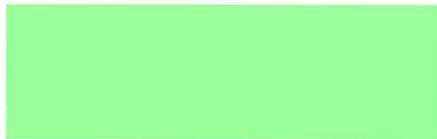




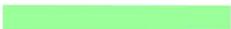
U.S. Citizenship  
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Services

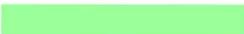
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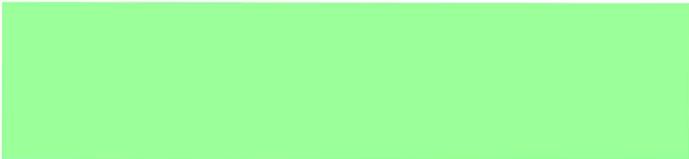
OFFICE: CHICAGO

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(3)(D)(iv)  
of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(3)(D)(iv)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

  
f/

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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)(3)(D)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(3)(D)(i), for her affiliation with the Communist Party in China. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(3)(D)(iv) of the Act, 8 U.S.C. § 1182(a)(3)(D)(iv), in order to reside in the United States with her two U.S. citizen children and their respective families.

The field office director found the applicant had established that she had two U.S. citizen children and thus met the requirement of having a qualifying relative for purposes of family unity. Further, the field office director noted that the record contained no reason for the USCIS to conclude that the applicant was a direct threat to the security of the United States. Nevertheless, the field office director concluded that it was not appropriate to exercise discretionary power to waive the applicant's inadmissibility for her Communist party membership. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly. *Field Office Director's Decision*, dated September 7, 2012.

On appeal, counsel asserts that the field office director erred in denying the waiver on discretion. Counsel maintains that the applicant was never devoted to the ideals and principles of Communism, she never now or before believed in Communism notwithstanding her membership in the Chinese Communist Party (CCP), and even though she did not withdraw from the CCP by taking any action, her inaction in not paying party dues or participating in party activities for more than six months resulted in her abandoning CCP membership, which was her intention. *See Brief in Support of Appeal*, dated November 5, 2012. In support, counsel submits the following: a brief; a personal statement and translation from the applicant; and documentation regarding country conditions in China. The entire record was reviewed and all relevant information considered in reaching a decision on the appeal.

Section 212(a)(3)(D) of the Act states:

**(i) In general** Any immigrant who is or has been a member of or affiliated with the Communist or any other totalitarian party (or subdivision or affiliate thereof), domestic or foreign, is inadmissible.

**(ii) Exception for involuntary membership** Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular officer when applying for a visa (or to the satisfaction of the Attorney General [Secretary of Homeland Security] when applying for admission) that the membership or affiliation is or was involuntary, or is or was solely when under 16 years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and whether necessary for such purposes.

**(iii) Exception for past membership** Clause (i) shall not apply to an alien because of membership or affiliation if the alien establishes to the satisfaction of the consular

officer when applying for a visa (or to the satisfaction of the Attorney General [Secretary] when applying for admission) that-

(I) the membership or affiliation terminated at least-

(aa) 2 years before the date of such application, or

(bb) 5 years before the date of such application, in the case of an alien whose membership or affiliation was with the party controlling the government of a foreign state that is a totalitarian dictatorship as of such date, and

(II) the alien is not a threat to the security of the United States.

(iv) **Exception for close family members** The Attorney General [Secretary] may, in the Attorney General's [Secretary's] discretion, waive the application of clause (i) in the case of an immigrant who is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or a spouse, son, or daughter of an alien lawfully admitted for permanent residence for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest if the immigrant is not a threat to the security of the United States.

The record establishes that the applicant became a member of the Communist Party in China in 1979. Counsel acknowledges the applicant's inadmissibility under section 212(a)(3)(D)(i) of the Act and does not indicate that the applicant falls under either of the exculpatory exceptions found in sections 212(a)(3)(D)(ii) or (iii). He asserts, instead, that the applicant is eligible for an exception to her inadmissibility pursuant to section 212(a)(3)(D)(iv) of the Act.

The evidence clearly establishes the applicant's family ties in the United States, including the presence of her two U.S. citizen children, their spouses and their children. In a declaration provided by the applicant's daughter, [REDACTED] explains that her father passed away 14 years ago and her mother was by herself in China. Although the applicant came to the United States to visit four times, and she went to China to visit her mother, long-term separation caused her hardship. The applicant's daughter further explains that it is customary for elderly parents to live with their adult children and she thus wants her mother by her side. The applicant's daughter maintains that due to her family and employment obligations, she is unable to travel to China regularly to visit her mother. Further, the applicant's daughter explains that her child has been diagnosed with Selective Mutism, an anxiety disorder, and her mother has been instrumental in helping her daughter progress. She states that were her mother to return to China, her daughter would feel less secure and confident and would regress in her speech progress. Finally, the applicant's daughter explains that she and her family are proud Americans with significant community, family and employment ties in the United States and relocation to China to reside with the applicant would cause them hardship. [REDACTED] dated August 13, 2011. In support, documentation has been provided establishing the applicant's daughter's extensive ties to the United States, including gainful employment as a Financial Systems Analyst for [REDACTED] earning over \$58,000 per year. Further, documentation establishing the U.S. citizenship of the applicant's two children and their families has been submitted. Moreover, evidence establishing the applicant's grand-child's diagnosis of selective mutism has been submitted. Based on the documentation provided, the AAO concurs with the field office director that the applicant is eligible

for a waiver based on the principle of family unity under section 212(a)(3)(D)(iv) of the Act. The AAO further concurs with the field office director that there is no evidence in the record that would indicate the applicant poses a threat to the United States. She is a retired elementary school teacher in her early 70s with no apparent criminal record. In that the applicant is eligible for a waiver based on family unity and is found to pose no threat to the United States, she is statutorily eligible for a section 212(a)(3)(D)(iv) waiver.

The AAO now turns to a consideration of whether the applicant merits a favorable exercise of discretion under the Act. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The field office director found that the applicant continued to be devoted to the ideals and principles of Communism as a result of still being a member of the CCP and thus concluded that favorable discretion could not be applied to the applicant for purposes of a waiver of inadmissibility under section 212(a)(3)(d)(iv) of the Act. The field office director's findings were based on an I-485 interview with the applicant in January 2011. At that time, the field office director noted that the applicant stated that Communism was like an unreachable dream and that the main principle of Communism was good. On appeal, counsel has provided a statement from the applicant addressing the concerns raised by the field office director. To begin, the applicant explains that she joined the Chinese Community Party in 1979 after being asked to do so by the party organization because she thought joining was recognition of her outstanding teaching, and because she was worried that if she refused, it would be seen as a political statement. She contends that the person who invited her to join the CCP was her administrative superior and were she to refuse to join, it might feel like insubordination which would hinder her future career. The applicant further details that she was an ordinary member and never held any positions in the Party. The applicant goes on to explain that

when she left China, she did not actively resign from the CCP because she thought that actively resigning from the CCP could be seen as a political statement. She maintains that she did not want to confront the CCP because she wanted to be able to return to China to visit as her father is still in China. The applicant explains that at her interview in January 2011, she stated that Communism was illusory and impractical but that the interpreter translated illusory to "like a dream", creating ambiguity. She states that she never regarded Communism as her ideal. The applicant contends that that since living in the United States with her daughter's family she has been deeply impressed with the democratic roots of the American political system and finds that the democratic system not only encourages people to work hard, but also provides social welfare to the people who need help and compared to the illusory promise of Communism, democracy in the United States is real. Since coming to the United States in 2010, the applicant asserts that she has not paid Party dues and has had no contact with CCP and consequently, she has abandoned her membership of the CCP. She maintains that she never intended to educate her children to become Communist Party members, they never joined the Communist Party and she fully supported her three children's decisions to go to the United States and Norway to study and hoped that they could live in a democratic country. See [REDACTED], dated November 1, 2012.

The positive factors include the presence of the applicant's two U.S. citizen children and their respective families, the general hardship to her children and their families that would result from the denial of the waiver, the apparent absence of a criminal record, the applicant's forty years as an educator in China, the statement submitted by the applicant's daughter relating to her mother's integrity and character, and the detailed statement from the applicant explaining her position with respect to her membership, philosophy and involvement with the Chinese Communist Party and her support of democracy. The field office director found that the negative factors in the applicant's case were her continued devotion to Communism and her current membership. The AAO finds that on appeal the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The appeal is sustained.