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SEP 17 2007

FILE: [REDACTED] Office: LOS ANGELES DISTRICT OFFICE 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:

[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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, a citizen of the People's Republic of China, was found 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 is the spouse of a United States citizen, and 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 with her husband.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's husband would suffer extreme hardship if the applicant were required to return to China. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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:

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 she entered the United States in or around March 2000 via a passport issued to another person. Thus, the applicant entered the United States by making a willful misrepresentation of a material fact (her identity) in order to procure entry into the United States. Accordingly, the applicant is 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 attempting to enter the United States by making a willful misrepresentation of a material fact (his identity) in order to procure entry into the United States. She does not dispute his inadmissibility. Rather, she is filing for a waiver of inadmissibility.

A section 212(i) waiver of the bar to admission resulting from a 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 that 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).

Thus, the first issue to be addressed is whether the applicant's return to China would impose extreme hardship on her husband. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion in granting the waiver.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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 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 set forth a list of non-exclusive factors relevant to determining whether an alien 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 United States 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. In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

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.

Additionally, the Ninth Circuit Court of Appeals has held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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 record reflects that the applicant's husband is a twenty-six-year-old citizen of the United States. He has been a citizen since 2002. He and the applicant have been married since April 12, 2001. The applicant filed Form I-485 on February 15, 2002, and the instant Form I-601 was filed on December 11, 2002.

The record contains two affidavits from the applicant's husband. In his first affidavit, dated December 2, 2002, he states that he would experience hardship if required to depart the United States; that he loves the applicant dearly; that it is unconscionable that he should be forced to choose between his adoptive country and his wife; that he and the applicant are both working to save money so that they can have a baby; that two households are more expensive to maintain than one; that China has a one-child policy; that he and the applicant would like to have two or three children; and that he and the applicant cannot stomach the idea of living in a communist country because they both value the freedoms of the United States.

In his second affidavit, dated March 29, 2005, the applicant's husband states that he immigrated to the United States at around fourteen years of age; that growing up in China was very difficult, as the Chinese government did many bad things without thought of who they were hurting; that he was often bullied in school in China; that he often had to work instead of going to school; that, as a result of his early childhood experiences he was shy and introverted; that he became even more shy and introverted upon the family's immigration to the United States; that learning English was very difficult for him; that he had no friends in the United States while he attended school and lived a very solitary life; that he met the applicant while working in a restaurant; that the applicant was kind and patient with him; that the applicant allowed him to develop confidence, which allowed him to open up to her; that moving so many times in his life made it difficult for him to form attachments; that the applicant is warm, wonderful, and has helped him to make friends with others; that the applicant is an important part of the community; that the applicant volunteers in the community; that the applicant was a simple farm girl at the time of her misrepresentation and would have done it had she known the serious nature of the crime; that he will be hopelessly lost without the applicant; that he has slipped deeper and deeper into depression, and his parents are worried about him; that he cannot sleep; that he has a difficult time functioning at work; that the thought of life without the applicant is so depressing that he has sought psychological help; that he speaks to a psychoanalyst twice a month regarding the deep depression into which he has sunk; that the applicant is the key to his dreams; that no one has given him the love and hope that the applicant has given; that if he is forced to live without the applicant he will be devastated; and that he cannot go on living if it would mean retuning to the life he had before meeting the applicant.

The record also contains an evaluation from [REDACTED], dated December 30, 2004. [REDACTED] states that the applicant's husband is dependent upon his wife emotionally; feels down when discussing the future; is unable to sleep well; and has gained about thirty pounds over the past two years as a result of increased eating due to anxiety. He states that the applicant's husband has no acute suicidal intent or plans, that he has no evidence of acute psychosis, and that he is not at risk for suicide at the present time. [REDACTED] recommends that the applicant be granted United States citizenship within the shortest timeframe possible so that her husband will not have to suffer a lengthy emotional distress.

The letter also contains several letters from members of the couple's church, attesting to the applicant's and her husband's good moral characters, as well as a letter from the mayor of Los Angeles thanking the applicant for her volunteer service.

On appeal, counsel reiterates the affidavits and letters discussed previously, and contends that the applicant's husband is deeply devoted to the applicant, and that the thought of separating from the applicant has caused him to contemplate suicide.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); see also *Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.")

The Ninth Circuit Court of Appeals has stated that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also 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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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 the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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);

INS v. Jong Ha Wang, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy”).

In the instant case, the applicant is required to demonstrate that her husband would face extreme hardship in the event the applicant is required to return to China, regardless of whether he accompanies her to China or remains in the United States.

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 husband will face extreme hardship if the applicant returns to China. If he remains in the United States without the applicant, the record fails to establish that he would face greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. As presently constituted, the record fails to establish that the financial strain and emotional hardship he would face would be any greater than that normally be expected upon separation. The financial strain associated with the maintenance of two households is experienced by every family in the applicant’s situation and is to be expected. As for her husband’s depression, there is no evidence in the record that he has sought any medical treatment beyond a single visit to [REDACTED] in 2004. There is no evidence of an ongoing with any mental health professional.

Nor does [REDACTED] evaluation establish extreme hardship. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant’s husband and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant’s spouse or any history of treatment for the depression suffered by the applicant’s spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship.

Nor has the applicant demonstrated that her husband would face extreme hardship if he relocated to China with her. China’s one-child policy is enforced differently in the various parts of the country, and the applicant has submitted no information or documentation, beyond the assertions of record, that she and her husband would be subjected to the one-child policy. Simply 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)).

In limiting the availability of the waiver to cases of “extreme hardship,” Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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). “[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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The AAO finds that the District Director properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant’s husband would suffer hardship beyond that normally expected upon the removal of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her husband would suffer hardship unusual or beyond that normally expected upon removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. “Extreme hardship” has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director’s denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.