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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: SEP 0 2 2011 Office: LOS ANGELES, CA FILE: [redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of South Korea who provided false information to obtain a B2 visitor's visa to enter the United States. The applicant 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). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) September 20, 2008.

On appeal, counsel for the applicant asserts the applicant did not knowingly provide any false information or documents, that the director failed to consider all the necessary hardship factors and that the record establishes the applicant's spouse will experience extreme hardship if the applicant's waiver is denied. *Form I-290B*, received October 22, 2008.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant was granted a B2 visa and entered the United States on May 19, 1999. A subsequent investigation by the embassy in South Korea revealed that the information provided to obtain her visa was false. The applicant was found inadmissible under section 212(a)(6)(C) for misrepresenting a material fact.

Counsel asserts on appeal, as does the applicant, that she never willfully misrepresented any fact, did not submit any false information and did not submit any fraudulent documents. United States Citizenship and Immigration Service (USCIS) records indicate otherwise, and establish that the employment information provided by the applicant – whether directly to USCIS or to her travel agency – was false. Counsel asserts that the applicant denies willfully providing any false information, but that she cannot remember the name of the travel agency through which she obtained her visa. When a visa is obtained by providing false information it is not sufficient to simply assert that an applicant did not willfully misrepresent herself. It is the applicant's burden to establish eligibility in these proceedings, without any evidence to support these assertions counsel's argument is not persuasive. The applicant's B2 visa was obtained by providing false information, the AAO finds that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The record contains, but is not limited to, the following evidence: statements from counsel; statements from the applicant's spouse; a statement from the applicant; business records for prior businesses owned by the applicant's spouse; an employment verification letter for the applicant's spouse; medical records for the applicant's spouse; medical records pertaining to the applicant's spouse's mother; a psychological assessment of the applicant's spouse by [redacted] dated September 21, 2006; bank records for the applicant and her spouse; copies of court records pertaining to the applicant's Reckless Driving conviction; copies of birth certificates for the applicant's children; and photographs of the applicant and her spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

> (1) The Attorney General may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel asserts that the applicant's spouse would experience financial and emotional hardship if he were to relocate to South Korea with the applicant. *Brief in Support of Appeal*, received on October 22, 2008. Counsel explains that the applicant's spouse has resided in the United States since he was 19 years old, has significant family and community ties in the United States, has no significant family

ties in South Korea and would experience significant financial hardship due to unfamiliarity with the South Korean business environment. Counsel also explains that the applicant's spouse's mother depends on him physically because she is elderly and requires assistance.

The record does not contain any documentation indicating that the applicant's spouse would be incapable of finding employment or starting a business if he chose to do so upon relocation to South Korea. The AAO also notes that the applicant's spouse is a native of South Korea, and despite his long time residence in the United States, can speak the language and would be familiar with its culture and customs. The AAO does not find this impact to be an uncommon hardship among family members who relocate with their family members abroad.

The AAO takes into consideration the fact that the applicant's spouse, who is now 40, has resided in the United States since the age of 19. The AAO can also consider the fact that the applicant's spouse's immediate family – except for a brother whom the applicant's spouse claims he is not close with – resides in the United States.

The record contains medical records for the applicant's spouse's elderly mother which establishes that she has several medical conditions, including hypertension, hyperlipidemia and degenerative disc disease. However, these records do not establish that the applicant's spouse provides for her physically or financially. Nor is there any other evidence in the record to establish that the applicant's spouse provides assistance to his mother. Therefore the AAO cannot determine that the applicant's spouse would experience any uncommon emotional hardship due to separating from his mother if he relocated abroad.

Counsel asserts on appeal that the applicant's spouse would suffer a cultural and financial impact because the applicant's spouse is not familiar with the South Korean business environment and would be unable to start or run a business there. The record does not contain any country conditions materials or other documentation which corroborates counsel's assertions. Having to readjust to one's native country after many years abroad, or having to find employment which is not in one's desired field is considered a common impact. *See Matter of Ige*, 20 I&N 880 (BIA 1994) (summarizing considerations and reasoning that the mere existence of a reduction in a standard of living or financial hardship or difficulty readjusting, without more, do not constitute extreme hardship); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996)(holding that emotional hardship caused by severing family and community ties is a common result of deportation, and that having to work outside of one's chosen profession and does not constitute an extreme hardship).

While the AAO recognizes that the applicant's spouse would experience some hardship due to the severance of family ties, loss of employment and acculturation impacts upon relocation given his long time residence in the United States, the record does not contain sufficient evidence to establish that the impacts on the applicant's spouse upon relocation would rise to the level of extreme.

Counsel has asserted that the applicant provides crucial household support for the applicant's spouse, and that due to several failed businesses the applicant's spouse needs the applicant to assist him with

raising their two children so that he can work. *Brief in Support of Appeal*, received October 22, 2008. Counsel also asserts that the applicant's spouse has medical issues and may require back surgery, leading to several months of incapacitating rehabilitation when he would need the applicant's physical support. Counsel further asserts that the applicants' spouse would experience emotional hardship if the applicant were removed and refers to a psychological assessment by [redacted]

The record contains some business records indicating that the applicant's spouse has previously owned and operated businesses in the United States. The documents suggest that the businesses operated at a loss. The record also contains an employment verification letter and a personal tax return listing the applicant's spouse's annual income at roughly $50,000. There is no indication that the applicant's spouse was held personally liable for the losses incurred by the businesses he owned. Nor are there other records which indicate that the applicant's spouse has accrued any significant debt or is in financial crisis. There is no evidence that the applicant's spouse would be unable to meet his current financial obligations. This lack of evidence makes the degree of financial impact unclear, and the AAO does not find the record to support that the financial impact of the applicant's departure would rise above the common impacts experienced by the relatives of inadmissible aliens.

Counsel has asserted that the applicant's children need their mother present in the United States to help support and raise them. However, as noted above, children are not qualifying relatives in this proceeding, as such, any hardship on them is only relevant to the extent that it impacts the qualifying relative. In this case, there is insufficient evidence to establish that any uncommon impacts on the applicant's children which would create an indirect hardship on the applicant's spouse if she were removed.

On appeal counsel notes that the Field Office Director was incorrect in failing to consider the medical hardships on the applicant's spouse, and has submitted additional evidence in support of the assertions. Most of the documents submitted are raw medical records. The AAO is not qualified to interpret raw medical data or draw conclusions based on lab results or doctor's notes. However, in this case the documents contain enough basic information to establish that the applicant's spouse reported back problems to her doctor in 2003, previously visited a doctor due to a potential knee injury and had been prescribed pain medication in either 2003 or 2008 (date unclear). The documents do not offer any diagnosis information, do not offer any prognosis for the conditions, do not state the degree or severity of the conditions and do not indicate to what degree, if any, they impact his ability to function on a daily basis. Based on these observations the AAO finds that counsel's assertions that the applicant will need back surgery and has been unable to work are largely unsupported. Nonetheless, the AAO will consider some degree of medical hardship when aggregating the impacts on the applicant's spouse upon separation.

The record contains a psychological assessment of the applicant's spouse by [redacted] In the evaluation [redacted] discussed the emotional impact on the applicant's spouse as narrated to him by the applicant's spouse. The evaluation does not render any diagnosis of a mental health condition and fails to provide a basis upon which to distinguish the emotional impact on the applicant's spouse from the common emotional impacts which arise due to separation. Nonetheless,

the AAO will give some consideration to the emotional impact on the applicant's spouse when aggregating the impacts upon separation.

The record indicates that the applicant's spouse may experience some hardships upon separation, however the evidence submitted is not sufficient to establish that these hardships, even when considered in aggregate, can be distinguished from the kinds of impacts commonly experienced by the relatives of inadmissible aliens.

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 faces extreme hardship if she is refused admission. The AAO recognizes that the applicant's husband will have to bear the burden of increased parenting duties, and will experience some emotional impact. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.