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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: PHILADELPHIA, PA Date: NOV 02 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania, a subsequent motion to reopen was dismissed by the Field Office Director and the application 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 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 attempting to procure a visa to the United States by fraud or willful misrepresentation. The applicant's spouse is a lawful permanent resident. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The acting 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 Acting District Director*, at 2, dated December 3, 2007. A subsequent motion to reopen was dismissed. *Decision of the Field Office Director*, dated July 5, 2008.

On appeal, counsel asserts that there was an erroneous conclusion of fact in the field office director's decision and the submitted evidence establishes extreme hardship to the applicant's spouse. *Form I-290B*, at 2, received August 7, 2008.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statements, the applicant's statements, education-related letters for the applicant's children, medical records for the applicant, and medical letters for the applicant and his spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant presented fraudulent employment documents in attempting to procure a visitor's visa to the United States in 1999. The AAO finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for this misrepresentation.

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.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant or his children is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship affects the qualifying relative. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (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. These factors included the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in South Korea or in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that the qualifying relative resides in South Korea. The applicant's spouse states that the applicant was diagnosed with acoustic neuroma around June 2007, acoustic neuroma is a brain tumor, he would not be able to receive the best care and treatment in Korea, he is under the care of good doctors in the United States, medical care for his condition is better in the United States than in Korea, her daughters would struggle to adjust to life in Korea and their education would be disrupted, her daughters' unhappiness and the disruption of their education would have a devastating effect on her, and her depression would worsen if she left her children in the United States. *Applicant's Spouse's Statements*, dated January 3 and August 5, 2008. The applicant's spouse states that the applicant had surgery to treat his brain tumor on December 12, 2007, his life will be at risk if he does not receive adequate care and monitoring, he has been anxious and depressed, and he has not slept well and lost his appetite since the diagnosis. *Applicant's Spouse's Statement*, at 1, dated January 3, 2008. The record reflects that the applicant was diagnosed with acoustic neuroma and underwent a craniotomy on December 12, 2007. *Letter from* [redacted], dated January 2, 2008. The applicant's physician states that the applicant suffers from uncontrolled hypertension, he is under treatment with medication and forced departure from the United States could put his

health at risk. *Letter from Applicant's Physician*, dated June 16, 2006. The applicant's spouse's physician states that the applicant's spouse came to see him for symptoms of depression after the applicant was diagnosed with a brain tumor, the applicant has a serious condition that requires continuous monitoring and follow-up care, the applicant would not get the best treatment available if he left the United States and his brain tumor might recur, the applicant's spouse's depression would get worse if she returned to Korea as she would be worried about the recurrence of the applicant's brain tumor and would have the added stress of him not getting the best treatment in Korea, and she is pre-diabetic with a very high blood glucose level and must avoid stress as much as possible. *Second Letter from* [redacted], dated August 5, 2008.

The AAO notes the statements from the applicant's spouse's physician concerning the applicant's continuing health problems, specifically that he would not receive the best treatment available for his condition in Korea and would, therefore, be at risk for a recurrence of his brain tumor. However, it finds the record to contain no medical statement or record from a physician treating the applicant that addresses his medical condition following his December 2007 surgery. The record offers no indication as to the outcome of the applicant's craniotomy; whether he continues to experience problems related to his acoustic neuroma or is at risk of its recurrence; the severity of these medical problems, if any; or what type of continuing treatment or assistance he may require. Neither does it offer documentation to establish the state of medical treatment for acoustic neuromas in Korea. Accordingly, the record fails to establish that the applicant's spouse's would face emotional hardship if she returned to Korea based on the lower quality of medical care that would be available to the applicant in Korea and the resulting risk that his brain tumor would recur. Moreover, the statements provided by the applicant's spouse's physician are insufficient proof that the applicant's spouse is currently suffering from depression. The AAO notes that these statements fail to provide the type of detailed psychological analysis commensurate with an established relationship with a mental health professional and, therefore, finds them to be of limited evidentiary value to a finding of extreme emotional hardship.

The AAO further observes that, on motion, the applicant offers no updated medical report with regard to the state of his hypertension, as discussed in the June 16, 2006 letter from physician, or documentation to establish that this condition could not be adequately treated in Korea. It also finds the record to contain no documentation to establish the severity of the applicant's spouse's pre-diabetic condition, whether she is currently receiving treatment and, if so, that such treatment would be unavailable to her in Korea.

The record does reflect that the applicant's daughters are integrated into the American lifestyle and would experience hardship if they relocated to South Korea. However, the applicant's daughters are not qualifying relatives in this proceeding and the record fails to establish how their hardship would affect their mother, the only qualifying relative. While the applicant's spouse indicates that she would be devastated by her daughters' unhappiness and the disruption of their education, the record does not include documentary evidence, e.g., an evaluation by a licensed mental health professional, to support this claim. Going on record without supporting documentation will not meet the

applicant's burden of proof in this proceeding. *See 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)).

Based on its review of the evidence before it, the AAO does not find the record to include sufficient evidence of emotional, financial, medical or other hardships that, in the aggregate, establish that the applicant's spouse would experience extreme hardship upon relocating to South Korea.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. The applicant's spouse states that she has been married to the applicant for over 20 years, separation would cause severe emotional distress, the applicant suffers from hypertension and needs the support of his family to deal with the condition, the applicant has a history of high blood pressure, his father died at the age of 60, it is extremely important for him to maintain a healthy lifestyle, any extreme stress could severely impact his health, which would cause considerable stress and grief to her and her daughters, the applicant is receiving treatment for this condition, she is concerned that the stress of separation would be detrimental to his health, the applicant contributes over 50 percent of the family income, she could not continue paying their monthly bills or meet their financial responsibilities without his income, she would be worried that the applicant could have a heart attack from the stress of removal, and she is terrified of having to raise her daughters without him. *Applicant's Spouse's Statement*, dated June 21, 2006. The applicant's physician states that the applicant suffers from uncontrolled hypertension, he is under treatment with medication, emotional support of his family is essential to his health and forced departure from the United States could put his health at risk. *Letter from Applicant's Physician.* .

The applicant's spouse also states that she has been the sole person to help the applicant deal with his diagnosis of acoustic neuroma and to give him the strength to deal with the resulting emotional devastation, she is not sure how he would survive without her and their daughters, he is very frail and his health would deteriorate very quickly, she would not be able to deal with this situation at all, she has been treated for symptoms of depression since the applicant's diagnosis, she has been anxious and unable to concentrate, she has felt helpless and pessimistic about her and the applicant's life, she has felt guilty that the applicant was diagnosed with a life-threatening condition, she is taking antidepressants and she would be afraid to go on with her life without the applicant or their children. *Applicant's Spouse's Statement*, dated January 3, 2008. The applicant's spouse states that her depression would get worse if she remained in the United States with her children, and her second daughter is in a prestigious school whose dean states that she would not be the extraordinary person she is today without the applicant. *Applicant's Spouse's Statement,* dated August 5, 2008..

The applicant's spouse's physician asserts that her depression would get worse if the applicant were to be removed as she would suffer from the additional stress of worrying that his brain tumor would recur and he would not be able to obtain the best available medical treatment in Korea. He also states that the applicant's spouse is pre-diabetic with a very high blood glucose level and must avoid stress as much as possible. *Second Letter from* [redacted] The applicant's spouse's physician previously stated that he had prescribed an antidepressant for her. *First Letter from* [redacted]

[redacted] dated January 3, 2008. The dean of the applicant's younger daughter's school details this child's academic accomplishments and states that her family would lose their strength without the applicant and that she would feel great sadness and loss of support which would affect her in school, at home, and with friends. *Letter from* [redacted], dated July 25, 2008.

While the AAO acknowledges the statements made by the applicant's spouse's physician concerning the applicant's spouse's depression, it, as previously noted, finds them insufficient proof of her mental state. Further, his prediction that the applicant's spouse's current depression would worsen if she were to be separated from the applicant is his unsupported conclusions regarding the state of the applicant's health and the medical treatment available in Korea. The AAO also notes that the record fails to indicate that the applicant's spouse has any medical condition for which she is receiving treatment and which would result in extreme hardship for her in the applicant's absence.

The applicant's spouse states that she would be unable to support herself and her daughters in the applicant's absence. The record contains an annual budget for the applicant's family that indicates both the applicant's and his spouse's salaries are required to meet their financial obligations. However, while the record provides documentary evidence to establish the incomes of the applicant and his spouse, it fails to offer similar proof of their financial obligations. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Therefore, the record does not establish what the state of the applicant's spouse's finances would be in the applicant's absence. The record also fails to document, e.g., country conditions reports on the Korean economy and employment, that the applicant would be unable to obtain employment in Korea and financially assist his family from outside the United States.

The AAO finds that the record does not include sufficient evidence of emotional, financial, medical or any other hardships that, in the aggregate, establish that the applicant's spouse would experience extreme hardship if the applicant were to be removed and she remained in the United States.

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.

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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.