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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

H<sub>2</sub>

JAN 26 2010

FILE:

Office: SEATTLE, WA

Date:

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 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 Field Office Director, Seattle, Washington and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Hong Kong S.A.R. 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. The applicant is married to a naturalized United States citizen and has a United States citizen child. He 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 spouse.

The Field Office 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 Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 30, 2007.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding the applicant to be inadmissible as his misrepresentation was not intentional. In the alternative, counsel states that USCIS erred in finding that the applicant has failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO)*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, medical letters for the applicant's spouse and father-in-law; statements from the applicant and his spouse; medical records for the applicant's spouse; criminal documents for the applicant; tax returns for the applicant's spouse; earnings statements for the applicant's spouse; bank statements; cellular telephone statements; health insurance cards; an employment letter for the applicant; and a report on Chinese criminal enterprises. 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:

- (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 February 25, 2005, the applicant was issued a nonimmigrant visa based on an application in which he had stated that he had never been arrested or convicted for any offense or crime. *Form DS-156, U.S. Department of State Nonimmigrant Visa Application*. The applicant was admitted to the United States on March 5, 2005. *Form I-94, Departure Card*. On June 14, 2005, the applicant married a naturalized United States citizen, and on March 24, 2006 a Form I-130, Petition for Alien Relative was approved for the applicant. *Marriage certificate; Form I-130, Petition for Alien Relative*. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status in which he stated that in 1988 he had pled guilty to a misdemeanor assault charge in Hong Kong, in 1992 he had pled guilty to membership in a gang in Hong Kong, and in 1996 he pled guilty to participation in illegal car racing in Hong Kong. *Form I-485; See also criminal documents for the applicant*. The Field Office Director found the applicant inadmissible under section 212(a)(6)(C) for failing to disclose his criminal history when applying for his nonimmigrant visa. *Decision of Field Office Director, dated May 1, 2007*.

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. Counsel asserts that the applicant's misrepresentations were not willful, as the applicant did not think his convictions of many years ago were serious. *Attorney's brief*. While the AAO acknowledges counsel's assertion, it notes that the applicant, in a statement submitted in support of the waiver application, admitted that he knew he should have said yes to the nonimmigrant visa question regarding whether he had ever been arrested or convicted of a crime, but that he said no because he did not believe it was a serious charge and he did not want to delay the processing of his visa. *Statement from the applicant, dated July 20, 2006*. As the applicant has indicated that his failure to provide his criminal history in connection with his nonimmigrant visa application was intentional, the AAO finds that his misrepresentation was willful. The applicant is therefore inadmissible under section 212(a)(6)(C) of the 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 or his child would experience if his waiver request is denied is not directly relevant to the determination as to whether he 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 spouse 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 spouse must be established whether she resides in Hong Kong or the United States, as she 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 the adjudication of this case.

If the applicant's spouse relocates to Hong Kong, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse is a native of Hong Kong. *Naturalization certificate*. She has been residing in the United States since 1992 with her parents and two siblings. *Attorney's brief*. The applicant's spouse was diagnosed with cervical dysplasia (precancerous, CIN I-II lesions) in 2005. *Statement from [REDACTED]*, dated May 30, 2007. She was treated with Cryotherapy in August 2005 and LEEP in May 2006. *Id.* She still has persistent cervical dysplasia. *Id.* The occurrence of progression of CIN lesions to invasive cancer ranges from 1.4 to 60 percent. *Id.* Therefore, any patient with any degree of dysplasia should be followed-up properly and regularly. *Id.* The AAO acknowledges the documented health condition of the applicant's spouse, yet observes that the record does not demonstrate that adequate follow-up care and treatment would be unavailable in Hong Kong. Furthermore, the doctor of the applicant's spouse does not offer a prognosis that would indicate her condition requires her to stay in the United States.

The father of the applicant's spouse suffers from cirrhosis of the liver as a result of chronic viral hepatitis and has been evaluated for a liver transplant. *Statement from [REDACTED]*, dated May 29, 2007. He is on Interferon injection therapy to maintain his liver health. *Id.* He also suffers from diabetes mellitus and is on insulin. *Id.* He has poor vision because of diabetic retinopathy and is in need of further treatment for his eye. *Id.* He is in need of home assistance and physical and mental support as his medical condition continues to deteriorate. *Id.* The applicant's spouse states that her father's health conditions make it impossible for her to leave him. *Statement from the applicant's spouse*, dated May 30, 2007. She notes that she is the eldest child in her family and as a result, she has the biggest responsibility in making sure her parents are taken care of. *Id.* She further asserts that in Chinese culture, children are expected to take care of their parents. *Id.* While the AAO acknowledges these statements, it notes that there is nothing in the record to indicate that the applicant's spouse's mother and siblings would be unable or unwilling to provide care and support for her father. The record does not establish what role the applicant's spouse played in her father's care prior to the birth of her child or that he was in any way dependent upon her. The record also fails to establish the emotional impact upon the applicant's spouse of leaving her father. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Hong Kong.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of Hong Kong.

*Naturalization certificate.* She has been residing in the United States since 1992 with her parents and two siblings. *Attorney's brief.* The applicant's spouse has been diagnosed with cervical dysplasia (precancerous, CIN I-II lesions) since 2005. *Statement from* [REDACTED] dated May 30, 2007. She still has persistent cervical dysplasia and needs regular and proper follow-up care. *Id.* She notes that although she does not have cancer, there is no question that the presence of the applicant has greatly helped her cope with her condition. *Statement from the applicant's spouse,* dated May 30, 2007. She believes having a positive marital relationship will enhance her ability to cope with her condition and any cancer that might develop in the future. *Id.* She notes that it would be detrimental to her current and future health if she were to be separated from the applicant who is the immediate provider of her emotional support. *Id.* While the AAO acknowledges these assertions, it notes that the applicant's spouse currently does not have cancer and she places much emphasis upon her future health. The AAO does not find the record to provide any medical prognosis relating to the applicant's dysplasia and cannot speculate as to the applicant's spouse's future health issues and how her separation from the applicant may potentially affect her given those conditions. The applicant's spouse notes that she and the applicant recently had a child and the thought of their child growing up without the applicant is devastating. *Id.* While the AAO acknowledges this statement, it notes that the applicant's child is not a qualifying relative for the purpose of this case and the record fails to document how any hardship the applicant's child might encounter would affect the applicant's spouse, the only qualifying relative in this case.

The applicant's spouse states that she cannot imagine what her life would become without the applicant. *Statement from the applicant's spouse,* dated May 30, 2007. The AAO acknowledges the hardship of being separated from one's spouse and that this case arises within the Ninth Circuit Court of Appeals case where *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States." However, it notes that the record does not document, e.g., a statement from a licensed healthcare professional, the psychological effect upon the applicant's spouse of being separated from the applicant. 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)).

U.S. 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, *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. *Hassan v. INS, supra*, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of

removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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) 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.