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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

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FILE:



Office: PHILADELPHIA, PA

Date:

MAY 13 2010

IN RE:

Applicant:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania 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 has resided in the United States since September 17, 1992, when he entered the United States at or near New York. He 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 procured admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative based on his November 21, 1997 marriage to a Legal Permanent Resident, who has since become a naturalized United States citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse and other family members.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in an “extreme hardship” to the qualifying spouse (hereinafter referred to as [REDACTED]) and denied the application accordingly. *See Decision of Field Office Director* dated December 11, 2007.

On appeal, counsel for the applicant asserted that the Field Office Director failed to consider the country conditions for China, indicating that they demonstrate [REDACTED] “would be subject to undergo painful sterilization procedures or pay heavy fines” for having two children. As evidence of such allegations, counsel points to China’s Country Report on Human Rights Practices, 2005 (and [REDACTED] affidavit), yet does not refer to any language in the report which supports such a claim. Second, counsel for the applicant states the director failed to address that [REDACTED] entire immediate family lives in the United States. Lastly, counsel for the petitioner asserted that the director “incorrectly” evaluated the evidence pertaining to [REDACTED] employment. Counsel contends that the applicant, according to [REDACTED] affidavit, “has been the sole economic provider since [REDACTED] has] not worked since 2003,” and therefore [REDACTED] faces a financial hardship should the applicant be deported.

The record contains the following evidence; an initial brief, an appeal brief, [REDACTED] affidavit, four reference letters, the 2006 and 2003 U.S. Department of State Country Reports on Human Rights Practices in China, the applicant’s marriage certificate, [REDACTED] petition for name change and her naturalization certificate and the birth certificates of the applicant’s two United States citizen children. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (1) The [Secretary] may, in the discretion of the [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 [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.

In the present case, the record reflects that the applicant sought admission into the United States on September 17, 1992, by presenting a fraudulent passport issued in Taiwan and a counterfeit visa issued in Hong Kong. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is his wife, [REDACTED] and as aforementioned, his Petition for Alien Relative (Form I-130) has already been approved.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 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 566. The BIA has held:

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). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it

has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). 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).

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The applicant’s qualifying relative in this case is [REDACTED] his qualifying spouse.

The record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship. In the present case, [REDACTED] is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect [REDACTED]

The evidence provided which specifically relates to the applicant’s hardship includes [REDACTED] affidavit, four reference letters and the 2005 and 2003 U.S. Department of State Country Reports on Human Rights Practices in China, as well as the briefs submitted by counsel on behalf of the applicant.

The record reflects that, should [REDACTED] relocate to China with her husband, she could encounter emotional hardship due to separation from her family. [REDACTED] affidavit claims that her entire immediate family, including her children, parents and siblings, live in the United States and that they have no intention of returning to China. However, [REDACTED] has only provided a declaration from herself and her children’s birth certificates to substantiate these claims. There is no evidence that her parents and siblings reside in the United States, such as letters or declarations from these family members. Further, the record remains silent regarding whether [REDACTED] has extended family or friends in China. Therefore, should [REDACTED] decide to return to China with the applicant, she may be able to rely on support from her extended family or friends in China. Nonetheless,

even if [REDACTED] experiences emotional hardship due to her separation from her immediate family, this is a common result of separation and such hardship is insufficient to warrant a finding of “extreme hardship.”

Moreover, [REDACTED] can remain in the United States, and would therefore not experience the separation from her immediate family, other than from the applicant. There are no laws that require her to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, “even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States.” 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. See *Shoostary v. INS*, 39 F. 3d 1049 (9th Cir. 1994).

In addition to the emotional hardship referenced above, [REDACTED] also contends that she will be “subject to undergo painful sterilization procedures or pay heavy fines” because she has two children, if she returns to China. However, counsel fails to point to language in the country reports supporting these statements, and the record as a whole fails to offer any proof for such allegations. In fact, the most recent 2009 country report states that “[t]he law prohibits the use of physical coercion to compel persons to submit to abortion or sterilization.”¹ Further, the 2005 country report provided by counsel for the applicant indicates that “in most rural areas, ...the policy was more relaxed.” The applicant is from Fujian Province in China, which is a rural area. As such, it has not been demonstrated that [REDACTED] would face hardships relating to her reproductive ability or otherwise in the Fujian Province. Further, as previously noted, [REDACTED] is not required to return to China with her husband. She is a naturalized United States citizen and can remain in the United States.

Lastly, [REDACTED] asserts in her affidavit that she would suffer financial hardship, should her husband be forced to leave the United States. [REDACTED] states that her husband has been the sole income provider. The reference letters also reference the fact that the applicant financially supports his family.² As aforementioned, counsel contends that the director “incorrectly” found that the “spouse owns her own business” and is “gainfully employed,” and can therefore “make a financial contribution to the household income.” Counsel points to [REDACTED] affidavit which states that the applicant “has been the sole economic provider since [REDACTED] has] not worked since 2003.” Likewise, in her appeal brief, counsel states that [REDACTED] has not worked since 2003 and that the “adjudicator is unaware of the actual proper facts which leads the adjudicator to [an] erroneous legal conclusion.” However, on August 8, 2006, [REDACTED] submitted an Affidavit of Support in conjunction with the applicant’s application for adjustment. In the Affidavit of Support, [REDACTED] swore that she was “self-employed” and that she “filed a joint tax return for the most recent tax year which includes only [her] income,” as well as indicating that she had a

¹ The Department of State 2009 Human Rights Report for China has been incorporated into the record.

² Note that other than the financial implications of the applicant being deported, the reference letters only confirm that the applicant has a good moral character.

combined income with her spouse of "\$15,103.00." As such, the record does support that the spouse has been unemployed after 2003. In addition, the record contains no financial documentation to demonstrate the applicant's contribution to the family income. Moreover, the applicant failed to provide evidence to document his family's expenses, such as mortgage payments and/or rent, car payments, credit card obligations or other expenses, in order show how such expenses may pose a financial burden upon [REDACTED] consistent with a finding of an extreme hardship.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

In this case, the record does not contain sufficient evidence to show that the hardships faced by [REDACTED] considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. 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.