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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 20 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:

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, 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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of China, who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). She is the wife of a naturalized U.S. citizen and the mother of three U.S. citizen children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the *Application for Waiver of Grounds of Inadmissibility (Form I-601)* on November 20, 2006.

On appeal, counsel for the applicant asserts that the Director erred in denying the applicant's waiver application. He contends that a full and fair review of the record will establish that the applicant's spouse will face extreme hardship if the applicant's inadmissibility is not waived.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 indicates that on June 15, 1999 the applicant used a fraudulent Japanese passport to attempt to enter the United States. She was convicted of violating 18 U.S.C. § 1546(a), Fraud and Misuse of Visas, Permits, and Other Documents, on August 9, 1999. As the applicant attempted to enter the United States by fraud, materially misrepresenting her identity, she is inadmissible pursuant to section 212(a)(6)(C) of the Act. The applicant does not contest this finding. In April, 2001, the applicant applied for adjustment of status.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case, the U.S. citizen husband of the applicant. Hardship to the applicant or her children is not relevant to a determination of extreme hardship in these proceedings, except to the extent that such hardship would affect the

qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant 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 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.

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.

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

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant’s waiver request.

The record of proceeding contains extensive evidence of the coercive population control policy in China, and in particular in the Fujian province where the applicant was born. Such evidence includes numerous media articles documenting family planning practices in Fujian, as well as a translation of the family planning laws from Fujian, an administrative decision by a Fujian court refusing to waive the policy for parents of children born overseas, Country Reports from Canada’s Immigration and Refugee Board, and translated records of two medical sterilizations in Fujian. The record also includes statements from the applicant and her spouse, numerous photographs of the applicant, her spouse and their children, birth certificates for the applicant’s daughters, bank statements, tax returns, school records and pay stubs for the applicant’s spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

The applicant’s spouse states that the applicant is the primary caretaker for their three children, and that if the applicant were excluded it would be an extreme hardship for him because he would be unable to care for their three children on his own. Counsel for the applicant asserts on appeal that the applicant and her spouse fear that if she returns to China she will be forcibly sterilized because she has violated the family planning laws of her province. The record contains evidence that the applicant has three U.S. citizen children born within a two-year period. The record also contains

translations of the coercive population control policy implemented in China and in the applicant's home province specifically, which states that violators are subject to forced sterilization. The record also contains numerous exhibits, which specifically refer to the implementation of forcible sterilizations and abortions in cases where individuals have violated population and family planning policy in the applicant's home province. When the above factors are considered in the aggregate, the AAO finds the record to establish that the applicant's spouse would suffer extreme hardship if he were to remain in the United States following her removal.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. In the present case, however, the applicant has focused on the hardship that she would experience if she returned to China. She has not addressed the possibility of her husband's relocation to China or claimed that he would suffer extreme hardship as a result. Accordingly, the AAO is unable to find that the applicant's spouse relocation to China would result in extreme hardship.

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 would face extreme hardship if she is refused admission. 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. Therefore, the AAO will not address counsel's assertions regarding the exercise of discretion as it applies in the present case.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) or 212(i) of the Act, the burden of proving eligibility rests 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.