

- <sup>57</sup> *Carranza de Salinas* is summarized in 84 Interpreter Releases 355 (Feb. 12, 2007).
- <sup>58</sup> For discussion of cases addressing when an alien is firmly resettled in another country, see 189 A.L.R. Fed. 231.
- <sup>59</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), opened for signature Dec. 10, 1984, G.A. Res. 39/46, 39 U.N. GAOR Supp No. 51 at 197, U.N. Doc. A39/51 (1984), art. 3, reprinted in 23 I.L.M. 1027 (1984), modified in 24 I.L.M. 535 (1985). For analysis of the CAT, see Feroli, "Trends in Decisions Under the Convention Against Torture," 05-05 Immigration Briefings 1 (May 2005); and Sklar, "New Convention Against Torture Procedures and Standards," 99-07 Immigration Briefings 1 (July 1999). See also Construction and Application of United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, or Punishment, 184 A.L.R. Fed. 385.
- <sup>60</sup> *Matter of C-A-* is examined in 83 Interpreter Releases 1473 (July 17, 2006).
- <sup>61</sup> *Matter of Acosta* is examined in 62 Interpreter Releases 212, 220 (Mar. 11, 1985).
- <sup>62</sup> *Matter of Mogharrabi* is examined in 64 Interpreter Releases 783 (June 29, 1987).
- <sup>63</sup> *Matter of Koloamatangi* is examined in 80 Interpreter Releases 150 (Feb. 3, 2003).
- <sup>64</sup> *Mejia-Orellana* is summarized in 84 Interpreter Releases 2258 2261 (Oct. 1, 2007).
- <sup>65</sup> *Lara-Ruiz* is examined in 78 Interpreter Releases 768 (May 7, 2001).
- <sup>66</sup> *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).
- <sup>67</sup> The court pointed out that the petitioners did not take issue with the BIA's decision denying asylum and withholding of removal.
- <sup>68</sup> Made permanent in October 2000, this program is now known as the Visa Waiver Program. The VWP allows eligible nationals from designated countries to apply for admission to the U.S. for 90 days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa from a U.S. consular officer abroad. See INA § 217 [8 USCA § 1187].
- <sup>69</sup> *Hassan* is summarized in 82 Interpreter Releases 619 (Apr. 11, 2005).
- <sup>70</sup> *Ventura* is discussed in 79 Interpreter Releases 1673 (Nov. 11, 2002) and 83 Interpreter Releases 769 (Apr. 24, 2006).
- <sup>71</sup> Pub. L. No. 107-208, 116 Stat. 927 (Aug. 6, 2002).
- <sup>72</sup> *Bolvito* is summarized in 85 Interpreter Releases 1563 (June 2, 2008).
- <sup>73</sup> The court in *Freeman* reasoned that the alien widow qualified as the "spouse" of a U.S. citizen when she and her husband petitioned for adjustment of status and, absent a clear statutory provision voiding her spousal status upon her husband's

untimely death, she remained a "surviving" spouse. The court also rejected the government's contention in that case that the second sentence in the immediate-relative statute relating to the ability of widows and widowers to self-petition implicitly qualifies the general definition of a spouse by imposing a two-year marriage requirement. *Freeman* is summarized in 83 Interpreter Releases 876 (May 8, 2006).

- <sup>74</sup> Editor's note: Presumably, the petitioner did not endeavor to apply for asylum as he could not have fulfilled the statutory requirement for filing within one-year of his arrival to the U.S. ■

## 11. USCIS Announces \$1.2 Million Citizenship Grant Program

U.S. Citizenship and Immigration Services (USCIS) has announced that a competitive grant program is being offered through Grants.gov for a \$1.2 million grant program to support citizenship preparation programs for legal permanent residents. Through this competitive grant program, USCIS will provide funding to community-based organizations (CBOs) that serve one or more priority immigrant groups in areas of the U.S. that contain a large representation of the country's immigrant population.

To be eligible for funding, CBOs must have demonstrated experience in providing citizenship and/or immigration-related services to legal immigrants. USCIS requests that CBOs intending to apply for funding under this program send an e-mail to citizenshipgrantprogram@dhs.gov by April 15, 2009. To apply for this funding opportunity, visit the Grants.gov Web site at <http://www.grants.gov>. For more information, see the related Fact Sheet, reproduced in Appendix III of this Release. ■

## 12. Unpublished AAO Decision

The following article reviews an unpublished decision issued by the Administrative Appeals Office (AAO), which handles appeals filed with the Associate Commissioner for Examinations, U.S. Citizenship and Immigration Services (USCIS). The decision was submitted to Interpreter Releases by Alan Lee, Esq., of New York, N.Y.

### INA § 212(i) WAIVER OF INADMISSIBILITY

In *Matter of Chang*, File No. A70 010 615 (AAO Mar. 4, 2009), which is reproduced in Appendix IV of this Release, the AAO sustained an appeal from the denial of an application for an INA § 212(i) [8 USCA § 1182(i)] waiver of inadmissibility under INA § 212(a)(6)(C)(i). On December 22, 1991, the applicant, a native and citizen

of the People's Republic of China, attempted to procure admission into the U.S. at Honolulu International Airport in Hawaii by presenting a false passport from Singapore. He is the son of a naturalized U.S. citizen and seeks a waiver of inadmissibility in order to reside in the U.S. with his father. The District Director concluded that the applicant failed to establish that his father would suffer extreme hardship if the applicant were removed to China, and denied the waiver application.

The applicant appealed, presenting, among other things, a brief, statements from the applicant and his father, an expert's affidavit regarding China's family planning policies, a psychological evaluation of his father, and his father's medical records.<sup>75</sup> The evidence established that the applicant's father was born in China and moved to the U.S. in 1988. He is now 57 years old. Both of his parents are deceased, and while he has two siblings who live in China, he does not communicate frequently with them. He had an operation a few years ago and often feels ill. According to an evaluation conducted by a licensed clinical social worker, the applicant's father is in an anxious and depressive state. He also has several chronic illnesses, including high blood pressure, a post-surgical intestinal problem, abdominal pains, and rectal bleeding. He is being treated at one of New York University's teaching hospitals. In the social worker's opinion, if the applicant's father returned to China with the applicant, his emotional problems would intensify and his physical health would deteriorate. He has lost his Chinese citizenship and could only return to China as a visitor, and his visitor visa would only be good for three months. In light of this evidence, the AAO concluded that the applicant demonstrated that his father would suffer extreme hardship if he accompanied the applicant to China.

The AAO then turned to the issue of whether the applicant's father would suffer extreme hardship if the applicant returned to China but his father remained in the U.S. The evidence established that the applicant resides in Georgia, while his father resides in New York City. He lives in the Chinese community in Brooklyn and has a job where he is able to speak Chinese. He has learned the subway system and can travel anywhere he wants to go by himself. The father has another son who lives in California, but he does not hear from him.

The father said he would not be able to visit the applicant often because of the cost of flying to China, the strain of traveling, and his poor health. The psychotherapist noted the emotional and psychological support the applicant furnishes his father. Whenever the father is ill, the applicant goes to New York to take care of him and to accompany him to the doctor's office or clinic.

The AAO, while recognizing the father's "independent lifestyle," found that the father relies on the applicant during physically and emotionally difficult times.

The applicant's father expressed fear that his son and daughter-in-law, who have four U.S. citizen children, will be sterilized if they return to China. The evidence included an expert's affidavit indicating that while China has a "relaxed" attitude towards multiple babies born abroad to Chinese citizens who left China with permission, the same is not true where, as in this case, the Chinese citizens left China without permission. The AAO held that the applicant had established that his father would suffer extreme hardship if he stayed in the U.S. while the applicant returned to China.

The AAO then found that the applicant merits a waiver of inadmissibility as a matter of discretion, holding that when taken together, the favorable and mitigating factors—his U.S. citizen father and children; his care of his spouse, children and father; and his payment of taxes—outweighed the adverse factors—the misrepresentation which rendered him inadmissible, his criminal convictions (for battery, simple battery, public drunkenness, and theft by shoplifting), and his periods of unlawful residence and unauthorized employment in the U.S.

As Interpreter Releases® continues to report on unpublished AAO decisions, attorneys who wish to submit AAO decisions for consideration are encouraged to do so by contacting Carolyn Bower, Principal Attorney Editor, [carolyn.bower@thomsonreuters.com](mailto:carolyn.bower@thomsonreuters.com).

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## Notes

<sup>75</sup> For detailed discussion of evidence in extreme hardship waiver cases, see Laurel Scott, "Evidence for an Extreme Hardship Waiver of Inadmissibility: Boldly Going Where No Case Law Has Gone Before," 09-01 Immigration Briefings 1 (Jan. 2009). ■

## 13. Other AAO Decisions

The following article reviews selected decisions issued by the Administrative Appeals Office (AAO), which handles appeals filed with the Associate Commissioner for Examinations, U.S. Citizenship and Immigration Services (USCIS).

### ADVANCED-DEGREE REQUIREMENT

In *Matter of [name withheld]*, File No. LIN 093 52637, 2008 WL 5652011 (AAO, Nov. 7, 2008), the petitioner, a computer consulting firm, sought to