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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PHILADELPIA, PA 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 Interim District Director, Philadelphia, Pennsylvania, 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 South Korea 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 sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the Interim District Director denied finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Interim District Director*, dated September 9, 2003.

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 record reflects that the applicant admitted that in February 1998 she presented to immigration officials at the Miami International Airport a U.S. permanent resident card and a Korean passport that had a name other than her own so as to enter in the United States. The applicant stated that she paid 200,000 Korean Juan for the documents, which she obtained from a broker in Korea. *Record of Sworn Statement in Affidavit Form, dated July 19, 1999.* The AAO finds that the record supports the finding that the applicant willfully misrepresented a material fact, her true identity, to an immigration officer so as to gain admission into the United States. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

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 her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(a)(9)(B) of the Act. Thus, hardship to the applicant and her child will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the

applicant's U.S. citizen husband, [redacted] 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).

"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).

Extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, that he 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 record contains income tax records, letters, school records and certificates of award, photographs, documents relating to shares of [redacted] and [redacted]'s Realty Management Inc.; a report of employee wages; title insurance policies, deeds; and other documents.

In the November 5, 2003 affidavit, [redacted] states that he met the applicant in 1983 when he was married to [redacted]a. He states that he and the applicant feel in love in 1986, and in 1988 the applicant gave birth to their son in South Korea. [redacted] states that because their son was born out-of-wedlock, he was raised by [redacted] family. He states that the applicant came to the United States to discuss their son in February 1998, and that she decided to stay and reside with him. He states that he entered into a property settlement agreement with his wife in South Korea and conveyed his Korean home worth $100,000 to her. He states that on January 6, 1998 he obtained a Pennsylvania No Fault Divorce and on January 12, 1998 married the applicant. [redacted] indicates that he has lived in the United States since 1987 and that he is 53 years old. He states that his father and stepmother live in South Korea and that he sends them money on holidays and special occasions. He states that his son is fully assimilated into the American culture, is attending Holy Ghost Preparatory School as a freshman, and is academically outstanding. He states that his three siblings live in the United States and that they are a close family. He indicates that he is active in the community as a church deacon, as a volunteer with the Lions Club, and as the president of the Buck County Korean Dry Cleaners Association. [redacted] states that he and his wife own and operate a dry cleaning

business and his wife, who is fluent in English, manages the business, while he operates the dry cleaning equipment and does some tailoring. He states that their business has been profitable. [redacted] conveys that they own their own house and purchased a small strip mall in Pennsylvania. He states that South Korea's unemployment rate is 4 percent and that everyone his age is either retired or unemployed. He states that his wife will not find employment in South Korea due to her age, education, and the country's economy. Mr. [redacted] states that the dry cleaning industry in South Korea does not exist as it does in the United States and that he could not duplicate his business there.

The letters in the record from family members convey their close relationship with him and the need to have the applicant remain in the United States. The letter from states that the applicant helps [redacted] improve his English.

The letter from The First Korean United Methodist Church of Philadelphia dated October 30, 2002, indicates that the applicant is a deaconess and her husband is a deacon.

The record conveys that the applicant's son is in the ninth grade at Holy Ghost Preparatory School and that he is bright. *Letter from Principal of Holy Ghost Preparatory School, dated October 24, 2003.*

The International Association of Lions Clubs letter and newspaper article about the Bucks County Korean Dry Cleaners' Association describe [redacted] involvement in those organizations.

The individual income tax record for 2002 reflects income of $40,560 for the applicant and her husband. The income tax return for an S Corporation for the same year reflects gross sales of $214,005.

The letter dated January 12, 1998 from [redacted] t/a/ Coronet Cleaners indicates that the applicant was employed as an alteration tailor, earning $10.00 per hour.

The November 3, 2003 letter from [redacted] f Temple University states that the majority of people in their 50s and many in their late 40s have been laid off by Korean firms as a result of corporate restructuring. He states that Korean firms "use age as the almost exclusive criterion" in determining who to layoff. He states that it is his understanding that in South Korea tailoring is primarily done in tailor shops or clothing factories and dry cleaning businesses are a cottage industry, and only large hotels have dry cleaning operations that have tailoring and dry cleaning.

On appeal, counsel states that in 1992 the applicant's son was sent to the United States by [redacted] father to be with his parents. He states that the applicant assists her son with homework and that she attends parents' meetings with teachers. He states that the family's house mortgage is $250,000 and their mortgage on the strip mall is $520,000. He states that the facts in *United States v. Arrieta*, 224 F.3d 1076 (9th Cir. 2000) and *Gutierrez-Centeno v. INS*, 99 F.3d 1529 (9th Cir. 1996) are similar to those presented here. Counsel states that the applicant's son's integration into American society and his academic scholarship, and the family's contribution to the community were overlooked in determining hardship. He states that [redacted] family ties to the United States and the applicant's role in the family must be considered in the hardship analysis, and their financial ties to the United States and the lack of employment in Korea must be considered. Counsel states that the applicant is the brains behind the dry cleaning business and is the majority owner. He states that the Korean government forces workers who are 45 years old to abandon the workforce. Counsel states that the applicant's fraudulent behavior should not be considering in determining whether to grant a waiver.

Counsel states that social and humane considerations should be applied as shown in *Hartman v. Elwood*, 255 F. Supp. 2d 510 (E.D. Pa. 2003).

The record fails to establish that the applicant's husband would endure extreme hardship if he remained in the United States without her.

[redacted] states that he needs his wife to manage the dry cleaning business because he does not speak English well. The AAO finds that no documentation in the record indicates that [redacted] would be unable to operate the business without his wife's assistance on account of his English language and writing skills. 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)).

Furthermore, the record contains [redacted] naturalization certificate, dated December 7 2005. In order to receive the certificate of naturalization, an applicant must demonstrate "an understanding of the English language, including an ability to read, write, and speak . . . simple words and phrases . . . in ordinary usage in the English language." *A Guide to Naturalization, U.S. Citizen and Immigration Services, Form M-476, Revised 2/04.* Thus, the naturalization certificate indicates that [redacted] has successfully demonstrated that he is able to read, write, and speak simple words and phrases; and the AAO notes that no documentation in the record suggests that [redacted] would need a more advanced understanding of English in order to manage his business.

Counsel analogizes the facts in *United States v.* [redacted] 224 F.3d 1076 (9th Cir. 2000) to those presented here. The court in [redacted] found that [redacted] provided his family with significant financial support, and that his mother's affidavit described the critical role [redacted] played in raising his younger siblings. The court stated that [redacted] mother was in very poor health, and was raising two citizen children. It stated that his mother "documented the essential assistance [redacted] provided in helping to raise those children, especially when she was medically unable to do so."

Here, the applicant is not raising her younger siblings due to a health condition of a parent, nor is she raising a young son on account of a health condition of her husband. Thus, the key facts in [redacted] are distinguishable from those presented here.

[redacted] is very concerned about separation from his wife. Courts in the United States have 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, 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). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld

the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record conveys that the applicant's husband is very concerned about separation from her. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's husband, if he remains in the United States, is typical to individuals separated as a result of removal 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 experienced by the applicant's husband is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez,* and *Sullivan, supra.*

The present record is insufficient to establish that the applicant's husband would endure extreme hardship if he joined the applicant in South Korea.

The conditions in the country where [redacted] and would live if he joins his wife, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

[redacted] indicates that he would be unemployed in South Korea on account of his age and that wife will not find employment due to her age, education, and the state of the economy. Court decisions have shown that difficulties in securing employment are insufficient to establish extreme hardship. *See, e.g., Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the BIA's finding that hardship in finding employment in Mexico did not reach "extreme hardship"); *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment 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"). The loss of a job along with its employee benefits is not extreme or unique economic hardship, but is a normal occurrence when an alien is deported. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985).

[redacted] claims that he would not be able to establish a dry cleaning business in South Korea; the letter from [redacted] is submitted in support of his claim. In the letter, [redacted] states that it is his understanding that in South Korea tailoring is done in tailor shops or clothing factories and dry cleaning businesses are a cottage industry. He states that only large hotels have both dry cleaning and tailoring. The AAO finds that [redacted] statements about tailoring and dry cleaning in South Korea are not substantiated by any independent documentation. 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)). Furthermore, even if dry cleaning and tailoring are generally not performed at the same business, this does not mean that [redacted] would be unable to establish a business that provides both dry cleaning business and tailoring, or set up two separate businesses.

If he joins his spouse overseas, [redacted] states that he would have to leave his siblings. Courts in the United States have held that separation from one's family need not constitute extreme hardship. For instance, in *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families in *Guadarrama-Rogel v. INS*, 638 F.2d 1228, 1230 (9th Cir.1981) (separation of parents from alien son is not extreme hardship where other sons are available to provide assistance); in *Banks, supra* at *763* (separation of a mother from a grown son who elects to live in another country is not extreme hardship); and in *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985), the Third Circuit affirmed the BIA's decision in finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child." It is noted that [redacted] has family ties in South Korea: his father, stepmother, and the applicant.

The record reflects that [redacted] is actively involved in the community through his church and dry cleaning business. The AAO finds that community involvement in and of itself does not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *See, e.g., Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

[redacted] states that his son is integrated into the American culture, attending school and obtaining scholastic awards. The AAO notes that the applicant's son is now 19 years old. Although hardship to the applicant's son is not a consideration under section 212(i) of the Act, the hardship endured by her spouse, as a result of his concern about the well-being of their son, is a relevant consideration.

In *Dill v. INS, supra,* the Third Circuit affirmed the BIA's decision in finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child." Here, the AAO finds that in light of the fact that the applicant's son is 18 years old, as shown by the Application to Register Permanent Residence or Adjust Status, he would be able to establish his own life in South Korea or the United States and would not need to depend primarily on his parents for emotional support in the same way as a young child. For this reason, the AAO finds that [redacted] would not experience extreme hardship if his son were to live in South Korea.

The AAO notes that *Gutierrez-Centeno v. INS*, 99 F.3d 1529 (9th Cir. 1996), cited by counsel, is distinguishable from the instant case. In *Gutierrez-Centeno* the applicants for suspension of deportation, [redacted] claimed that they would experience difficulty adjusting to life in Nicaragua, specifically in terms of their educations, as English is their primary language. Here, [redacted] does not claim that his son would not be able to adjust to life in South Korea because he does not read or write in Korean.

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.

The record fails to support a finding of significant hardships over and above the normal economic and social disruptions involved in removal 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.

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.