

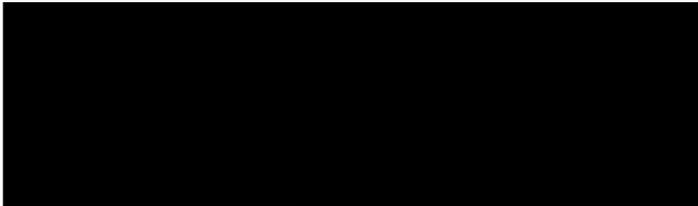
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

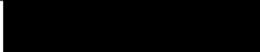
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JUN 22 2007

FILE:



Office: SEOUL, KOREA

Date:

IN RE:



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

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 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 and seeking readmission within 10 years of his last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien convicted of crimes involving moral turpitude. The applicant is married to a U.S. citizen and has a U.S. citizen child. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

The officer in charge found that based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the Officer in Charge*, dated February 14, 2006.

On appeal, counsel asserts that he is submitting evidence of the applicant's spouse's mental and physical health problems, which he states are being caused by the severe stress she is suffering because of her spouse's inadmissibility to the United States. *Form I-290B*, dated March 13, 2006.

In the present application, the record indicates that the applicant resided in the United States from December 23, 1994 to February 2004. *Form DS 230 Part I*, dated August 1, 2004; *Form I-601, Application for Waiver of Ground of Excludability*, dated February 10, 2006. Although the record does not contain the documentation to support his assertions, counsel indicates that the applicant entered the United States on business in 1994 and changed his status to that of an L-1 intracompany transferee in 1995. In June 1997, counsel states, the applicant was the beneficiary of a Form I-140, Petition for Alien Worker, denied by the legacy Immigration and Naturalization Services (now Citizenship and Immigration Services (CIS)). *Attorney's Response to the Request for Evidence issued by the Officer in Charge*, dated September 13 2005. The applicant accrued unlawful presence from the summer of 1997 until February 2004, when he departed the United States. *Form I-601; Form DS 230 Part I; and FPU Request Form for IV*, dated August 31, 2004. In applying for an immigrant visa, the applicant is seeking admission within ten years of his February 2004 departure from the United States. 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) 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 the 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 present application also indicates that the applicant was convicted of three criminal acts. On March 25, 1988, the applicant was convicted of Fraud and was fined; on July 12, 1991, the applicant was convicted of Violation of Trademark and Copyright Acts and was fined; and on May 4, 1993, the applicant was convicted of Embezzlement and sentenced to eight months in prison, the execution of which was to be postponed for one year. All three convictions occurred in Korea.

Section 212(a)(2)(A) of the Act states in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General

[Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The AAO notes that at the present time the applicant's actions leading to two of his three convictions took place more than 15 years prior to the applicant's applying for admission. The activities leading to the applicant's conviction for Fraud occurred in early July 1987 and the actions leading to his conviction for Violation of Trademark and Copyright Acts occurred during the period of September 1990 to April 1991. However, the applicant's conviction on May 4, 1993 does not fall under the section 212(h)(1)(A) exception. The AAO notes that the record shows that the applicant was arrested on November 4, 1992 for embezzlement, but does not state when the actions leading to this conviction occurred. Therefore, because of his conviction for embezzlement, the applicant is still subject to section 212(a)(2)(A) of the Act and will require a waiver for his inadmissibility under section 212(h)(1)(B) of the Act, as well as the previously noted waiver for unlawful presence under section 212(a)(9)(B) of the Act.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent upon showing that the bar imposes an extreme hardship to the U.S. citizen or lawful permanent resident spouse and/or parent of the applicant. A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawful permanent resident spouse, parent and/or child of the applicant. The AAO notes that unlike section 212(h) waiver proceedings, waiver proceedings for a section 212(a)(9)(B)(v) waiver do not permit consideration of hardship to the applicant's U.S. citizen or lawful permanent resident child unless it causes hardship to the applicant's spouse. As the applicant is subject to both section 212(a)(9)(B)(v) and the section 212(h) waiver requirements, his application will have to meet the more restrictive burden of section 212(a)(9)(B)(v) waiver proceedings for him to be found admissible. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Korea or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Korea. Counsel contends that the applicant's spouse has been fully integrated into U.S. society, that all her friends and family live in the United States and that she has no financial ties to Korea. *Counsel's Response to the Request for Evidence*, dated September 13, 2005. In response to the officer in charge's statement that the applicant's spouse has traveled frequently to Korea in recent years, counsel asserts that the applicant's spouse immigrated to the United States in 1989 and did not return to Korea until her grandmother died 12 years thereafter. *Counsel's Brief*, dated March 10, 2006. Counsel also states that the applicant's spouse has traveled to Korea only three times since April 2004 – April 4, 2004 to July 8, 2004; December 2004 to January 2005; and May 2005 – and that each of these trips has been in connection with the applicant's visa petition and waiver request.

While the AAO notes counsel's claims regarding the limited number of trips that the applicant's spouse has taken to Korea, it also finds him to indicate that the applicant's spouse has relocated to Korea. On appeal, counsel asserts that the applicant's spouse is experiencing physical and mental hardship caused by living in Korea and submits medical documentation of the problems she is encountering.

The record includes two medical certificates from Korea. The first medical certificate, dated February 28, 2006, states that the applicant's spouse visited the hospital with symptoms of a stomach disorder (nausea, emesis, gastralgia) and that her symptoms became more serious. The certificate states that an endoscopic examination was done and found serious superficial inflammation on her mucous membrane and multiple polyps. The doctor found that the applicant's spouse's problems were caused by acute gastritis related to severe stress and that she required medical treatment and psychological rest. *Medical Certificate from [REDACTED] Internal Clinic*, dated February 28, 2006. The second medical certificate is dated March 8, 2006 and states that the applicant's spouse has been diagnosed with anxiety disorder, suffering from repetitive stress and with symptoms such as anxiety, insomnia, gastroenteric, anorexia and autonomic nerve. The certificate states that the diagnosis of anxiety disorder is based on psychological testing and interview, and that since the date of her first visit the applicant's spouse had been treated with medication and private consultation. He recommends that long-term care is needed. *Medical Certificate from [REDACTED] Psychiatry Hospital*, dated March 8, 2006.

Although the input of any health care professional is respected and valuable, the AAO notes that the submitted medical certificates fail to offer the type of detailed medical analysis that is required in determining extreme hardship. While both evaluations indicate that the applicant's spouse is suffering from stress, they do not identify the source of this stress. Neither does either evaluation describe how gastritis and anxiety disorder will affect the ability of the applicant's spouse to meet her daily responsibilities. The reports also fail to identify the medical treatment the applicant's spouse is undergoing for gastritis or the medication and type or extent of the private consultation prescribed in connection with her anxiety disorder. Moreover, neither evaluation indicates the medical prognosis for the applicant's spouse, nor do they state that she will continue to experience these medical and psychological problems if she remains in Korea. They do, however, establish that the medical/psychological treatment required by the applicant's spouse is available in Korea and there is no indication in the record that the applicant and his spouse are unable to afford the treatment that has been prescribed by the doctors noted above. Accordingly, while the certifications establish that the applicant's spouse is experiencing physical and emotional problems, they do not support counsel's claims that the applicant's spouse is experiencing extreme hardship as a result of her relocation to Korea. Therefore, AAO finds that the applicant has not established that his spouse would suffer extreme hardship as result of relocating to Korea.

In response to the officer in charge's request for evidence, counsel asserted that the applicant and his spouse own a jewelry business in California, "Enterprise," that has been operated by the applicant and that the applicant's spouse cannot run the business by herself. He contended that if the applicant's waiver request is denied, the applicant and his spouse would have to close their business and dispose of the real estate the applicant's spouse owns in Beverly Hills, California, causing them extreme financial hardship. *Counsel's Response to the Request for Evidence*, dated September 13, 2005.

The AAO notes that the record contains documentation of a business [REDACTED], owned by the

applicant's spouse and a property in her name at [REDACTED], Beverly Hills, California. However, no documentation has been submitted to indicate the nature of the business owned by the applicant's spouse, to explain the difference between the name of the business identified by counsel and that identified in the documentation of that business' incorporation, or the roles of the applicant and his spouse in the running of the business. Neither does the record offer evidence that would support counsel's claim that a denial of the applicant's waiver request would result in extreme financial hardship to the applicant's spouse. The applicant has submitted no financial documentation to establish that his spouse would experience financial hardship if his waiver request were to be denied. Without supporting documentary evidence, the assertions of counsel will not meet the applicant's burden of proof in this proceeding. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the record does not demonstrate that the applicant's spouse would experience extreme hardship if the applicant's spouse were to live in the United States following a denial of the applicant's waiver request.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Further, as previously discussed, the AAO's determination that the applicant has failed

to establish eligibility for a waiver under the more restrictive requirements of section 212(a)(9)(B)(v) of the Act renders unnecessary an analysis of his eligibility for a waiver under section 212(h) of the Act.

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