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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

[redacted]

H5

FILE: [redacted] Office: PHILADELPHIA, PA Date: MAY 13 2010

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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 District Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 entering the United States using fraudulent documentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her U.S. citizen husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated May 30, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted] indicating they were married on August 29, 2000; a copy of [redacted] naturalization certificate; copies of the birth certificates of the couple's three U.S. citizen children; an affidavit from [redacted] a letter from [redacted] physician; a psychiatric evaluation form and other medical documentation for [redacted]; a letter from the children's school; a letter from one of the children's physicians; copies of tax and other financial documents; photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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) provides:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant admits, that in 1993, she attempted to enter the United States using a counterfeit re-entry permit. *Record of Sworn Statement*, dated August 22, 1993. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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-Moralez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-66 (BIA 1999), provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship under the Act. These 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.

The record reflects that the applicant married [redacted] a naturalized U.S. citizen, on August 29, 2000. The applicant and her spouse have three U.S. citizen children, who are currently four, eleven, and thirteen years old. [redacted] is a qualifying relative for purposes of a section 212(i) waiver. Hardship to the applicant and her children will be considered only insofar as it results in hardship to her spouse.

In this case, the applicant's husband, [redacted], states that he would suffer emotionally and financially if his wife's waiver application were denied. [redacted] contends he cannot imagine life without his wife. He states he could not move to China with his wife because he wants their children to be educated in the United States. According to [redacted], most of their relatives live in the United States. He claims that if his wife returns to China, the children would be able to visit her only once every two years "since they are too young for frequent travel and it is expensive." In addition, [redacted] states that he and his wife would like to have another child, but that if they were to return to China, either he or his wife would be sterilized under China's family planning policy. Furthermore, [redacted] states that he and his wife jointly own a Laundromat and that if he had to care for their three children alone, they "would wind up on welfare." He contends that his wife would be unable to find a "decent" job in China and that even if she did, there would be limitations on her sending money to her family in the United States. Moreover, [redacted]

[redacted] states that "[b]ecause of [his wife's] three deliveries, she has developed acute waist pains" and visits doctors frequently. He further contends that their daughter, [redacted] suffers from asthma and that his wife brings her to the hospital and cooks a special diet for her. *Affidavit of* [redacted], dated November 29, 2005.

A letter from physician states that has acute stress disorder, is depressed, does not sleep well, and is "very anxious with poor concentration and attention." The physician contends [redacted] condition is not stable, that he needs treatment, and is receiving medications. According to the physician, "[b]ased on his current condition, he has trouble to take care of his children by himself." *Letter from* [redacted] dated July 20, 2006.

A psychiatric evaluation of [redacted] states that he is very depressed due to his wife's immigration status. The evaluation states [redacted] "felt anhedonia, poor sleeping, poor appetite, [and is] very anxious all day." [redacted] was diagnosed with acute stress disorder and was prescribed Lexapro, Ativan, and Ambien. *Psychiatric Evaluation Form*, dated July 17, 2006. Progress notes indicate that [redacted] was "still very depressed [with] poor sleeping, poor concentration[, and] poor attention." The progress notes indicate [redacted] has trouble caring for his children by himself and that he has lost twenty pounds in the past two months. [redacted] dated July 22, 2006.

A letter from a physician states that the couple's son, [redacted], who is currently thirteen years old, "was brought back to China and lived there from 2 months to 5 years of age." The physician states that [redacted] was diagnosed with allergic urticaria in August 2004. According to the physician, [redacted] was referred to a pediatric allergy specialist and put on anti-histamines to control his urticaria. *Letter from* [redacted], dated June 13, 2006.

Upon a complete review of the evidence, the record does not show that the applicant's spouse will suffer extreme hardship as a result of the applicant's waiver being denied.

The AAO recognizes that [redacted] will endure hardship as a result of his wife's departure from the United States and is sympathetic to the family's circumstances. However, if [redacted] decides to stay in the United States, their situation is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. With respect to [redacted] mental health, there is insufficient evidence to show that the hardship he has experienced or will experience is beyond what would normally be expected. The record shows that [redacted] has no past history of depression. *Psychiatric Evaluation Form, supra.* Although the input of any mental health professional is respected and valuable, the letters in the record indicate that the applicant's depression and anxiety are related to his wife's immigration case, but do not comment on whether his symptoms might lessen if he relocated to China with his wife, and the applicant does not discuss the availability of mental health care in China.

Regarding the financial hardship claim, although the record contains copies of bills and tax documents, the record fails to provide sufficient details to show that the financial hardship [redacted] would experience would be extreme. For instance, the record indicates that the couple owns a restaurant called

[redacted] and a Laundromat called [redacted]. The record further shows that from April 1 to May 31, 2006, the businesses earned a total net income of $6,870. [redacted] *Statement of Profit and Loss*, dated June 19, 2006. However, it is unclear from the record to what extent, if any, the applicant helps to support these businesses. According to the only tax documents in the record, in 2004, the applicant earned $6,506 working at [redacted], and [redacted] *2004 Wage and Tax Statements (Form W-2)*. Although [redacted] contends that if his wife departed the United States, he would have to take care of their three children and would probably end up on welfare, *Affidavit of* [redacted], *supra,* the record does not specify his current childcare arrangements. The record shows that the couple's son, [redacted], lived in China for the first five years of his life and it is unclear who cared for him during that time. *Letter from* [redacted] *supra.* In any event, even assuming [redacted] would suffer some economic hardship, the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

To the extent [redacted] contends that their daughter, [redacted], suffers from asthma, there is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of her purported asthma. Conversely, although the record contains documentation that the couple's son, [redacted], was diagnosed with allergic urticaria, neither the applicant nor her husband make any mention of [redacted] condition and they do not contend that it would cause [redacted] extreme hardship should the applicant's waiver application be denied. In addition, the physician's letter does not sufficiently address the prognosis, treatment, or severity of [redacted] condition.

Federal courts and the BIA have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, 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. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (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).

Furthermore, [redacted]'s claim that he cannot move to China with his wife because he wants his children to be educated in the United States, and either he or his wife would be sterilized under China's family planning policy, is unpersuasive. The record shows that [redacted] was born in China and is currently forty years old. There is no indication in the record that he has any physical or mental health issues that would render his transition to moving back to China an extreme hardship. Although he contends that "most" of his relatives live in the United States, *Affidavit of* [redacted] *supra,* [redacted] does not address whether he still has relatives living in China. According to the applicant's Biographic Information form, both of her parents live in China. *Biographic Information (Form G-325)*, dated June 8, 2005. To the extent [redacted] claims that he or his wife would be sterilized upon returning to China due to China's family planning policy, the applicant has not submitted any evidence to show that this

fear is reasonable. *Cf. In re J-W-S-*, 24 I. & N. Dec. 185, 190 (BIA 2007) (stating that the U.S. State Department has found that children born overseas are "not ... counted" for family planning purposes when the parents return to China) (citing Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *China: Profile of Asylum Claims and Country Conditions* 30 (May 2007)).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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, 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.