

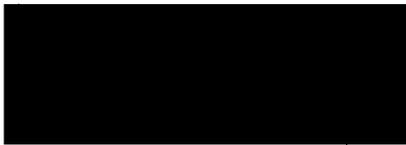
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U.S. Citizenship
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FILE: [REDACTED] Office: CHICAGO, IL Date: **DEC 27 2007**

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:



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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 35-year-old native and citizen of Korea who was found 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). The record reflects that the applicant is the spouse of a lawful permanent resident. She seeks a waiver of inadmissibility in order to remain in the United States with her family and adjust her status to that of a lawful permanent resident under section 245 of the Act, 8 U.S.C. § 1255.

The district director found that the applicant failed to establish extreme hardship to her lawful permanent resident spouse and denied the application accordingly. On appeal, the applicant contends that the district director failed to give proper consideration to all the relevant hardship factors. She claims that her husband would suffer extreme psychological, emotional hardship if they were separated. The applicant submits a psychologist's report outlining the extent of her husband's depression.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director found the applicant to be inadmissible based on the fact that her visitor's visa was obtained in 1999 through fraud. The applicant does not dispute this finding. The district director's determination of inadmissibility is therefore affirmed. The question remains whether the applicant qualifies for a waiver.

Section 212(i) of the Act provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute. Hardship to the applicant's children also may not be considered.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The applicant's spouse, [REDACTED], was born in 1971 in Korea. He has resided in the United States since 1999. He obtained his lawful permanent resident status in November 2004. He married the applicant on November 17, 2001. The couple has a child, born on April 19, 2003 in Chicago. The applicant's spouse suffers from Major Depressive Disorder, according to the psychologist's report submitted on appeal. The applicant's spouse worked in a clothing store until the store closed. He then took a job in Indianapolis, Indiana and worked there, while the applicant and their child remained in Chicago.

The applicant's spouse states in an affidavit submitted to the director that if the applicant were deported to Korea, he would have a difficult time taking care of their child as a single parent. He further states that their separation would result in financial and emotional hardship. The applicant also states that it would be very difficult for him to relocate to Korea because he would have to leave his job, and because of the lower standard of living in Korea. The applicant's spouse has some family and friends in the United States, according to the background information included in the psychologist's report.

The AAO has considered the evidence in the record, individually and in the aggregate. The AAO finds that the hardship that would be experienced by the applicant's spouse does not rise to the level of "extreme." The applicant's spouse was born in Korea and has resided in the United States for about 10 years. The record does not contain any evidence to suggest that his relocation to Korea would result in extreme hardship. In that regard, the AAO notes that the applicant's spouse, as a lawful permanent resident, is not required to relocate to Korea if his wife is deported. He may remain in the United States, with his child and other relatives. The record also suggests that the applicant's spouse was working and living in Indianapolis while his family remained in Chicago. There is no indication in the record that the family would live together, even if the applicant remained in the United States. There is also no specific information in the record regarding the applicant's spouse's economic situation. It appears from the evidence provided that the applicant's spouse is well-employed, and not dependent on the applicant for financial support.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant is denied the waiver. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

While the AAO has carefully considered the impact of separation from family resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's spouse due to the potential separation from the applicant rises to the level of extreme. The AAO has also considered the applicant's claim regarding the living conditions in Korea. The AAO notes that the applicant's spouse stated in his declaration that he would choose not to relocate to Korea and, as such, the living conditions in Korea are only relevant to the extent that their impact on the applicant in Korea may cause hardship to her spouse. The AAO notes that the applicant's child, as a U.S. citizen, would not be required to depart the United States and doing so would be a matter of the family's choice. The AAO finds that the claimed hardship that would result from the applicant and her child relocating to Korea, such as the lower standard of living and reduced opportunities, are common results suffered by any family in the applicant's circumstances and therefore do not amount to "extreme hardship." *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient"). The AAO notes that the applicant's spouse appears to have a good income in the United States, as well as family and friends in the United States.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests 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.