenship  
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[REDACTED]

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES

Date: OCT 25 2006

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant is a native of Hong Kong and citizen of the United Kingdom 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 husband and children.

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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 1, 2004.

On appeal, counsel for the applicant contends that the applicant's husband and two children will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Statement from Counsel on Form I-290B*, dated December 29, 2004. Counsel contends that the district director failed to adequately consider the submitted evidence in aggregate, or to balance factors presented in the record, thus the denial was an abuse of discretion. *Id.*

The record contains statement from counsel on Form I-290B; a statement from the applicant's husband submitted with the initial Form I-601 waiver application; a copy of the applicant's marriage certificate; a copy of the applicant's husband's naturalization certificate; a Form I-864, Affidavit of Support, executed by the applicant's husband on her behalf; copies of tax records for the applicant and her husband; letters verifying the employment of the applicant and her husband; copies of bank records and bills for the applicant and her husband; a copy of the applicant's and her husband's passports; a copy of the applicant's Form I-94 departure record, and; documentation regarding the Form I-140 previously filed on behalf of the applicant and the company that filed it. The entire record was reviewed and considered in rendering this decision.

It is noted that counsel requested 60 days from February 8, 2005 in order to send a brief and/or evidence to the AAO. However, as of June 30, 2006, the AAO had received no further documentation or correspondence from the applicant or counsel. On June 30, 2006, the AAO sent a facsimile to counsel with notice that a brief or additional evidence had not been received, and affording five days in which to provide a copy of any missing filing. As of the date of this decision, the AAO has not received a response to the facsimile, and the record is deemed complete.

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 February 17, 1998, [REDACTED] filed a Form I-140, Immigrant Petition for Alien Worker, on behalf of the applicant. In connection with this petition Artone submitted a lease as evidence of its business operations in the United States, yet upon investigation the lease was determined to be fraudulent. Artone further submitted documentation to report that the applicant holds a 49 percent share of the company, and that it employed the applicant as President, a Sales Manager, two Warehouse Workers, and five independent Sales Representatives. *Organizational Chart for Artone*. From the documentation provided, it is evident that the warehouse workers and independent sales representatives were not responsible for making immigration filings with Citizenship and Immigration Services (CIS.) The sales manager's responsibilities were listed as "manage all sales and warehouse workers," thus Artone did not indicate that this worker, [REDACTED], had responsibility for making immigration filings with CIS.

The Form I-140 was signed by the applicant's husband, [REDACTED] who represented himself as Vice President. *Letter from [REDACTED]* dated December 11, 1997. However, [REDACTED] was not identified in the organizational chart as having responsibility for Artone functions. Thus, as the President over a small company and 49 percent shareholder, the applicant could reasonably be expected to have involvement in and awareness of immigration filings on her behalf. The Artone organizational chart strongly suggests that the applicant was the single employee with responsibility for the Form I-140 petition submitted on her behalf. Therefore, fraud committed by Artone in the course of seeking immigration benefits for the applicant could be attributed to direct conduct by the applicant. The applicant has not asserted or shown otherwise. 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 alien herself 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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that, “[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.” (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant’s husband would possibly remain in the United States if the applicant departs. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

On appeal, counsel contends that the applicant’s husband and two children will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Statement from Counsel on Form I-290B*, dated December 29, 2004. Counsel contends that the district director failed to adequately consider the submitted evidence in aggregate, or to balance factors presented in the record, thus the denial was an abuse of discretion. *Id.*

The applicant’s husband stated that denial of the present waiver application will create extreme hardship for him, the applicant, and their two children. *Statement from Applicant’s Husband*, dated October 25, 2001. The applicant’s husband indicated that his two children require the applicant to care for them, and he implied that he would endure hardship if she is unavailable to provide childcare. *Id.* The applicant’s husband stated that the applicant herself will experience difficulty if she is separated from her family. *Id.*

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from remaining in the United States. The evidence of record contains explanations of hardships that the applicant and her children will endure if she departs. However, hardship to the applicant or her children is not a relevant concern in the present matter. Section 212(i)(1) of the Act. While the AAO acknowledges that the applicant and her children will bear significant consequences if they are separated or if they depart the United States, only hardship to the applicant’s husband may be properly considered in this section 212(i) waiver proceeding.

The applicant’s husband implies that he will experience emotional hardship if he is separated from the applicant. The AAO recognizes that the applicant’s husband will endure hardship as a result of separation from the applicant should he remain in the United States. However, his situation is typical to individuals separated as a result of deportation or exclusion, and the record does not show that it rises to the level of extreme hardship. 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 (9<sup>th</sup> 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.

The applicant's husband stated that he needs the applicant to remain in the United States to take care of their two children, implying that he is unable to provide sufficient childcare. However, the applicant has not shown that her husband would be unable to secure alternate childcare services should he remain in the United States with their children. The record shows that the applicant's husband earned \$1,726.25 per month as of September 4, 2001, equivalent to \$20,715 per year. *Letter from KMC Enterprise*, dated September 4, 2001. This amount is above the poverty line for a family of three, evaluated as \$16,600. *See Form I-864P, Poverty Guidelines*. The applicant has not provided documentation that reflects that her husband would be unable to care for his children and meet his financial needs in her absence.

It is noted that the applicant's husband may relocate abroad with the applicant if he chooses, though he is not required to do so. The applicant is a native of Hong Kong and a citizen of the United Kingdom. No claim was made that the applicant's husband couldn't relocate with his wife to another country. The AAO recognizes that the applicant's husband may suffer economic consequences if relocating outside the United States, as he would have to leave his current position and adapt to new employment. However, the applicant has not shown that her husband would be unable to meet his financial needs abroad.

Counsel contends that the district director failed to adequately consider the submitted evidence in aggregate. However, the record lacks sufficient evidence to show that the applicant's husband will experience extreme hardship. It is noted that the only direct explanation of hardship to the applicant's relatives consists of the letter from the applicant's husband. However, the letter is brief and vague, providing little insight into the consequences that may result from the applicant's departure. As noted above, while counsel indicated that he would provide additional evidence to support the appeal, he failed to do so. Thus, the district director's brief analysis of the record is deemed appropriate.

Counsel contends that the district director failed to balance the factors present in this case. However, a balancing of positive and negative factors is only performed when assessing whether the applicant warrants a favorable exercise of discretion. If an applicant fails to first establish that a qualifying relative will experience extreme hardship, the district director lacks discretion to approve a waiver application. *See section 212(h) of the Act*. Having found the applicant statutorily ineligible for relief, no purpose would have been served in discussing whether she merits a waiver as a matter of discretion. Thus, the director's lack of discussion of factors that weigh in the applicant's favor was proper.

All instances of hardship to the applicant's husband have been considered separately and in aggregate. Based on the foregoing, the instances of hardship that will be experienced by the applicant's husband should the applicant be prohibited from remaining in the United States do not rise to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, as noted above 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.