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FILE:

Office: CHICAGO (MILWAUKEE)

Date: **MAR 27 2007**

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of the Peoples Republic of China who is married to a naturalized U.S. citizen and is the beneficiary of any approved petition for alien relative. The applicant was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having obtained admittance into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen 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. On appeal, counsel contends that the district director failed to consider all the evidence, which counsel maintains establishes extreme hardship to the applicant's wife. Counsel asserts that denial of the waiver would cause the applicant's spouse to suffer extreme hardship whether she remains in the United States or relocates to China to accompany the applicant.

On appeal, counsel submits letters written by the applicant's friends and relatives, country conditions information regarding, in particular, China's coercive family planning program, financial documentation, a psychological evaluation of the applicant's wife, and other documentation. 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.

The record reflects that on May 24, 1990 the applicant presented a photo-switched Chinese passport in another person's name and was consequently admitted to the United States. The AAO also notes that the applicant admits to having filed two asylum applications containing untrue and/or unknown data in order to procure work authorization and remain in the United States.

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.

A § 212(i) waiver of the bar to admission resulting from violation of § 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 or his children experience upon removal is irrelevant to § 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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 Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to § 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.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to China to remain with the applicant, as her immediate relatives reside in the United States. Counsel submits a psychological evaluation by [REDACTED] based on an interview that [REDACTED] conducted with the applicant, his wife, and one of their sons on December 30, 2004. [REDACTED] wrote that the applicant's wife was separated from her younger sister and her father for many years, and as a consequence, she currently harbors deep-seated fears of being apart once more from her loved ones. [REDACTED] stated that the applicant's wife suffers from major depressive disorder due to her anxiety over the possible results of the applicant's removal. [REDACTED] also noted that the applicant's wife's depression is reactive in nature, that is, it is based on the stressful situation in which she finds herself, and therapy and medication are unlikely to relieve the symptoms. [REDACTED] concluded that the applicant's wife's depression would worsen if she departed the United States to accompany the applicant abroad.

The AAO does not doubt the anxiety and depression that the applicant's removal would cause his wife to experience; however, [REDACTED] description of her symptoms does not lead to the conclusion that the applicant's wife's emotional state is more negative than that of other spouses of inadmissible persons. In other words, the record does not establish that the applicant's wife would suffer emotionally to an extreme degree on account of either her husband's absence, should she elect to remain in the United States, or a separation from her immediate family, if she chose to move to China with the applicant.

Counsel also asserts that if the applicant's wife returns to China with the applicant, her relatives will not be able to run the family's two restaurants in Oshkosh, Wisconsin, and the restaurants will have to close. Counsel states that this will cause the applicant's wife to suffer. The AAO notes, however, that families who relocate abroad frequently must rearrange their properties and business; hence, the sale and/or closure of their restaurants would not be an uncommon result of their situation.

Counsel further contends that if the applicant's wife moves to China, she or the applicant will be forcibly sterilized. Counsel proffers an affidavit executed by sociologist [REDACTED] who indicates that the

applicant and his wife will not be exempt from Chinese coercive family planning tactics and punishments simply because their children were born abroad. [REDACTED] discusses the consequence to Chinese couples who violate the one child policy while abroad; however, the applicant's wife is a U.S. citizen. There is no evidence that the U.S. citizens and their spouses are subject to the forced abortions, IUD insertions, and sterilizations mentioned by [REDACTED]

The evidence also does not establish that the applicant's wife would suffer extreme hardship if she remains in the United States. The AAO recognizes that the applicant's wife will undergo emotional and other hardship as a result of separation from the applicant; however, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and cannot be considered extreme. 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. Moreover, 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.

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.