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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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FILE:



Office: SEOUL, KOREA

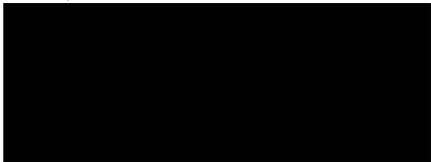
Date: **MAR 04 2004**

IN RE:



PETITION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(6)(C) and 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182 (a)(6)(C) and 1182 (a)(9)(B)

ON BEHALF OF PETITIONER:



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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Seoul, Korea, and 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 to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant married a naturalized citizen of the United States on June 1, 1997 and is the beneficiary of an approved Petition for Alien Relative. The applicant was removed from the United States in June 2000 and is the recipient of an approved Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The officer in charge (OIC) found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *See* Officer in Charge Decision, dated April 17, 2003.

On appeal, counsel contends that the Immigration and Naturalization Service [now Citizenship and Immigration Services] erred and abused its discretion in denying the applicant's waiver. Counsel states that the applicant properly divorced her first husband prior to marrying her current spouse and asserts that her current spouse suffers extreme hardship as a result of the applicant's inadmissibility to the United States.

Counsel requests an additional 60 days in which to submit a brief to the AAO. *See* Letter from Peter R. Hill, dated May 12, 2003. It has been approximately nine months since the appeal was filed and no brief or additional information has been received. A decision will therefore be made based on the current record.

The record contains a psychosocial evaluation of the applicant's husband, dated September 19, 2001; copies of documents and letters pertaining to the scholastic performance of the applicant's children; copies of financial documents and bills for the couple; three letters from the applicant, dated March 6, 2002, February 3, 2003 and March 3, 2003, respectively and documentation verifying the applicant's divorce from her previous husband. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

.....

(v) Waiver. - The Attorney General [now Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record indicates that the applicant arrived in the United States in July 1994, presumably entering on a valid visitor visa. In May 1995, the applicant filed paperwork with INS [CIS] in an attempt to gain a religious worker visa to the United States. The application was denied when CIS determined the application to be fraudulent. The applicant accrued unlawful presence from April 1, 1997, the date unlawful presence provisions under the Act were implemented, until the date of her departure from the United States in June 2000. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B)(v) and 212(i) waivers of the bar to admission resulting from sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) and 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. The AAO notes that counsel makes hardship assertions regarding the applicant's children, however the record does not establish that the applicant's children are lawful residents or citizens of the United States and therefore, they are not qualified relatives for purposes of section 212(a)(9)(B)(v) and 212(i) waiver proceedings. 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, 565-566 (BIA 1999) provides a list of factors the Bureau 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.

The BIA noted in *Cervantes-Gonzalez*, that the alien's wife knew that he was in deportation proceedings at the time they were married. The BIA stated that this factor went to the wife's expectations at the time they wed because she was aware she might have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. The BIA found this to undermine the alien's argument that his wife would suffer extreme hardship if he were deported. *Id.*

In the present case, the applicant's husband was aware of the uncertainty of the applicant's immigration status at the time of their marriage in 1997. The applicant states, "Before we became serious, I told Mr. [REDACTED] that I did not have a green card and I was in the process of applying to get a [sic] permanent residential status..." and "In 1996, I received a letter from the INS stating that I was denied permanent residential status because I had submitted a fraudulent document. I told Mr. [REDACTED] what I had done." *See* Letter from Mrs. [REDACTED] dated March 3, 2003. Even if Mr. [REDACTED] did not understand the extent of the repercussions of the applicant's actions on her admissibility to the United States, he was aware that her continued presence in the United States was uncertain and subject to Government adjudication prior to their marriage.

Counsel contends that the applicant's husband suffers extreme hardship as a result of separation from his spouse. Counsel offers a psychosocial evaluation as evidence of the emotional hardship imposed upon the applicant's husband. The evaluation concludes that as a result of his upbringing, the applicant's husband is dependent on women and is extremely vulnerable to loss. *See* Psychosocial Evaluation prepared by [REDACTED] LCSW, LMFT, dated September 17, 2001. The AAO notes that the social worker preparing the evaluation met with the applicant's spouse on only two occasions and the record does not evidence any continuing psychological treatment or medication undertaken by the applicant's spouse in response to his condition. The record fails to establish that the applicant's spouse is unable to function psychologically in the absence of the applicant.

Counsel contends that the applicant's spouse is suffering financially as a result of separation from the applicant by incurring the additional costs of two residences, travel to Korea and the loss of business when he is out of the country. Although the record provides evidence of phone calls and travel to Korea as well as wire money transfers, the record does not establish the amount of income earned by the applicant's husband or by the applicant herself and it does not reveal the financial resources of the couple in relation to their expenses. The applicant states that her husband cannot hire anyone but her to work in their sign shop. *See* Letter from [REDACTED] dated February 3, 2003. The record does not substantiate this assertion beyond the statement of the applicant.

The record does not make any assertions regarding the ability of the applicant's husband to relocate to Korea in order to remain with the applicant. The AAO notes that as a U.S. citizen, the applicant's husband is not required to depart from the United States as a result of the denial of the applicant's waiver. However, the record does not demonstrate that relocation would impose extreme hardship upon the applicant's spouse. The submitted psychosocial evaluation for the applicant's husband states that it is not feasible for him to try to go to Korea and start a business there, but does not provide any supporting findings to substantiate the assertion. *See Psychosocial Evaluation*. The evaluation indicates that the extended family of the applicant's husband resides throughout the United States, but does not establish the level of his interaction with them or his involvement in their lives.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA) 1996, held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *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. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the evidence in the record, when considered in its totality reflects that the applicant has failed to establish that her U.S. citizen husband would suffer "extreme hardship" if she were denied a waiver of inadmissibility. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.