

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

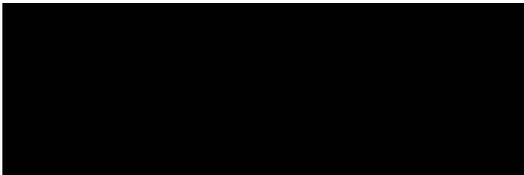
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

H3



FILE:



Office: GUANGZHOU, CHINA

Date: **MAY 06 2009**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, Guangzhou, China, 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more and seeking admission within ten years of his last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B).

The officer-in-charge denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) based on the denial of the Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212). *Decision of the Officer-in-Charge*, dated May 17, 2006.

On appeal, counsel asserts that the officer-in-charge erred in denying the Form I-601 based on the Form I-212 denial, the two applications have different criteria and the applicant for a Form I-601 waiver must demonstrate extreme hardship to a U.S. citizen or lawful permanent resident parent, spouse, son or daughter. *Form I-290B*, received June 8, 2006.

The record includes, but is not limited to, counsel's brief and medical evidence for the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant attempted to enter the United States on March 17, 1991 by presenting a photo-substituted Singapore passport and counterfeit visa, was paroled into the United States for exclusion proceedings under the former section 236 of the Act, was ordered excluded and deported *in absentia* on September 24, 1991, and was removed to China on December 30, 2002. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until December 30, 2002, the date he was removed from the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his December 30, 2002 departure.<sup>1</sup>

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

---

<sup>1</sup> As a result of the applicant's March 17, 1991 misrepresentation, he is also inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States by fraud or willful misrepresentation. The AAO notes that eligibility for a section 212(a)(9)(B)(v) waiver would render the applicant eligible for a section 212(i) waiver of section 212(a)(6)(C)(i) of the Act.

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. 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 China or in 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 first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in China. The record reflects that the applicant's spouse has a history of chronic debilitating abdominal and pelvic pain, she had surgery on November 9, 2002 where it was

found that she had stage 4 endometriosis, extensive adhesions, and multiple lesions on the bowel and pelvic wall. *Letter from [REDACTED]*, dated December 10, 2002. However, the applicant's spouse's newest medical letter does not reflect that she is currently experiencing these problems. *Letter from [REDACTED]* dated November 27, 2007. The letter reflects that she has had difficulty conceiving a baby due to multiple physical problems, specifically a bilateral salpingectomy (now with no fallopian tubes), a failed IVF attempt and the absence of the applicant. *Id.* As such, the record does not reflect that the applicant's spouse continues to suffer from her prior health problems or that she has an established treatment program for the aforementioned problems that she would be required to abandon. The newest medical letter also does not indicate that the applicant's spouse has an ongoing, established treatment relationship for her fertility problems that she would be required to abandon. The record does not address or include evidence of any forms of hardship should the applicant's spouse reside in China. Therefore, record fails to establish that the applicant's spouse would suffer extreme hardship as a result of relocating to China.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the refusal of the applicant's admission has resulted in extreme hardship to his spouse and the applicant's spouse is seeking treatment for her infertility. *Brief in Support of Appeal*, at 3, undated. The applicant's spouse states that the removal of the applicant has caused her financial, physical and emotional hardship; she was dependent on him for financial support; she has not been able to bear children and has consulted a physician to treat her infertility; she has suffered anxiety and depression; and she cannot function normally. *Applicant's Spouse's Statement*, dated February 24, 2004. While the AAO acknowledges the applicant's spouse's claims, the record does not provide the documentary evidence to support them. Going on record without supporting documentation will not meet the applicant's burden of proof in 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's spouse's physician states that the applicant's spouse has had difficulty conceiving a baby due to multiple physical problems, specifically a bilateral salpingectomy (now with no fallopian tubes), a failed IVF attempt and the absence of the applicant. *Letter from [REDACTED]* The record does not indicate when the failed IVF attempt occurred and if the applicant's spouse intends to attempt fertility treatment again. As mentioned above, the record does not reflect that the applicant's spouse continues to experience the medical problems (abdominal and pelvic pain, stage 4 endometriosis, extensive adhesions, and multiple lesions on her bowel and pelvic wall) for which she was treated in 2002. Based on the record, the AAO does not find that the applicant has established that his spouse would suffer extreme hardship if she were to remain in the United States without him.

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.

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 he merits a waiver as a matter 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.