

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H2

FILE:

Office: SAN FRANCISCO, CA

Date: OCT 10 2007

IN RE:

Applicant:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Mongolia who was found 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 seeking admission into 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). The District Director denied the waiver application, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated September 28, 2004. Counsel submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

The Mongolian passport and B-1 visa contained in the record reflect that the applicant altered his first name and date of birth in order to obtain a B-1 visa and allegedly participate in the 2002 World Cup of Free Wrestling held in Spokane, Washington. This evidence supports the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act. Furthermore, the District Director noted that the record reflects that an F-1 student visa was issued to the applicant on December 7, 1998 to attend Indiana University, and the Biographical Information Form (Form G-325A) does not reflect that the applicant attended the university.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

Section 212(i) of the Act provides that:

- (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 to the applicant and his child is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the present case is the applicant's wife, [REDACTED], who is a naturalized citizen of the United States. 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).

On appeal, counsel states that the denial of the section 212(i) waiver was an abuse of discretion. Counsel claims that hardship to the applicant's U.S. citizen child is a material factor, as found in *Sauceda-Corrales vs. Ashcroft*, 105 Fed. Appx. 928 (2004). Counsel distinguishes the facts in *Matter of Pilch*, 22 I&N Dec. 560 (BIA 1996), *Marquez-Medina vs. INS*, 765 F.2d 673 (7<sup>th</sup> Cir. 1985), and *Matter of W-9*, I &N Dec. 1 (BIA 1960), from those presented here. Counsel states that in *Matter of Pilch*, by returning to Poland, the respondents would be reunited with their son who lived in Poland; and their child who lived in America, would return to Poland, where the child lived for six years and had been exposed to the Polish language. With the [REDACTED] counsel claims that [REDACTED] and her son do not speak Mongolian or Russian, have never lived in Mongolia, and do not have a support system in Mongolia to help with readjustment. According to counsel, unlike *Marquez-Medina*, a case in which general economic conditions were found insufficient to establish hardship, the applicant presented facts illustrating his specific economic hardships. Counsel states that [REDACTED] is a former wrestler on the national team who has no marketable skills other than as a wrestler. Counsel states that unlike [REDACTED], who did not have family members who were in the United States legally, the applicant's wife and son are U.S. citizens. Counsel states that unlike *Matter of W-9*, where there were no children and the wife did not require support, the [REDACTED] have a child and [REDACTED] depends on her husband. According to counsel, the Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 564 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a section 212(i) waiver application in the exercise of discretion. Counsel states that in *Hartman vs. Elwood*, 255 F. Supp. 2d 510 (2003), the court granted Hartman's section 212(c) waiver, finding family ties, years of residency, and other factors were in his favor. According to counsel, the court in *Hartman* found extreme hardship when a U.S. citizen wife and child must choose to either live apart from the applicant or give up the privilege of living in the United States. Counsel asserts that this is the situation of the [REDACTED] family. He states that [REDACTED] is remorseful for using a different name in order to obtain a new passport. Counsel states that the applicant is hardworking and has never had trouble with the law. According to counsel, all equities must be balanced and reversing the denial is warranted.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

The record contains photographs; federal income tax returns; 1099 Forms; wage statements; bank statements; information about Mongolia; affidavits; employment letters; and other documents.

In a September 3, 2004 affidavit, the applicant's wife states that she does not wish to live anywhere but the United States. She further states that it would be an extreme hardship for her if she joined her husband in Mongolia because she could not communicate freely and would have no social interaction with long-time friends. In a declaration [REDACTED] describes her life.

The September 3, 2004 affidavit from [REDACTED] states that he has no marketable skills and would work as a general laborer in Mongolia, earning \$100 per month. He states that prior to coming to the United States, he lived with his parents and his sister and her family in their one bedroom apartment. He states that if his family joins him in Mongolia, they would have to share the apartment with the other family members.

Counsel states that [REDACTED] has worked in the United States as a dental lab technician and has been self-employed as a restaurant owner. Counsel states that [REDACTED] cares for her one-year-old son and is currently not working. According to counsel, the applicant is employed as a delivery driver, earning \$2,600 per month.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The Ninth Circuit has stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that an applicant has a U.S. citizen child is not sufficient, in itself, to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In [REDACTED] v. *INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

On appeal, counsel indicates that the section 212(i) waiver application should be approved based on the *Hartman* decision. The AAO disagrees. In *Hartman*, the court considered relief under a section 212(c) waiver application, which requires balancing "the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented in his behalf." (citations omitted). A section 212(i) waiver, which provides relief for misrepresentation and fraud, involves establishing "extreme hardship" to a qualifying relative; and once that is established, the Secretary then determines whether an exercise of discretion is warranted. Thus, the section 212(i) waiver and the section 212(c) waiver are not similar and do not have the same requirements.

There is insufficient evidence in the record to establish that the applicant's wife would experience extreme hardship if the waiver application is denied and she remained in the United States.

The income tax records indicate that the applicant provides the sole financial support for his wife and child. The W-2 Form reflects that he is an employee of [REDACTED] and the letter from Babak Mokhtari states that the applicant is an independent contractor with IC Declaration of Trust. Although Mrs. [REDACTED] and her child are financially dependent on the applicant, courts in the United States have universally held that economic detriment alone is insufficient to establish extreme hardship. See, e.g., *INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider). In addition, the applicant has not established that his wife would be unable to return to her prior profession in order to support her family.

The applicant and her husband are very concerned about separation. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. It has taken into consideration and carefully reviewed the record. After careful consideration, it finds that the situation of the applicant's wife, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship as defined by the Act. The record

before the AAO is insufficient to show that the emotional hardship to be endured by the applicant's wife is unusual or beyond that which is normally to be expected upon deportation. *See Hassan and Perez, supra.*

The AAO will now consider whether the applicant's wife would experience extreme hardship if she joined the applicant in Mongolia.

The applicant indicates that he will have difficulty obtaining employment in Mongolia. Court decisions have shown that difficulties in securing employment, and the hardships that are a consequence of this, such as a lower standard of living and health care, are insufficient to establish extreme hardship. *See, e.g., Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) (Even a significant reduction in the standard of living is not by itself a ground for relief); *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship"); *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship); and *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir. 1982) (claim by respondent that he had neither skills nor education and would be "virtually unemployable in Mexico" found insufficient to establish extreme hardship) ("It is only when other factors such as advanced age, illness, family ties, etc., combine with economic detriment that deportation becomes an extreme hardship").

states that she and her son have no knowledge of the official language, Mongolian. The AAO finds that would experience hardship as a result of not having knowledge of Mongolian; however, the record fails to establish that such hardship would be extreme. Counsel states that is presently not employed and is caring for her son. The AAO finds that would therefore not require proficiency in Mongolian in order to obtain immediate employment.

Although hardship to the applicant's child is not a consideration under section 212(i) of the Act, the hardship endured by the applicant's wife, as a result of her concern about the well-being of her child, is a relevant consideration. The record indicates that the applicant and his wife have a four-year-old son. With regard to a child's education in a foreign country, in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), the Ninth Circuit stated that "[t]he disadvantage of reduced educational opportunities for the children was also considered by the BIA and found insufficient to establish "extreme hardship." It also stated that "[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute "extreme hardship." In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit states that "[w]hile changing schools and the language of instruction will admittedly be difficult, Banks herself admitted that would be able to learn the German language." Applying the reasoning in *Ramirez-Durazo* and *Banks*, the AAO finds that reduced educational opportunities in Mongolia is not sufficient to demonstrate extreme hardship under the Act.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

The AAO notes that the record contains a new waiver applicant filed by the applicant which remains adjudicated.

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.