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



[REDACTED]

tlj

DATE: **FEB 23 2012** OFFICE: LOS ANGELES, CA

FILE: [REDACTED]

IN RE: APPLICANT: [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:

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 \$630. 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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, 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 August 8, 2007, when she was last admitted pursuant to a B-1/B-2 nonimmigrant visa. In her nonimmigrant visa interview, she claimed she was not married, even though she was already married to a U.S. Citizen, and intended to visit the United States to see Disney. She 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 a visa to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. 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 her U.S. Citizen spouse.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative, and also failed to show she merited a favorable exercise of discretion, and denied the application accordingly. *See Decision of Field Office Director* dated September 15, 2009.

On appeal, counsel for the applicant submits a brief in support of appeal. Therein, counsel contends the applicant has shown her spouse would experience extreme hardship in the form of emotional, financial, and physical hardship given the applicant's inadmissibility. Counsel explains the Field Office Director erred in ignoring the spouse's severe depression as well as evidence of financial difficulties upon separation from the applicant. With respect to relocation, counsel asserts the Field Office Director erred by basing its determination solely on the fact that the spouse speaks Cantonese and that he had previously considered relocating to Hong Kong before.

The record includes, but is not limited to, evidence of birth, marriage, divorce, residence, and citizenship, financial documents, medical documents, statements from the applicant and her spouse, letters from family and employers, a psychological evaluation, other applications and petitions filed on behalf of the applicant, copies of passport pages, articles on Hong Kong, another statement from the attorney, and photographs. 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.

The Field Office Director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for having presented a nonimmigrant U.S. visa that was obtained through improper means upon being admitted to the United States on August 8, 2007. The record supports this finding, and the AAO concurs that this misrepresentation was material. The applicant through counsel has not disputed his inadmissibility on appeal. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

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).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*,

The applicant's spouse describes financial difficulties which will occur upon separation. He indicates his current expenses include \$500 in rent plus utilities paid to his sister for living in a house with his sister, her husband and children, as well as his parents. The spouse adds that he would also have to pay for household expenses for the applicant's residence in Hong Kong, which would further strain his finances. A document listing average monthly household expenses is submitted. He indicates that the applicant would not be able to support herself and find employment again in Hong Kong in light of the poor economy. With respect to financial hardship upon relocation to Hong Kong, the applicant's spouse contends he will also be unable to find employment, and he would have to liquidate his minimal assets in the United States, including his vehicle. Articles on Hong Kong's economy are submitted.

The applicant's spouse asserts the hardship his U.S. Citizen parents would suffer without him would also add to his hardship. He states that his parents are in their seventies and are in poor health, and consequently he and his sister attend to their needs, such as driving them to medical appointments. Some medical records are submitted in support of these assertions. If he moved to Hong Kong, the applicant's spouse indicates he would not be able to afford the long distance trips to visit his parents in California, which cause them emotional distress. Moreover, the applicant's spouse explains he has no other ties to Hong Kong except for the applicant, and that all of his family lives here in the United States.

Despite submission of evidence on income and rent payments, the record does not contain sufficient evidence of the spouse's household expenses to support assertions of financial hardship. Furthermore, the spouse's contention that he would have to pay for the applicant's household in Hong Kong given separation is not supported by the record. Even though counsel asserts otherwise, the applicant indicates in a statement that she lived with her parents and her sister before the applicant and her spouse rented an apartment in Hong Kong. There is no indication in the record of why the applicant could not return to that living situation, and mitigate the spouse's financial hardship in supporting another household. Moreover, although the applicant's spouse and counsel assert that the applicant would have severe difficulties finding a job and supporting herself in Hong Kong, the applicant's Form G325A, Biographical Information, shows that the applicant had a history of employment in Hong Kong as an assistant manager and a consultant. It is also noted that the applicant has not submitted evidence that she is able to contribute financially to the household while in the United States. Without sufficient details and supporting evidence of the family's expenses and income, as well as evidence to support assertions regarding the applicant's financial situation in Hong Kong, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

It is noted that the applicant's spouse has shown he has some psychological and emotional issues, including severe depression and anxiety, given the applicant's immigration issues. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional or other impacts of separation on the applicant's spouse are cumulatively

above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Hong Kong without her spouse.

The AAO also notes that the applicant's spouse does not have family ties in Hong Kong besides the applicant, and that relocation to Hong Kong would result in separation from his parents and sister, as well as liquidation of some assets. However, the record also reflects that the applicant's spouse has visited Hong Kong on several occasions, and that he speaks Cantonese. The spouse's familiarity with the language and culture may provide him with a better ability to adjust to life in Hong Kong, and to find employment. As the Field Office Director noted, the unemployment rate in Hong Kong, as described by counsel and supported by evidence of record, is viewed in light of unemployment rates in the United States. The AAO acknowledges the applicant's spouse would experience some hardship as a result of relocation to Hong Kong. However, the record lacks evidence to demonstrate that the financial, emotional, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond hardships commonly experienced by relatives of inadmissible aliens. Therefore, the AAO finds there is insufficient evidence of record to show the applicant's spouse would experience extreme hardship upon relocation to Hong Kong.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 her 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.