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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: NOV 30 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:

[redacted]

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, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of South Korea. The record reveals that the applicant presented fraudulent documents and provided false information when applying for a visitor visa at the U.S. Embassy in Seoul, Korea on June 2, 1998. The applicant was found to be inadmissible to the United States under 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 a visa by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and 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 with her U.S. citizen spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated December 14, 2005.

In support of the appeal, counsel for the applicant submits a psychological evaluation in regards to the applicant's spouse and children, dated January 12, 2006. The entire record was reviewed and considered in rendering this decision.

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 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 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...

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

> 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.

To begin, references are made to the applicant's two U.S. citizen children and the hardship they would face were the applicant removed. As stated by counsel, "...There are two children born of this marriage in the United States. The parties' twenty-three months old and five months old children currently reside with parties in Morton Grove. The children would be extremely emotionally unstable due to sudden separation from their mother..." *Brief in Support of the Form I-601,* dated June 30, 2005. Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant herself a permissible consideration under the statute. In the present case, the applicant's spouse, a naturalized U.S. citizen, is the only qualifying relative, and hardship to the applicant or their children cannot be considered, except as it may affect the applicant's spouse. 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).

Counsel has not established that the emotional and psychological repercussions to the children due to the applicant's absence would cause the applicant's spouse extreme hardship. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

Counsel further contends that the applicant's spouse will suffer emotional hardship if the applicant is removed from the United States and supports this contention by providing a psychological evaluation prepared by [redacted] based on an interview she conducted with the applicant's spouse on January 9, 2006. As [redacted] states, "..[redacted] the applicant's spouse] is suffering from Major Depressive Disorder...His depression is further complicated by his experiencing frequent panic attacks. I wish to emphasize that the condition described herein is not 'ordinary' depression, but represents a severe clinical syndrome of a major depressive disorder. If the separation should actually occur, I would expect his depression to exacerbate into

an even more severe major depression, with serious risk of suicidal behavior..[redacted] depression is reactive in response to the possible breakup of his marriage and his family. If his wife is not permitted to stay in the U.S., I would not expect him to recover for many years and not fully even then. Since [redacted] depression is of a reactive, situational nature, it is highly unlikely that either anti-depressant medication or psychotherapy will alleviate the root cause of his problem..." *Psychological Evaluation Prepared by* [redacted], dated January 12, 2006.

An evaluation provided by a psychologist based on a one-time interview does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Moreover, although the psychologist has determined that the applicant's spouse is depressed and possibly suicidal, the psychologist makes no recommendations for the applicant's spouse's continued care, such as regular therapy sessions or other treatment, and/or medications, to further support the gravity of the situation. Finally, it has not been established that the applicant's spouse's situation is extreme as he is able to maintain long-term, full-time employment as a professional roof repair worker, thereby permitting him to support his family as the sole breadwinner.

The psychological evaluation of the applicant's spouse show that the applicant has a very loving and devoted spouse who is extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases.

In addition, counsel references the financial hardship the applicant's spouse would experience were the applicant removed from the United States. As counsel states, "...The bar to the applicant's admission to the United States would impose an economic extreme hardship to her husband due to the fact of the family's imposed separation and the financial strain of having to maintain two households if she were deported to South Korea..." *Supra* at 3.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (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."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "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."); *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); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Although the applicant's spouse may need to make alternate arrangements with respect to the daily care of the children and the maintenance of the household were the applicant removed, it has not been established that such arrangements would cause him extreme hardship. Moreover, counsel provides no evidence to substantiate that the applicant would not be able to obtain employment were she to relocate to South Korea, or any other country of her choosing, thereby assisting the applicant's spouse with the household expenses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, counsel asserts that the applicant's spouse will suffer extreme hardship were he to accompany the applicant to South Korea. As stated by the applicant's spouse, "...It would be very difficult for me to relocate to Korea. I have lived in the United States for more than two-thirds of my life and this is the only life and culture I know...it would be extremely difficult to find a job due to my lack of language skills and cultural references. That would result in our family faced with unaccustomed poverty..."*Affidavit of* [redacted] dated June 30, 2005. [redacted] further discusses the hardship that the applicant's spouse would face were he to accompany the applicant to South Korea, by stating that such a move "...would still present issues of separation that would overwhelm [redacted] damaged capacity to adjust to separation. His entire extended family is now in the United States. He would have no friends or relatives in Korea. Most importantly, he would have to endure another separation from his mother. Such a separation could not come at a worse time, since his mother has recently undergone surgery for stomach cancer. She has lost an enormous amount of weight, and [redacted] cannot bring himself to leave her..." *Supra* at 4.

No corroborating evidence has been provided to confirm the involvement and interaction that the applicant's spouse has with his extended family, and most specifically with his mother, such as affidavits outlining their need for the applicant's spouse's continued physical presence in their lives. Moreover, no supporting evidence has been provided to establish that the applicant's spouse, born in South Korea, would be unable to find gainful employment that would permit the applicant's spouse to support the household, and return to the United States to visit his mother and extended family members on a regular basis.

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 will face extreme hardship if the applicant is removed. 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. There is no documentation establishing that his financial, emotional or psychological hardship would be any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to

the applicant's spouse's situation, the record does not establish that the financial strain and emotional and psychological hardship he would face rise to the level of "extreme" as contemplated by statute and case law.

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(i) of the Act, the burden of proving eligibility remains entirely 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.