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U.S. Citizenship
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FILE: [REDACTED]

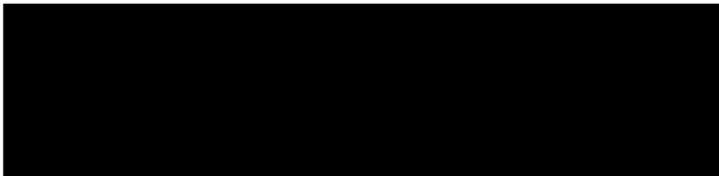
Office: SALT LAKE CITY, UT

Date: **DEC 29**

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:



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).

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Salt Lake City, Utah, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of China, attempted to procure entry to the United States in July 1991 by presenting a fraudulent passport and U.S. visa. The applicant was thus 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 having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen 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 U.S. citizen spouse and children, born in 2002 and 2006.

The field office 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 Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 31, 2008.

In support of the appeal, the applicant submits a brief, dated February 28, 2008. 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.

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 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 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 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.

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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) 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.

To begin, numerous references are made to the hardships the applicant's two U.S. citizen children will face were the applicant removed. Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or their U.S. citizen children cannot be considered, except as it may affect the applicant's spouse. It has not been established that the repercussions to the applicant's children due to the applicant's removal would cause the applicant's spouse extreme hardship.

Counsel further asserts that the applicant's U.S. citizen spouse would experience extreme emotional and financial hardship were the applicant removed from the United States. As stated by the applicant's spouse,

I came to Vernal to operate my sister's restaurant. My sister had operated the restaurant for 2 years. She died in a car accident in 1994. Her family wanted to rent the restaurant to someone else. I and my husband [the applicant] took over the restaurant. We operate the restaurant and pay rent for space. We have had the restaurant for 8 years.... My husband runs it and employs his two brothers, a cousin and nephew as dishwashers, servers, cooks and helpers. We have 7 employees and are open from 11 a.m.-10 p.m. 7 days a week. We had net profits of about \$80,000 in [sic] 2006, and it is estimated to be about the same in 2007.

We own two residences....

I am not able to work in the United States because I must stay home and must care for the children. Due to the restaurant hours I cannot obtain daycare for them. Either I or my husband must be in the restaurant or available by phone to assist in translations and running the restaurant. My husband supplies all our support from the profits of the restaurant. Even now with him here is it difficult. Vernal is very far from Salt Lake City where we must often do business. My sister was killed in a car accident on the highway between Vernal and Salt Lake. I cannot drive on the highway by myself because of this. My husband must drive all the family if we are going to go outside of Vernal. Services of almost any kind are limited in Vernal. If the children were to need expert medical care or other health care, they would need to come to Salt Lake City to obtain them. My husband would need to drive them to Salt Lake.

[W]ithout my husband I would be unable to run the restaurant or to obtain suitable employment. The children would be without a father as they grow up. I would be without a husband as a companion, provider and helper with the children. I would be isolated in Vernal which has very few Chinese people. I would suffer emotional devastation if I were to be separated from my husband. I would also lose the economic support of my husband since he would not be able to provide support from China. Every aspect of my life and the life of the children would be impacted by my husband's permanent return to China....

Affidavit of [REDACTED] dated February 22, 2008.

U.S. 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). 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.

Counsel has not provided any documentation from a mental health professional that describes the ramifications that the applicant's spouse and/or children would experience were they to be separated from the applicant due to his inadmissibility. Although a letter has been provided from [REDACTED], asserting that the applicant's spouse experienced postpartum depression after her most recent delivery, the AAO notes that said delivery occurred in 2002; [REDACTED] letter thus does not establish the applicant's spouse's current mental health situation and the hardships she would

face were the applicant to relocate abroad. In addition, with respect to the applicant's spouse's concerns relating to driving long distances, the applicant has failed to establish that the applicant's spouse would be unable to obtain assistance from other individuals, including her spouse's family members who are employed by their restaurant, should she need to travel to Salt Lake City for personal and/or professional reasons by car. Moreover, no documentation has been provided that establishes that the applicant's spouse, a native of China, and/or children would be unable to travel to China to visit with the applicant. The AAO recognizes that the applicant's spouse will endure 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 does not rise to the level of extreme hardship based on the record.

As for the financial hardship referenced by the applicant's spouse, the AAO notes that 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."); *Shooshtary 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).

No evidence has been provided with the appeal that establishes the applicant's and his family's financial situation, including income and expenses, assets and liabilities. Nor has any evidence been provided to establish the financial viability and profitability of the applicant's and his spouse's business, to establish that without the applicant's physical presence in the United States, their business will suffer to an extent that will cause the applicant's spouse extreme hardship. The AAO again notes that numerous family members are currently employed in the applicant's restaurant; it has not been established that said family members would be unable to assist the applicant's spouse in the management and operations of the business, should the need arise, thereby ensuring the continued success of the business. Finally, it has not been established that the applicant's spouse would be unable to obtain appropriate child care coverage, should she wish to work at the restaurant on a regular basis. The applicant has thus failed to show that his absence will cause extreme financial hardship to the applicant's spouse.

Alternatively, it has not been documented that the applicant's spouse would be unable to obtain gainful employment to support herself and her children, should she choose to sell the business and/or assign its continued operations to a third party. Nor has the applicant established that were he

removed, he would be unable to obtain employment abroad and assist in supporting his family financially. While counsel has provided general information about country conditions in China, no evidence has been provided to establish that the applicant specifically will be unable to obtain gainful employment in China. 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)). Thus, the AAO concludes that it has not been established that the applicant's U.S. citizen spouse will suffer extreme hardship were the applicant removed from the United States.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's spouse asserts the following hardships were she to relocate to China to reside with the applicant:

My husband [the applicant] worked for the Chinese Government as a clerk.... He has no degree, and finished only middle school. He was an activist during the uprising in Tiananmen Square in 1989. The Government arrested and detained him. He has been blacklisted so is unable to obtain a job....

I lost my Chinese Citizenship when I became a U.S. citizen. My Children do not have Chinese Citizenship. We would all have to obtain Chinese visas to live there. We would not be eligible for benefits available only to Chinese Citizens. School fees are 10 times what fees are charged for Chinese Citizens. Hospital fees are more expensive. I and the children would be treated as foreigners and not eligible for benefits, for example obtaining a mortgage would be difficult if not impossible. Because of the high population in China, Chinese who have not been out of the Country will be hired first.... Returning Chinese are treated with resentment and hostility by the Chinese. I fear for discrimination for myself and my children.

It is very expensive to raise children in China. My Husband and I cannot run a similar restaurant in China due to extreme competition. Also, you can only run a business in China if you have many relationships. You must have relationships with friends and officials who control businesses. You must pay money under the table for licenses and permits. Because my husband and I left China over 16 years ago, we do not have the relationships with friends and officials that could help us get the necessary licenses and permits or to help us get restaurant supplies and food. Even if we were able to run a business we would not be able to make same level of income.

Because I did not complete my economics degree I would have a hard time getting a job. Most companies in China would want to hire a young person with a degree.... If I did get a job, it would be very low paying and I would not be able to support myself and my children in the same way that my husband and I can support them here. My husband has been blacklisted by the Chinese Government and will not be able to obtain employment....

I do not want to have my children go through the Chinese education system. It is too difficult and children are pushed too hard.... I want my children to have U.S. education and to learn English.... I and my children would not have the freedoms guaranteed to U.S. citizens by the Bill of Rights if we were to go to China.

In China children are not treated by a family doctor, but must go to the hospital and wait to be seen. Medication given for children are not child friendly and it is difficult to determine proper dosage and is difficult to administer....

I, my husband and our children are all used to American ways and life would be extremely difficult if we were all to return to China. The children's' education would be difficult and it would be very difficult for them to obtain a good education, learn English and go to college....

If I was to return to China with my husband, I would have to sell the restaurant and our homes. Because of the depressed housing market and the remoteness of Vernal, Utah, I would not be able to obtain the full value of the homes and would lose substantial amounts of money that we would need in China. We would also have to sell the restaurant, and would lose money on its sale....

Id. at 1-4.

As previously noted, no documentation has been provided to corroborate that the applicant and/or his spouse will be unable to obtain gainful employment in China, ensuring financial viability and stability for the family. Moreover, it has not been established that the applicant's children would be unable to attend a school in China that also teaches English, thereby ensuring academic stability in both China and the United States. In addition, it has not been established, as referenced above, that the applicant's and his spouse's U.S. business could not continue to function with the help of family members, thereby ensuring a steady income to the applicant and his family while they reside in China, and/or that the sale of their business and their homes would result in a loss that would cause extreme financial hardship to the applicant's spouse. Finally, it has not been established that the applicant's spouse and children would be unable to obtain visas to reside in China on a long-term

basis with the applicant. As previously referenced, unsupported assertions do not suffice to establish extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. 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) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.