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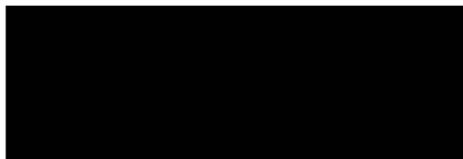


U.S. Citizenship  
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H2

FILE:



Office: HONG KONG

Date: JAN 26 2009

IN RE:



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:

SELF-REPRESENTED

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 Officer in Charge, Hong Kong, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of China who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to enter 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 with her husband in the United States.

The officer in charge 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 Officer in Charge*, dated October 6, 2006.

On appeal, the applicant's spouse submits new evidence of visits to a physician in Hong Kong and requests the AAO reconsider his wife's waiver application.

The record contains, *inter alia*: a copy of the marriage license of the applicant and her husband, [REDACTED], indicating that they were married on May 28, 2002; two letters from [REDACTED], a letter from the applicant; a letter from [REDACTED]'s physician; and a copy of the applicant's visa application. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(i) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien. . . .

The record shows that the applicant entered the United States on November 29, 2001, using a visitor's visa. She remained in the United States until sometime in December 2001. The applicant entered the United States again on April 13, 2002, using a visitor's visa. On May 28, 2002, she married [REDACTED] at the time a legal permanent resident. She stayed in the United States until sometime in September

2002. On January 14, 2003, the applicant applied for another visitor's visa in Hong Kong. On her visa application, she stated that her marital status was "widowed," and that she had no relatives in the United States. She further indicated on her visa application that she intended on staying in the United States for ten days, that the purpose of her trip was "to visit friends in church," and that she had "not yet confirmed" where she would stay in the United States. The applicant's daughter signed the application, indicating that she prepared the application for her mother. The applicant certified that she "read and understood all the questions set forth in th[e] application and the answers [she] furnished [were] true and correct." In support of her application, the applicant submitted a letter from her employer stating that she "will leave on holiday from 4<sup>th</sup> February to 8<sup>th</sup> February 2003. [S]he is planning her holiday to U.S.A. and we assure that she will return to her post after the trip." *Letter from the Professional* [REDACTED] dated January 13, 2003. Handwritten notes on the applicant's visa application indicate that during the applicant's interview, she stated that when she was previously in the United States, she stayed with a church friend. The applicant's visa application was approved. On February 21, 2003, when the applicant attempted to enter the United States, during a secondary inspection, it was revealed that the applicant had misrepresented her marital status. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact in order to procure admission into the United States.

The applicant contends that her daughter completed her visa application for her as she does not understand English. The applicant states that her first husband passed away in 1996. She claims she is a "traditional Chinese woman," and was "embarrassed" about remarrying after her first husband's death, particularly considering she married a man who is sixteen years younger than her. She contends she "[did] not want to tell anybody including [her] children about this marriage." *Letter from* [REDACTED] dated May 30, 2006. The applicant's explanations regarding her misrepresentation are unpersuasive, particularly considering that she failed to mention her marriage during her interview and told the interviewer that she had stayed at a church friend's house when she was in the United States previously. In addition, she submitted a letter from her employer, dated after she had already married her husband, indicating she was planning on staying in the United States for a very short period of time. Under these circumstances, it is evident from the record that the applicant willfully misrepresented a material fact in order to procure an immigration benefit.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(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. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). Hardship the applicant experiences is not a permissible consideration under the statute. *Id.* 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 deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, the applicant claims that her husband “will be very disappointed” if her waiver application is denied, and that he will be under constant pressure to visit her in Hong Kong, which will affect his career. *Letter from* [REDACTED] dated May 30, 2006. She states that with their many years of acquaintance, it would not be possible for her husband to find another woman to replace her and he will be “deeply hurt.” *Id.* She further states that she and her husband rely on each other financially. *Letter from* [REDACTED] dated September 20, 2006.

claims he has returned to Hong Kong to see his wife four times and that it is costly both financially and emotionally. *Letter from* [REDACTED] undated. He claims he has been tortured by anxiety and depression, and that he has seen a physician in Hong Kong three times. *Letter from* [REDACTED] dated November 22, 2006. He further claims that his mother, who is seventy-three years old and lives in the United States, had cataract surgery and needs him to care for her, but that he is unable to do so because he is in Hong Kong with his wife. *Id.* A letter from [REDACTED] physician states that [REDACTED] had been seen on three occasions between November 13 and November 21, 2006, and that he “presented with a history of anxiety, palpitation, dizziness, headache, and [illegible] discomfort for about three months.” *Letter from* [REDACTED] dated November 21, 2006. The letter further states that the applicant suffered from insomnia “for [a] few days before he sought treatment.” *Id.* The letter states that [REDACTED] “reported an overall improvement of about 20% after receiving treatment for about a week.” *Id.* [REDACTED]’s doctor concludes that [REDACTED] has been suffering from anxiety and depression, and that counseling, psychotherapy, and drug treatment should help. *Id.*

It is not evident from the record that the applicant’s spouse would suffer extreme hardship as a result of the applicant’s waiver application being denied.

The AAO recognizes that [REDACTED] will endure hardship as a result of the denial of his wife’s waiver application and is sympathetic to the couple’s circumstances. However, their situation, if [REDACTED] decides to remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

Regarding [REDACTED] physical and mental health problems, there is insufficient evidence in the record to show that his health issues have risen to the level of extreme hardship. Although the letter from [REDACTED] [REDACTED]'s physician indicates that [REDACTED] suffers from anxiety and depression, the letter also states that [REDACTED] himself reported a 20% improvement after receiving treatment for just one week. *Letter from [REDACTED] supra*. The insomnia [REDACTED] suffered lasted for only a few days. *Id.* The doctor's letter does not diagnose or discuss the prognosis or severity of the palpitations, dizziness, or headaches [REDACTED] was experiencing, but rather, merely listed them as self-reported conditions. *Id.* Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

To the extent the applicant contends he cannot afford flying back and forth to Hong Kong or the fees related to his medical issues, aside from three receipts from the applicant's medical visits -- visits which occurred within a seven day time period -- there are no tax or financial documents whatsoever in the record. There is no documentation regarding either the applicant's or his wife's income or expenses. It is unclear from the record how the couple relies on each other financially, as the applicant claims. Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, there is insufficient evidence to show that [REDACTED] would experience extreme hardship if he went back to Hong Kong to avoid the hardship of separation. The record indicates that [REDACTED] was born in Hong Kong and lived there until 1999 when he came to the United States. Although his mother lives in the United States and, according to [REDACTED], needs him to care for her, there is no letter in the record from [REDACTED] mother or her physician documenting the level of assistance she requires, and there is no indication in the record addressing whether there are other family members in the United States who are able to assist [REDACTED] mother. Without more detailed information, [REDACTED] inability to care for his elderly mother in the United States 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 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 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.