

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

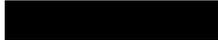


**U.S. Citizenship
and Immigration
Services**

H2



FILE:



Office: SEOUL, KOREA

Date: **OCT 27 2005**

IN RE:



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: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Seoul, Korea. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Korea who was found by a consular officer 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 having attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant 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.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative or to establish that her application warranted the favorable exercise of discretion of the Secretary of Homeland Security. The officer in charge denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated May 13, 2004.

On appeal, the applicant agrees with the officer in charge's finding that medical facilities in Korea are on par with those found in the United States, however the applicant contends that medical treatment in Korea would not be available to her father owing to his age and financial circumstances. The applicant asserts that she has not attempted to deceive the United States Government since the fraudulent act she committed in 1994 and has suffered the tragedy of failing to meet her father before his death on May 5, 2004. *Form I-290B*, dated May 31, 2004. In support of these assertions, the applicant submits a copy of a certificate of death for her father. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant attempted to obtain a nonimmigrant visa to the United States by presenting fraudulent documentation regarding her employment and tax payments to the United States Embassy.

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 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.

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. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's qualifying relative(s). 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 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.

Regrettably, the record on appeal evidences that the applicant's father passed away on May 5, 2004. *Certificate of Death*, dated May 6, 2004. Since the applicant's father is no longer living, the applicant is no longer able to claim her father as a qualifying relative under section 212(i) of the Act. While the applicant's mother also appears to be a United States citizen, according to the record, and therefore may serve as a qualifying relative for purposes of section 212(i) waiver proceedings, the record fails to make any assertion of extreme hardship suffered by the applicant's mother as a result of the applicant's inadmissibility to the United States. *See Form I-601*, dated January 26, 2004.

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 under section 212(i) 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.