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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H₂

FILE:

Office: COLUMBUS, OHIO

Date: APR 13 2009

IN RE:

Applicant:

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The record reflects that 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by presenting a fraudulent Panamanian passport. The record indicates that the applicant is married to a lawful permanent resident of the United States and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 lawful permanent resident spouse and United States citizen daughter.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 21, 2008.

On appeal, the applicant, through counsel, asserts that “[t]he denial of the Applicant’s I-601 was clearly erroneous and an abuse of discretion.” *Form I-290B*, filed May 14, 2008.

The record includes, but is not limited to, counsel’s brief, an affidavit from the applicant’s son-in-law, and numerous medical documents regarding the applicant’s wife’s medical conditions. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in the discretion of the [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 [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 November 7, 1990, the applicant entered the United States by presenting a fraudulent Panamanian passport. On November 30, 1990, the applicant filed a Request for Asylum in the United States (Form I-589). On December 11, 1991, an immigration judge denied the applicant asylum, and ordered him excluded and deported from the United States. On December 26, 1991, the applicant filed an appeal with the Board of Immigration Appeals (Board). On October 30, 1995, [REDACTED] filed a Petition for Alien Worker (Form I-140) on behalf of the applicant. On January 2, 1996, the applicant's Form I-140 was approved. On May 30, 1996, the applicant filed a motion to reopen his immigration case with the Board. On September 24, 1996, the Board denied the motion to reopen. On October 3, 1996, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On March 18, 1998, the District Director, Cleveland, Ohio, denied the applicant's Form I-485. On October 21, 1998, the Board dismissed the applicant's appeal. On February 3, 1999, a Warrant of Removal/Deportation (Form I-205) was issued. The applicant filed another motion to reopen, and on March 29, 2000, the Board denied the applicant's second motion to reopen. On June 30, 2000, the applicant's naturalized United States citizen daughter filed a Form I-130 on behalf of the applicant. On December 15, 2000, the applicant's Form I-130 was approved. On August 22, 2005, the applicant filed another Form I-485. On August 30, 2006, the applicant's second Form I-485 was denied because the applicant failed to appear at his adjustment interview. On July 5, 2007, the applicant filed another Form I-485. On April 21, 2008, the Field Office Director, Columbus, Ohio, denied the applicant's third Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative. On February 11, 2009, another Form I-205 was issued. On February 19, 2009, the applicant filed a motion to reopen and a stay of removal with the Board. On the same day, the Board denied the applicant's stay of removal. On February 20, 2009, the applicant was removed from the United States.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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 claims that the applicant's spouse will suffer economic, physical, and emotional hardship should the applicant be removed from the United States. *See appeal brief*, dated June 11, 2008. The AAO notes that it has not been established that the applicant's wife has no transferable skills that would aid her in obtaining a job in China. Additionally, the AAO notes that the applicant's wife is a native of China, who speaks the native language, she spent her formative years in China, and it has not been established that the applicant's wife has no family ties in China. The AAO notes that medical documentation in the record appears to indicate that the applicant's wife is being treated for degenerative joints disease, urticaria, and severe abdominal pain. Counsel states that the applicant's wife cannot relocate to China because she "needs consistent quality medical care." *Id.* However, the AAO notes that no documentation was submitted establishing that the applicant's wife could not receive treatment for her medical conditions in China or that she has to remain in the United States to receive her medical treatments. Additionally, the AAO notes that the applicant's spouse did not provide a statement or an affidavit regarding the extreme hardship she would suffer if the applicant were removed from the United States. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined the applicant in China.

In addition, counsel does not establish extreme hardship to the applicant's spouse if she remains in the United States, maintaining her employment and with access to medical care. As a lawful permanent resident of the United States, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel claims that the applicant's spouse will suffer serious economic hardship should the applicant be removed from the United States, including not being able to pay her medical bills. *See appeal brief*, supra. The AAO notes that the applicant's wife is employed and resides with her daughter and son-in-law. Additionally, the applicant's wife has medical insurance which pays 80-90% of her medical expenses. *See affidavit from [REDACTED]*, dated June 12, 2008. Furthermore, the AAO notes that beyond generalized assertions regarding country conditions in China, the record fails to demonstrate that the applicant will be unable to contribute to his wife's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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 Board 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. In *Hassan*, supra, the Ninth Circuit Court of Appeals 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 AAO recognizes that the applicant's wife has endured 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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(a)(6)(C)(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.