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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

H5

FILE:

Office: ST. PAUL, MN

Date: MAR 19 2010

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, St. Paul, Minnesota, 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, at 4, dated November 16, 2009.

On appeal, counsel asserts that the adjudicator did not properly weigh the hardship evidence and did not correctly apply the law to the evidence presented. He details several hardship factors. *Form I-290B*, at 2, received December 10, 2009.

The record includes, but is not limited to, counsel's brief, a federal court decision, the applicant's statement, the applicant's spouse's statement, documentation relating to the applicant's spouse's business; a death certificate for the applicant's child and photographs of the applicant and her spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant presented a passport in another person's name in order to gain admission to the United States on June 23, 2002. The AAO finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for this misrepresentation.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship affects the 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in China or in the United States, as the qualifying relative 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 her spouse in the event that he resides in China. Counsel states that the applicant's spouse has lived in the United States for many years, naturalizing in 1996; he has a career in the United States, owns a home and has friends and family in the United States; the applicant's spouse has none of this in China; and his small business and investment of time and money is in the United States. *Brief in Support of Appeal*, at 5. The record does not include evidence that establishes the inability of the applicant or her spouse to obtain employment in China; the impact on the applicant's spouse of leaving his business, home, investments, family and friends; or the impact, if any, that the death of his son would have on him if he relocated to China. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse would suffer extreme hardship if he relocated to China.<sup>1</sup>

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<sup>1</sup> The AAO notes the court case submitted by counsel: *Mi Ah Kim v. U.S.*, 609 F. Supp. 2d 499 (D. Md. 2009). The decision references a Form I-601 waiver proceeding where extreme hardship was found subsequent to the applicant's spouse's miscarriage, but does not identify the specific bases on which U.S. Citizenship and Immigration Services (USCIS) reached its decision. In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Accordingly, the AAO does not find the submitted decision to be relevant to the determination of extreme hardship in the present matter.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant gave premature birth to a boy on April 16, 2006 and that he passed away within hours; the applicant subsequently suffered a miscarriage; the applicant and her spouse have become even more dependent on each other for support in coping with these losses and in facing the reality that the applicant may not be able to bear children; the loss of the children has left an emotional scar and heightens the need for the applicant and her spouse to remain together; both the applicant and her spouse suffer immensely; and many couples do not survive the trauma and separate as a result. *Brief in Support of Appeal*, at 2-5. Counsel also states that the applicant and her spouse have been together for seven years and work together seven days a week in the applicant's spouse's take-out restaurant; the applicant's spouse would suffer extreme financial difficulties without the applicant; he is a small business owner and only has one employee other than the applicant; their minimal income supports them; and in the applicant's absence, her spouse would have to hire another employee, which would erode his income. *Id.* The record reflects that the applicant's child died due to respiratory distress, severe perinatal depression and being an extremely premature infant. *Applicant's Son's Death Certificate*, dated April 16, 2006. The record does not include supporting evidence of the applicant's miscarriage. Counsel also states that the applicant's spouse comes from a small family, lives at a distance from his family members and therefore spends all of his time with the applicant. *Form I-290B*, at 2. Based on the hardship factors presented, the AAO finds that the applicant's spouse would experience extreme hardship upon remaining in the United States without the applicant.

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 she 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.