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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: APR 2 1 2009

IN RE: [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.

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

[redacted]

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the district director for continued processing.

The applicant is a native and citizen of the Republic of Korea. The record reveals that the applicant submitted fraudulent documentation when he applied for a change of status from B-1 visitor for business to F-1 student. The applicant was thus 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 procured an immigration benefit by fraud and/or willful misrepresentation.[1] The applicant 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 his lawful permanent resident spouse and children, born in 1985 and 1991.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director,* undated.[2]

In support of the appeal, counsel submits a brief, dated October 10, 2006 and referenced exhibits. The entire record was reviewed and considered in rendering a decision on the applicant's 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.

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[1] The applicant does not contest the district director's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

[2] The decision issued by the district director is undated. However, counsel has provided a copy of the envelope containing the decision received by counsel; said envelope is postmarked August 16, 2006.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. 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.

Numerous references are made to the hardships the applicant's lawful permanent resident children, born in 1985 and 1991, would face were the applicant removed from the United States. 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. In the present case, the applicant's spouse, a lawful permanent resident, is the only qualifying relative, and hardship to the applicant and/or his children cannot be considered, except as it may affect the applicant's spouse.

The first step required to obtain a waiver is to establish that the applicant's lawful permanent resident spouse would encounter extreme hardship if she remained in the United States while the applicant relocated abroad due to his inadmissibility. Counsel asserts that the applicant's spouse would suffer extreme financial and emotional hardship were the applicant unable to reside in the United States. Specifically, the record establishes that the applicant and his spouse are the co-owners of [redacted] and have invested significant capital into the business. The purchase price of the business was $600,000. *See Closing Statement and Bill of Sale,* dated October 13, 2005. The applicant and his spouse took a commercial loan for $300,000 and refinanced their home for the remaining $300,000. In addition to the capital invested in the business, the applicant and his spouse signed a five-year lease agreement for the location of their dry cleaning establishment. *See Lease Assignment and Second Lease Amendment,* dated October 1, 2005.

The applicant plays an integral role in the successful day to day operations of the business, working six days a week, full time, as the applicant's spouse remains employed with the entity that sponsored her for permanent residency. Currently, the applicant serves in four different positions in the business, including manager, machine technician, delivery driver and counter associates. *Letter from* [redacted], dated June 23, 2006. If the applicant were removed, the applicant's spouse would be forced to hire four people to perform said duties; based on the revenue and expenditures of the business, the applicant's spouse would not be able to sustain the business while paying salaries to four additional employees. Were the applicant's spouse unable to maintain the business due to the applicant's absence, she would lose a major source of income for her and her children and she would not be able to recoup the losses that she would suffer as a result of the forced sale. The loss would also cause the applicant's spouse to likely lose her home, as the home was refinanced in order to buy the business, as noted above. Finally, the applicant's spouse could face commercial litigation resulting from the violation of the commercial lease agreement signed on behalf of [redacted]

In addition to financial hardship, the applicant's spouse asserts that she would suffer extreme emotional hardship were the applicant to relocate abroad due to his inadmissibility. The applicant's spouse asserts that she depends on the applicant for emotional and psychological support and encouragement; they have been married for over 20 years. *Letter from* [redacted] dated June 23, 2006. As such, the AAO concludes that were the applicant removed from the United States, the applicant's spouse would suffer extreme emotional and financial hardship. The applicant's spouse needs the emotional and financial support that the applicant provides; his absence would cause her extreme hardship.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad to reside with the applicant based on the denial of the applicant's waiver request. Counsel contends that the applicant's lawful permanent resident spouse will suffer extreme emotional and financial hardship were she to relocate to the Republic of Korea. To begin, documentation has been provided that confirms that it will be difficult, if not impossible for the applicant and/or his spouse to find gainful employment in the Republic of Korea because of their age. Moreover, the applicant's spouse has strong family ties in the United States, including her children, two siblings, brothers, nieces and nephews. Finally, relocating abroad would mean losing the business, as the applicant and his spouse, who play integral roles in the viability of the business, would no longer be residing in the United States.

Based on the problematic socio-economic conditions in the Republic of Korea, the applicant's spouse's long-term separation from her extended family, the applicant's spouse's integration into the community, and counsel's contention that the business created by the applicant and his spouse, with extensive money and time, will need to be sold, most likely at a loss due to the forced sale, due to the relocation abroad of its two owners, the AAO finds that the applicant's spouse would suffer extreme hardship were she to relocate to the Republic of Korea to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his lawful permanent resident spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's lawful permanent resident spouse would suffer extreme hardship were she to relocate to the Republic of Korea to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the hardship the applicant's lawful permanent resident spouse and children would face if the applicant were to return to the Republic of Korea regardless of whether they accompanied the applicant or remained in the United States, the lawful status of the applicant's spouse's family, the applicant's apparent lack of a criminal record, community ties, numerous letters of support provided by relatives, friends, colleagues and community members, payment of taxes, home ownership, business ownership and the employment of seven individuals,

and the passage of ten years since the applicant's immigration violation that lead to his inadmissibility. The unfavorable factors in this matter are the applicant's willful misrepresentation to officials of the United States Government and periods of unauthorized presence and employment in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the hardship imposed on the applicant's spouse as a result of the applicant's inadmissibility outweighs the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of ground of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.