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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
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U.S. Citizenship and Immigration Services

PUBLIC COPY

H5 #2

[redacted]

FILE: [redacted] Office: COLUMBUS, OH Date: DEC 01 2009

IN RE: [redacted]

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:

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

The applicant is a native of Vietnam and a citizen of Canada 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 states she is the daughter of a United States citizen. She 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 her spouse and father.

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 May 8, 2008.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant had failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. He further contends that USCIS failed to consider its previous approval of a multiple entry nonimmigrant visa for the applicant. *Form I-290B, Notice of Appeal or Motion.*

In support of the waiver, counsel submits a statement. The record also includes, but is not limited to, a vendor's license for the applicant's spouse; tax returns for the applicant's spouse; statements from the applicant's spouse; a psychological evaluation; a business license; statements from the applicant; Canadian police clearance letters for the applicant; a medical letter and medical records for the applicant; medical bills and receipts for the applicant; bank statements; a notice of property ownership; a property deed; homeowner's insurance; a car insurance bill and card; a life insurance policy ; a statement from the applicant's mother; and a fraudulent employment letter and pay stubs relating to the applicant. 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 16, 2000 the applicant attempted to gain admission to the United States at Buffalo, New York as a non-immigrant visitor. *Form I-213, Record of Deportable/Inadmissible Alien*, dated February 16, 2000. At the port of entry, the applicant presented a Canadian citizenship card and stated that she lived and worked in Canada. *Form I-213, Record of Deportable/Inadmissible Alien*, dated February 16, 2000. In secondary inspection, the applicant stated she was going to visit her aunt in Ohio for a few days and then returning to Canada. *Id.* She also presented a letter of employment and pay stubs from a company in Canada. *Id. Statement of employment; pay stubs.* Upon additional questioning, the applicant admitted that she had been living and working without authorization in the United States since December 25, 1999 and it was her intent to return to her unlawful residence and employment in the United States. *Id.*

Counsel asserts that the applicant's statement regarding her employment in Canada is not material, as she was admissible regardless of where she was working or living. *Attorney's brief.* While the AAO notes counsel's assertion, it observes that the applicant's misrepresentation regarding her employment is directly relevant to the applicant's intention of gaining admission to the United States as a nonimmigrant visitor. By misrepresenting her place of employment and residence at the port of entry, the applicant sought to establish that it was her intention to visit, rather than to reside in, the United States. Even if the applicant had not misrepresented her place of employment and residence, she would still be inadmissible to the United States under section 212(2)(6)(C)(i) of the Act as she sought to enter the United States as a nonimmigrant when her true intent was to remain and work in the United States, which she would not have been authorized to do as a nonimmigrant. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961).

The AAO notes counsel's additional claim on appeal regarding the applicant not having accrued unlawful presence in the United States. The AAO finds that the issue of unlawful presence is irrelevant to this case, as the applicant has been found to be inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel also asserts that USCIS has already admitted the applicant as a nonimmigrant and failed to give her nonimmigrant admissions appropriate consideration in accordance with *Zhang v. Mukasey*, 509 F.3d 313 (6th Cir. 2007). The AAO notes that while the applicant's 212(a)(6)(C)(i) inadmissibility may have been waived under section 212(d)(3) of the Act, allowing her to enter the United States as a nonimmigrant, that waiver does not establish her eligibility for a waiver as an immigrant under section 212(i) of the Act, where she must demonstrate that a qualifying relative would suffer extreme hardship as a result of her inadmissibility.

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 would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant 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 or father 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 or father must be established whether he resides in Canada or the United States, as he 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 adjudication of this case.

The AAO notes that the record fails to include documentation that establishes the applicant's father as a United States citizen. Furthermore, there is nothing in the record to demonstrate that the applicant's father would suffer extreme hardship if he resides in Canada or remains in the United States. As such, the AAO does not find that the applicant has demonstrated that her father is a qualifying relative or that he would suffer extreme hardship as a result of her inadmissibility.

If the applicant's spouse joins the applicant in Canada, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Vietnam. *Naturalization certificate*. The record does not indicate that the applicant's spouse has any family or cultural ties to Canada. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse states that he grew up in the United States and that all of his family resides in the United States. *Statement from the applicant's spouse*, dated September 30, 2007. He further states that he has responsibilities to his family and that both of his parents are diabetic, that his father has first-stage lung cancer and recently had surgery, and that his father is mentally-ill. *Id.* He further asserts that his father-in-law just had heart surgery and he needs to be in the United States for him as well. *Id.* The applicant's spouse also reports that he and the applicant have purchased a home and that he owns a business that employs three people. *Id.* He asserts that moving to Canada with his wife would force him to sell his home and his business, and that he cannot lay off his workers who depend on him. *Id.*

In a psychological evaluation, the licensed psychologist notes that the applicant's spouse is the legal guardian for his father. *Psychological evaluation from* [redacted] dated November 1, 2007 and November 12, 2007. The applicant's spouse stated to the licensed psychologist that his father's condition continues to worsen and he needs more care than his mother

is able to provide on her own, and that it has become necessary for him to move back to California in order to provide better care for his parents. *Id.* In addition to actively hallucinating and requiring several psychiatric hospitalizations, his father has also had a lung removed and been diagnosed with diabetes. *Id.* While the AAO acknowledges these statements, it notes that the licensed psychologist does not indicate that he reviewed any medical records for the applicant's spouse's father to confirm his medical problems and that the record also fails to include documentation that establishes the medical condition of the applicant's spouse's father. The AAO further observes that, while the psychological evaluation reports that the applicant's spouse indicated that he must move to California to care for his parents, the record offers no proof of such a move. 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)). The AAO also notes that the psychological evaluation does not specifically address the emotional impact on the applicant's spouse if he were to relocate to Canada rather than move to California to be with his parents. While the AAO also acknowledges the applicant's spouse's statements regarding the loss of his business and home upon relocation, it again finds the record to offer no proof that he would be unable to conduct his business from Canada or that he would be required to sell his and the applicant's home if he relocated. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Canada.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in Vietnam. *Naturalization certificate.* The applicant's spouse's family lives in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse; Statement from the applicant's spouse,* dated September 30, 2007. The applicant's spouse notes that he is stressed from having to perform everyday chores without the assistance of the applicant in addition to taking care of his business. *Statement from the applicant's spouse*, dated September 30, 2007.

According to a psychological evaluation from a licensed psychologist, the applicant's spouse is suffering from Depressive Disorder, Single Episode, Mild and has clinical symptoms of depression and anxiety. *Psychological evaluation from* [redacted] dated November 1, 2007 and November 12, 2007. In his psychologist's opinion, being separated from the applicant will surely cause the applicant's spouse's symptoms to become heightened to the degree that he will sink even further into his depression. *Id.* Although the input of any mental health professional is respected and valuable, the AAO finds the submitted evaluation to be of limited evidentiary value to this proceeding as it is based on a single interview with the applicant's spouse. While the AAO notes that the psychologist who evaluated the applicant's spouse based his findings, in part, on a series of standardized tests for depression, it finds that the evaluation does not report the applicant's spouse's test results, offering only generalized statements, e.g., "significant depressive symptomatology," regarding test outcomes. Therefore, the administered tests do not add significantly to the weight of the evaluation. Accordingly, the AAO finds the conclusions reached in the submitted evaluation, being based on a single interview, to lack the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering them speculative and of diminished value to a determination of extreme hardship.

The applicant states that the feelings of being separated from loved ones are harsh and painful. *Statement from the applicant*, undated. The applicant's spouse states that he and the applicant need each other physically and emotionally. *Statement from the applicant's spouse*, dated September 30, 2007. The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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 his separation from the applicant. However, the record does not distinguish his situation, if he 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 her spouse if he 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.