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U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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NOV 03 2009

FILE: [REDACTED] Office: NEW YORK CITY, NEW YORK Date:

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:

[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.

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).

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant, [REDACTED] 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 the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation; and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of committing a crime involving moral turpitude.

[REDACTED] is the spouse of [REDACTED] a naturalized citizen of the United States. He sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so as to immigrate to the United States. The director concluded that [REDACTED] had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director, dated September 15, 2008.* The applicant submitted a timely appeal.

On appeal, counsel states that the combination of medical, financial, family, social, and emotional factors demonstrate that [REDACTED] would experience extreme hardship if the waiver application were denied. If [REDACTED] were to remain in the United States without her husband, counsel claims that [REDACTED] would have enormous difficulty providing for her family, paying debts on her income, and taking care of her seven-year-old son [REDACTED] who has end-stage renal disease and underwent a kidney transplant, and their six-year-old daughter. With regard to joining her husband to live in China, counsel states that [REDACTED] family members, her children, mother, siblings, sisters-in-law, niece, and aunt, are either U.S. citizens or lawful permanent residents of the United States. Counsel states that [REDACTED] has no family members in China other than her in-laws. Counsel states that [REDACTED] and her children would experience extreme hardship in China because it has significant economic, social, governmental and environmental problems; lacks freedom of religion; and restricts fundamental procreation rights. Counsel states that in light of [REDACTED] and her husband's background, they would have limited employment opportunities in China and would be either under or unemployed, would not receive a living wage, and would not be able to provide medical care for their son, who requires lifelong medical treatment due to end stage renal disease. Counsel states that [REDACTED] has Blue Cross Blue Shield medical insurance thorough her employment with Grand Buffet restaurant and that [REDACTED] and her son would not be able to avail themselves of medical care in China under an insurance policy that is dependent upon [REDACTED] employment in the United States. She states that [REDACTED] would not be able to maintain private U.S. medical insurance that would cover her son's medical expenses in China. Counsel states that it would be impossible for them to provide a deposit prior to admission to cover expected costs of treatment. Counsel states that U.S. Medicare and Medicaid programs do not provide payment for medical services outside the United States and [REDACTED] and his wife could not rely on Medicare to cover costs associated with dialysis and/or a second or subsequent kidney transplant for their son if they lived in China. Counsel states that in China [REDACTED] and her children, particularly her son, would be impacted by lack of access to medical care and medical insurance, by substandard medical care, and by transplant practices condemned internationally but available in China. Counsel states that [REDACTED] did not plead guilty to a forfeiture

allegation and that transgressions do not preclude him from adjusting status. Counsel submits exhibits MMM-ZZZ.

The AAO will first address the finding of inadmissibility.

The record reflects the following. █████ entered the United States on May 24, 1994 at the John F. Kennedy International Airport in New York. Upon inspection, █████ presented a photo-substituted Japanese passport. He was referred to secondary inspection. In a sworn statement, █████ stated that he purchased the Japanese passport from a Chinese smuggler and that he was coming to the United States to work and live and intended to stay for four years. He was placed in exclusion proceedings and was issued Form I-222, Notice to Applicant for Admission/Deferred for Hearing before Immigration Judge. During a hearing conducted on June 27, 1994, █████ conceded excludability under the Act and filed an application for asylum. At a hearing on April 11, 1995, the immigration judge informed █████ that a hearing to consider his asylum application would be conducted on August 3, 1995. In a decision dated August 3, 1995, the immigration judge stated that █████ failed to appear and failed to establish his eligibility for admission or any discretionary relief. The immigration judge denied all of █████ applications for lack of prosecution and ordered that he be excluded from the United States as charged in the Form I-222. The Form I-222 charged █████ with being excludable under sections 212(a)(7)(B)(i)(I) and (II), 212(a)(7)(A)(i)(I), and 212(a)(6)(C)(i) of the Act. On February 21, 1996, the Board of Immigration Appeals (BIA) dismissed the applicant's appeal of the immigration judge's decision, and made one adjustment to the judge's decision, which was to vacate the applicant's exclusion under sections 212(a)(7)(B)(i)(I) and (II) of the Act. On May 7, 2001, Mr. █████ spouse filed the Form I-130, Petition for Alien Relative, on his behalf, which petition was approved on August 21, 2001. On May 3, 2001, █████ filed an adjustment application. On December 30, 2007, the Judgment in a Criminal Case in the United States District Court, Northern District of New York, reflects that █████ pleaded guilty to count 4 of Superseding Indictment █████ (Filing a False Income Tax Return)<sup>1</sup> and counts 1 and 2 of Information █████ (Hiring Unauthorized Aliens for Employment)<sup>2</sup> on May 24, 2007. █████ was sentenced to 18 months imprisonment for count 4 of Superseding Indictment █████ and 6 months imprisonment for count 1 and 4 months for count 2 of Information █████ The District Judge ordered that the sentences on each of the counts run concurrently for a total term of imprisonment of 18 months. The adjustment application and section 212(i) waiver were denied on September 15, 2008. The applicant filed a new section 212(h) waiver application on October 16, 2008, which application has not been adjudicated. The applicant filed a motion with the BIA to reopen proceedings in which, on August 3, 1995, the immigration judge ordered him excluded and deported in absentia when he failed to appear at a

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<sup>1</sup> 26 U.S.C. § 7206(2), Filing a False Income Tax Return.

<sup>2</sup> 8 U.S.C. § 1324a(a)(1)(B), Hiring Unauthorized Aliens for Employment.

hearing. On July 22, 2009, the BIA denied the motion to reopen and further ordered the request for a stay as moot. On August 6, 2009, [REDACTED] submitted a Petition for Review of a Final Order of Removal with the U.S. Court of Appeals of the Second Circuit.

The director found [REDACTED] to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of committing a crime involving moral turpitude. Section 212(a)(2)(A)(i)(I) of the Act states, in pertinent part, that:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense)  
or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The criminal offense of filing a false and fraudulent return is a crime involving moral turpitude. *Costello v. INS*, 311 F.2d 343 (Ca 1962). The director was correct in finding the applicant’s conviction for Filing a False Income Tax Return to be a crime involving moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

The director also found the applicant to be inadmissible under section 212(a)(6)(C) of the Act. That section 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.

The record reflects that the applicant acknowledges using a fraudulent Japanese passport in order to seek admission into the United States. *Record of Sworn Statement, dated May 24, 1994; Counsel’s*

*Brief on Appeal, page 13, paragraph 90.* Counsel states on appeal that [REDACTED] filed an asylum application of which [REDACTED] did not know the contents. *Counsel's Appeal Brief, paragraph 90.* Based on the record, the AAO finds the applicant is inadmissible under section 212(a)(6)(C) of the Act for having willfully misrepresented the material fact of his true identity so as to procure admission into the United States and for filing a false asylum application.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Hardship to [REDACTED] and to his children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED] naturalized citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. 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. *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in

determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

**On appeal, counsel submits affidavits by [REDACTED] dated October 9, 2008 and November 16, 2007; the seven-page Judgment in a Criminal Case; income tax records and W-2 Forms for 2007; wage statements from Grand Buffet for 2008; a list of debts and major expenses of [REDACTED] checks and property tax records; an invoice from the U.S. Clerk of Court with the amount due of \$115,944 with the next payment due of \$100; invoices dated August 25, 2008 from the Internal Revenue Service with the amounts due of \$46,267, \$863,791, and \$952,726; credit card invoices with the balances due of \$40,000, \$50,000, \$20,000, \$22,000, and \$55,000; invoices from Empire BlueCross BlueShield with the monthly amount due of \$974; a letter from Children’s Hospital Boston, dated September 29, 2008; U.S. Department of State country report on China for 2007; Embassy Notices for American Citizens about China, Amnesty International Reports on China for 2007 and 2008, a Central Intelligence Agency World Factbook on China, and other documentation.**

In rendering this decision, the AAO will consider all of the evidence in the record.

Extreme hardship to [REDACTED] spouse must be established in the event that she remains in the United States without [REDACTED], and alternatively, if she joins [REDACTED] to live in China. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

**Family separation must be considered in determining hardship to [REDACTED] if she were to remain in the United States without her husband,. See, e.g., *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (“the most important single hardship factor may be the separation of the alien from family living in the United States”).**

However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991).

**With regard to the hardship of [REDACTED] if she were to remain in the United States without her husband, counsel claims that [REDACTED] “has great difficulty in providing for their family and paying their enormous debts on her income alone.” *Counsel’s Appeal Brief*, page 34. [REDACTED] conveys that her**

and her children's medical coverage is provided through her employment with the Grand Buffet restaurant, and that Medicare coverage for end-stage kidney disease and transplants is limited. [REDACTED] affidavit, dated October 9, 2008. [REDACTED] states that Medicare coverage started after [REDACTED] began dialysis and stopped 36 months after his kidney transplant. [REDACTED] Affidavit, dated November 16, 2007, paragraph 97, (Exhibit NNN). The record shows that [REDACTED] had received Medicare coverage. Medicare invoices, (Exhibit S). [REDACTED] conveys that in December 2007 she and her husband closed the Super Buffet restaurant, one of their two restaurants, because she could not keep both restaurants open by herself, and that the Super Buffet restaurant can be reopened upon her husband's release from prison, which prison term began on January 8, 2008. [REDACTED] affidavit dated October 9, 2008, (Exhibit NNN). She states that the Grand Buffet restaurant remained open for her to earn a living and pay off debt. *Id.* [REDACTED] states that their 2007 income tax returns show her husband earned \$39,000 and she earned \$31,620. *Id.* However, the AAO notes that Exhibit OOO, the U.S. Individual Income Tax Return for 2007, does not include the business income of the restaurant(s) owned by [REDACTED]. The Plea and Cooperation Agreement at page 10 conveys that over a four-year period, from 2000 to 2003, [REDACTED] and his wife concealed \$5,566,929 in income and failed to pay taxes of \$1,873,207 for the E.G. Super Buffet and the Hudson Grand Buffet restaurants. Of the \$5,566,929, the Hudson Grand Buffet restaurant failed to report \$3,416,722 in income and pay income taxes of \$1,155,379 during the four-year period. The AAO therefore finds that the applicant fails to demonstrate that [REDACTED] personal and business income is insufficient to cover [REDACTED] financial obligations, which include the monthly medical expenses for her son. 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)). Furthermore, the AAO notes that [REDACTED] has been able to pay her financial obligations during her husband's imprisonment.

[REDACTED] states that she is not familiar with managing a restaurant kitchen and is temporarily using a relative from Tennessee for assistance. [REDACTED] affidavit dated October 9, 2008, (Exhibit NNN). However, the record shows that [REDACTED] and her husband were not alone in the management and operation of their restaurants. [REDACTED] stated that two family members assisted in running the restaurants. [REDACTED] Affidavit, dated November 16, 2007, at paragraph 100, (Exhibit NNN). [REDACTED] sister-in-law assisted in the management and operation of the Hudson Grand Buffet restaurant. *Superseding Indictment filed on June 14, 2006, paragraph 6* (Exhibit U). [REDACTED] claims that she cannot manage the restaurant and tend to her children, so she has been relying on her mother for assistance. [REDACTED] affidavit dated October 9, 2008, (Exhibit NNN). [REDACTED] states that her arrangement with her mother is temporary because her mother requires payment for her services and she cannot afford to pay her. *Id.* In the absence of documentation of the income of the [REDACTED] restaurant(s), the record is insufficient to demonstrate that [REDACTED] cannot afford to pay her mother or a childcare provider. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.*

The record demonstrates that [REDACTED] the [REDACTED]'s son, has a serious medical condition. [REDACTED]

Division of Nephrology at Children's Hospital Boston, states that [REDACTED] received a renal transplant on November 21, 2003, and is seen at his transplant clinic every three to four

months, or more often if indicated. Letter by [REDACTED] dated September 29, 2008, (Exhibit RRR). [REDACTED] states that due to the complexity of [REDACTED] case he advises that [REDACTED] remain with a few hours of the hospital in case of complications. *Id.* He states that [REDACTED] has a microscopic urine analysis at least at every clinic visit, and obtains monthly laboratory studies. *Id.* [REDACTED] indicates that [REDACTED] has had positive Epstein Barr Virus titers post-transplant, which is a virus that is closely monitored because it can cause a lymphoproliferative disorder. *Id.* He states that [REDACTED] serum sodium levels are monitored closely. *Id.* [REDACTED] conveys that [REDACTED] has five prescribed medications and must drink a prescribed amount of water every day. *Id.* [REDACTED] states that based on preliminary testing her husband is an eligible donor for their son, if he should need a donor. [REDACTED] Affidavit, dated November 16, 2007, paragraph 77, (Exhibit NNN). [REDACTED] [REDACTED], states that in the future, should [REDACTED] transplanted kidney fail, it may be necessary for him to receive a second kidney transplant. [REDACTED] states that [REDACTED] underwent a test that indicates that he meets basic eligibility to donate his kidney to his son, but the testing does not guarantee that he will be the definitive kidney donor as [REDACTED] is required to undergo further testing to meet medical criteria for living kidney donors. Letter by [REDACTED] [REDACTED] dated November 30, 2005, (Exhibit I). The record shows that [REDACTED], who was born on April 19, 2001, is in the first grade and [REDACTED] and [REDACTED] daughter, is in kindergarten. Psychological Evaluation by [REDACTED] dated April 28, 2008.

The psychological evaluation by [REDACTED] a licensed psychologist, of [REDACTED] and his wife conveys that the [REDACTED] share similar backgrounds in that they both were born into poor Christian families in China. [REDACTED] conveys that they have generalized anxiety and clinical depression due to their current circumstances. He states that [REDACTED] is stressed over how she will manage if [REDACTED] is in prison, but is more concerned about his possible deportation. He states that [REDACTED] has a close bond with [REDACTED] and will be devastated if [REDACTED] were to leave. Psychological Evaluation by [REDACTED] [REDACTED] dated April 28, 2008. Although [REDACTED] concludes that [REDACTED] has generalized anxiety and clinical depression due to her circumstances, the conclusions reached in the psychological evaluation, being based on a single interview, do not reflect the insight and elaboration derived from an established relationship with a mental health professional, which thereby renders [REDACTED] findings speculative and diminishes the evaluation's value in determining hardship.

[REDACTED] is concerned about separation from her husband and its impact upon her children, especially [REDACTED]. The record shows that [REDACTED] was born in April 2001 and [REDACTED] was born one year later in April 2002. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of family separation. It has taken into consideration and carefully reviewed the evidence in the record. After careful consideration, it finds that [REDACTED] situation, if she remains in the United States without her husband, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO conveys that the emotional hardship to be endured by [REDACTED] is a heavy burden, but it is not unusual or beyond that which is normally to be expected upon removal. *See Hassan and Perez, supra.* The AAO further notes that [REDACTED] is not alone in the United States as she has emotional support from her family members.

In considering all of the hardship factors presented, both individually and in the aggregate, the AAO finds they fail to demonstrate that the applicant's spouse would experience extreme hardship if she were to remain in the United States without her husband.

On appeal, counsel states that [REDACTED] wife and her children would experience extreme hardship if they joined [REDACTED] to live in China. As previously stated, hardship to [REDACTED] children will be considered only to the extent that it results in hardship to [REDACTED] spouse. Counsel claims that in China it would be impossible for [REDACTED] to obtain private medical insurance and Medicare and Medicaid would be unavailable. Without medical insurance, counsel states that [REDACTED] medications, monitoring by doctors and medical professionals, and access to emergency treatment would be unattainable. The China Travel Alert dated September 22, 2008, (Exhibit ZZZ) conveys that there are VIP wards in many hospitals in major Chinese cities, which have "reasonably up-to-date laboratory and imaging facilities" with physicians who are generally well-trained. *Id.* Submitted articles indicate that there are medical hospitals in China that perform organ transplants and are equipped with the latest medical equipment. (Exhibit Z). Most hospitals in China will not accept medical insurance from the United States; however, there is a Blue Cross Blue Shield's worldwide network providers – overseas network hospitals' list. *China Travel Alert dated September 22, 2008*, (Exhibit ZZZ). "China has no public healthcare systems to provide for people without insurance or money." *Id.* Although [REDACTED] has Blue Cross Blue Shield insurance, coverage for BlueWorldwide Expat is limited to employees of U.S. companies who are working and living over-seas. See, <https://www.blueexpat.com>. Thus, she would not qualify for this coverage. Counsel indicates on appeal the [REDACTED] will not qualify for Medicare or Medicaid in China. The U.S. Department of State, Bureau of Consular Affairs indicates that U.S. Medicare and Medicaid programs do not provide payment for medical services outside the United States. (Exhibit Z).

indicates that with a limited education she and her husband would not have a decent opportunity for work and would have minimal income, if any. [REDACTED] *Affidavit, dated November 16, 2007, paragraph 117* (Exhibit NNN). According to counsel, the World Factbook, China states that the per capita income in China was estimated at \$5,400 for 2007. *Counsel's Brief at page 34. See World Factbook, China* (Exhibit WWW). There are widespread illegal practices that effectively reduce workers' wages. *U.S. Department of State Country Reports on Human Rights Practices - 2007, dated March 11, 2008*. (Exhibit VVV). Restrictions upon movement within China impact the ability to obtain decent employment. *Id.* The restrictions also impact a child's opportunity for an education. *Id.* Women have reported that "discrimination, sexual harassment, unfair dismissal, demotion, and wage discrepancies were significant problems." *Id.* "Many employers preferred to hire men to avoid the expense of maternity leave and childcare, and some lowered the effective retirement age for female workers to 40 . . ." *Id.* Compliance with the 40-hour standard workweek, excluding overtime, and a 24-hour weekly rest period was weak. *Id.* Occupational health and safety concerns remained serious. *Id.*

[REDACTED] states that in China they "would face the heavy penalty of the so-called "violation" of the one child policy, and inhumane sterilization surgery." [REDACTED] *Affidavit, dated November 16, 2007,*

*paragraph 110* (Exhibit NNN). She indicates that many people in China are forcibly sterilized and fined for violating the one-child policy and is concerned because she and her husband have more than one child. *Id.* at 111. The U.S. Department of State Country Reports on Human Rights Practices - 2007, dated March 11, 2008, (Exhibit VVV) conveys that the Chinese government “restricted the rights of parents to choose the number of children they will have and the period of time between births.” “The one-child limit was more strictly applied in the cities . . .” “In most rural areas the policy was more relaxed, generally allowing couples to have a second child if the first was a girl or had a disability.” The report states that the law in China provides for family planning bureaus to conduct pregnancy tests on married women and provide them with unspecified “follow-up” services. Couples having an unapproved child, according to the report, are required to pay a “social compensation fee,” which sometimes was 10 times a person’s annual disposable income.

In her affidavit, [REDACTED] describes living in China as a Christian. [REDACTED] *Affidavit, dated November 16, 2007, paragraphs 8-15, 34* (Exhibit NNN). She indicates China does not allow freedom of religion and that she would live in fear of practicing her faith. *Id.* at 112. The Amnesty International Report 2007 (China), (Exhibit XXX), states that “[m]illions of people are impeded from freely practicing their religion. Thousands remained in detention or servicing prison sentences, at high risk of torture, for practicing their religion outside of state-sanctioned channels.” Underground Christian groups were among those “most harshly persecuted.” The U.S. Department of State Country Reports on Human Rights Practices - 2007, dated March 11, 2008, (Exhibit VVV) conveys that the Chinese government “sought to restrict legal religious practice to government-sanctioned organizations and registered places of worship and to control the growth and scope of the activity of both registered and unregistered religious groups, including house churches.”

In view of the hardship factors of the serious health problem of [REDACTED] son, of China having no public healthcare systems to provide for people without insurance or money; of the unavailability of U.S. Medicare and Medicaid in China; of the restrictions upon movement in China and its affect on obtaining employment; of the unlawful employment practices in China directed towards women; of the one-child policy, and of limited religious freedom, the AAO finds that, considered collectively, those factors establish that [REDACTED] would experience extreme hardship if she were to join her husband to live in China.

The applicant has established extreme hardship to his wife if she were to join him to live in China; however, he has not demonstrated that she would experience extreme hardship if she were to remain in the United States without him. Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In addition, even if extreme hardship had been found, the AAO finds the waiver application should be denied as a matter of discretion. In evaluating whether relief is warranted in the exercise of discretion, the factors adverse to the alien may include the nature and underlying circumstances of the removal ground at issue:

[T]he presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must:

[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.

*Id.* at 300. (Citations omitted).

The adverse factors here are the applicant's extensive fraud against the United States government and the use of illegal immigrants in support of his restaurant. The AAO finds that the adverse factors are very serious in nature and the applicant's undesirability as a permanent resident outweighs any social and humane considerations presented on the applicant's behalf. Accordingly, the applicant does not merit a grant of relief in the exercise 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. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.