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U.S. Citizenship  
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: ATLANTA, GA

Date: **MAR 04 2009**

(RELATES)

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.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Atlanta, Georgia and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation.<sup>1</sup> The applicant is the son of a naturalized 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 reside in the United States with his father.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 31, 2005.

On appeal, the applicant contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's father; an expert affidavit regarding China's family planning policies; published country conditions reports; statements from the applicant; a psychological evaluation of the applicant's father; medical records for the applicant's father; grade school report cards for the applicant's children; employment letters for the applicant and his spouse; bank statements for the applicant, his spouse, and his father; criminal records for the applicant; and a life insurance policy for the applicant's father. 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:

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<sup>1</sup> The AAO also notes that the record documents the applicant as having been convicted for battery, simple battery, public drunkenness, and theft by shoplifting. The AAO will not analyze whether the applicant's crimes constitute crimes involving moral turpitude and render him inadmissible under section 212(a)(2)(A) of the Act. The AAO notes that the extreme hardship analysis to the applicant's father under section 212(h) of the Act would be the same as that conducted under section 212(i). As the AAO has found that the applicant's father would suffer extreme hardship under section 212(i), an extreme hardship analysis regarding the applicant's four United States citizen children is unnecessary.

- (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.

The record reflects that on December 22, 1991 the applicant attempted to procure admission into the United States at Honolulu International Airport in Honolulu, Hawaii by presenting a false passport from Singapore. *Record of Sworn Statement*, dated December 22, 1991. Based on his presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from 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. The plain language of the statute indicates that hardship that the applicant would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's father if the applicant is removed. If 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 pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's father must be established whether he resides in China or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's father travels with the applicant to China, the applicant needs to establish that his father will suffer extreme hardship. The applicant's father was born in China and remained there until 1988. *Statement from the applicant's father*, dated November 28, 2005. Both of his parents are

deceased. *Id.* He has two siblings who live in China, but he does not communicate frequently with them. *Id.* The applicant's father states that in China, he would have no employment prospects. *Id.* He asserts that most people retire in China at age 50, and he is 57 years old. *Id.* He does not have any education and believes that there is no company in China that wants to hire an uneducated 57-year-old with health problems. *Id.* While the AAO acknowledges the assertions of the applicant's father, it notes that the record does not include documentation that specifically shows the employment situation in China and what opportunities are available, if any, to individuals over the age of 50. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). The applicant states that his father had an operation a few years ago and often feels ill. *Statement from the applicant*, dated October 7, 2005. His father has also been mentally depressed and suffers from stomach pain. *Id.* According to an evaluation conducted by a licensed clinical social worker, the applicant's father is in an anxious and depressive state. *Statement from [REDACTED]*, *Psychotherapist & Psychoanalyst, Psychosocial Diagnostic Evaluation*, dated September 17, 2005. Aside from his emotional problem, he has also suffered from multiple physical illnesses of a chronic nature, including high blood pressure, dizziness, muscle spasms in the legs, inability to walk a long distance, a post-surgical intestinal problem, abdominal pains, and rectal bleeding. *Id.* He attends one of the New York University's teaching hospitals for treatment. *Id.*; *see also medical records, New York Downtown Hospital*, dated September 2004. If the applicant's father were to reside in China, it is the position of the clinical social worker that his physical health would deteriorate and his emotional problems would intensify. *Statement from [REDACTED]*, *Psychotherapist & Psychoanalyst, Psychosocial Diagnostic Evaluation*, dated September 17, 2005. Additionally, the applicant's father states that even if he wanted to go back to China, he could only go back as a visitor. *Statement from the applicant's father*, dated November 28, 2005. He notes that to visit China, he needs a visa and the visa is only good for three months. *Id.*; *see also Interpreter Releases reprint of Nationality and Citizenship Handbook*. When looking at the aforementioned factors, specifically the extended period of time that the applicant's spouse has not resided in China, the loss of his Chinese citizenship, his minimal family ties to China, and his emotional and physical problems, the AAO finds that the applicant has demonstrated extreme hardship to his father if he were to reside in China.

If the applicant's father resides in the United States, the applicant needs to establish that his father will suffer extreme hardship. The record demonstrates that the applicant's father left China in 1988 and has since returned six times, never staying for more than two months. *Statement from the applicant's father*, dated November 28, 2005. The applicant's father notes that if he remained in the United States, he would not be able to visit China frequently because of the cost of the airplane, the strain of traveling, and his poor health. *Id.* **Not being able to see the applicant would be heartbreaking to him.** *Id.* The AAO notes that the applicant's father lives in New York while the applicant lives in Georgia. *Id.* The applicant's father states that he is able to rely upon himself in New York because he lives in the Chinese community in Brooklyn where there are many places and people who speak Chinese and he is able to work in a place where he can speak Chinese. *Id.* In New York City, the applicant's father has learned the subway system and is able to travel anywhere that he wants to go by himself. *Id.* The applicant states that because of his situation, his father has

been feeling worse. *Statement from the applicant*, dated October 7, 2005. His father does not sleep, has been very depressed and sometimes does not eat properly. *Id.* His father worries about the applicant and what he will do if the applicant is gone. *Id.* The applicant's father notes that the possibility of losing his son and maybe never seeing him again has been extremely difficult for him. *Statement from the applicant's father*, dated October 7, 2005. He notes that he has much anxiety and is depressed for periods of time. *Id.*

As previously noted, the applicant's father has been found to be in an anxious and depressive state due to his profound worry over his own health situation, the applicant's immigration situation, and his possible loss of care and support from the latter. *Statement from [REDACTED] Psychotherapist & Psychoanalyst, Psychosocial Diagnostic Evaluation*, dated September 17, 2005. The psychotherapist notes that while affected by his physical and emotional ailments, the applicant's father has been very limited in his level of functioning and that the applicant has furnished emotional and psychological support. *Id.* Whenever the applicant's father is ill, the applicant quickly takes a trip to New York to comfort him, to take care of him, to accompany him to the doctor's office or clinic, and to put the household activities in order, including errand running and meal preparation. *Id.* The psychotherapist notes that the applicant is an indispensable force in his father's life and his care and support are absolutely necessary and vital. *Id.* Separation between the applicant and the rest of his family would create serious, detrimental, and devastating impacts in terms of family destruction, personality disintegration, and family members' developing emotional and psychological problems. *Id.* The applicant's father notes that the applicant visits him when he can and if the applicant's father needs him. *Statement from the applicant's father*, dated October 7, 2005. He notes that he does not hear from his other son who lives in California. *Id.* While the AAO notes the independent lifestyle of the applicant's father, it also finds that the applicant's father depends on him during physically and emotionally difficult times.

The applicant's father also expressed fears that his son and daughter-in-law will be sterilized if they return to China because they would be returning with four children. *Statement from the applicant's father*, dated November 28, 2005. He states he is tormented by the worry that his son will face sterilization upon return, and that his son will forever be threatened with sterilization, particularly when his son and daughter-in-law have far exceeded the one-child policy by having four children. *Id.* The AAO notes that these fears cannot be dismissed as the record includes an expert affidavit that indicates that reports of a relaxed Government of China attitude toward multiple babies born abroad to Chinese citizens reflect the Government of China's attitude toward Chinese citizens who have lived abroad with Government of China permission, not toward Chinese citizens like the applicant who left China without permission. *Affidavit from [REDACTED]* dated February 9, 2004. When looking at the aforementioned factors, specifically the lack of the applicant's father's family ties in the United States, his reliance on the applicant for emotional and physical support, and his fear that the applicant would be subjected to sterilization if returned to China, the AAO finds that the applicant has demonstrated extreme hardship to his father if he were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of

equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's prior misrepresentation for which he now seeks a waiver, his criminal convictions and his periods of unlawful residence and unauthorized employment in the United States.

The favorable and mitigating factors are the applicant's U.S. citizen father and children, the extreme hardship to his father if he were refused admission, his long-term and supportive relationship with his father as evidence by statements in the record, his payment of taxes, and his care of his spouse and their four children.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.