(b)(6)

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]

DATE: DEC 0 1 2014 Office: LOS ANGELES File: [redacted]

IN RE: Applicant: [redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the waiver application, and it 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 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 procuring or attempting to procure admission to the United States by fraud or misrepresentation by entering the country using a false passport. She seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director,* December 30, 2013.

On appeal, counsel for the applicant contends that USCIS erred in finding the applicant failed to provide sufficient evidence her husband would experience extreme hardship if she is unable to reside in the United States and submits an updated hardship statement from the applicant's spouse. The record also contains the brief filed with the waiver application and supporting documentation including, but not limited to: hardship and supportive statements; financial information, including tax documents, bank statements, and a lease agreement; a psychological evaluation and medical prescription notation; marriage, divorce, and naturalization certificates; education and country condition information; prior immigrant petitions and benefits applications; and photographs. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

> 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)(1) of the Act provides:

> The [Secretary] may, in the discretion of the [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 [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 record reflects that the applicant claims to have entered the United States in January 2005 from Mexico using a fraudulent passport and to have resided here since that time. The applicant does not contest she is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission through fraud or misrepresentation, and she requires a waiver under section 212(i) of the Act.

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 U.S. citizen 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether a qualifying relative would suffer extreme hardship by relocating, the record reflects that the applicant has not established that the cumulative effect of hardships affecting her husband rises to the level of extreme. The record shows that the qualifying relative lived in his native South Korea until immigrating to the United States in 1991 as the dependent family member of a parent. He claims his father left him when he was nine and they reunited upon his immigration, and that his father abandoned him to return to Korea two years later. The record is unclear regarding his mother's whereabouts, although counsel reports he is estranged from both parents and that his only family member here is a sister. There is evidence his sister lives in New York City. The applicant's husband claims his teenage years were difficult and he developed an alcohol problem in his 20s. Other than a therapist's reference to the qualifying relative reporting a history of alcohol abuse, there is no medical documentation of this claim or indication of the seriousness of the problem. We note that the applicant's husband successfully learned English and completed six years of post-secondary education during this timeframe.

The record indicates the qualifying relative is self-employed exporting U.S. goods for resale overseas, in South Korea and other countries, and that he is involved in running at least two businesses. He claims that he is not employable in South Korea due to lack of contacts. We note that he claims to have worked for the Korean government before setting up his businesses. There is no evidence that these businesses could not be run by someone other than the applicant's husband or that he could not manage them from overseas, and he has not established that his education, expertise, and language fluency would not qualify him for foreign employment. Both he and his wife are natives of Seoul, South Korea, and there is no evidence he would not have the applicant's family connections to help his relocation.

Based on the totality of the circumstances, the evidence is insufficient to establish that a qualifying relative would experience extreme hardship by moving to South Korea, where he lived until the age of 17. Although we recognize that moving overseas would entail hardships for the applicant's husband, the applicant has made no showing that their impact would exceed the common or typical consequences of removal or inadmissibility.

Regarding the claim of hardship due to separation from the applicant, the record likewise contains insufficient evidence that separation will cause a qualifying relative distress beyond what commonly results from inadmissibility of a beloved spouse. The applicant's husband claims that concern about his wife's immigration problem has caused him depression and anxiety, characterized by lack of motivation and feelings of misery and chaos. A family therapist's March 2012 psychological evaluation diagnoses the qualifying relative with depression, based on reported symptoms including insomnia, fatigue, irritability, panic attacks, and suicidal ideation, and notes his prior alcohol dependency is in full remission. The therapist recommended counselling and evaluation for possible prescription medication, and the record contains a copy of a neurologist's written prescription, but no details of the examination on which it is based or reason it was prescribed.

The record reflects that the qualifying relative and the applicant married four years ago, have one child together, and were expecting a second child at the time the appeal was filed, and it further indicates they work together in the family export business. The applicant's husband states that his son is unusually sensitive and only happy when his mother is around, while counsel asserts that the applicant's husband fears repeating his own history by abandoning his son. We note it is a matter of parental choice whether the couple's children remain here or accompany their mother to Korea. There is insufficient evidence that the applicant's absence will cause her children such problems that her husband will suffer extreme hardship as a result. Although we acknowledge that the applicant's husband will experience some emotional hardship by remaining in the United States in her absence, the record does not establish the severity of this hardship and there is no indication he would be unable to visit his wife overseas to ease their separation.

There is insufficient evidence for us to conclude that the applicant's departure will make her husband unable to meet his financial obligations. Although USCIS records indicate the applicant has had a work permit, there is no documented employment history or evidence she has ever earned income here. While a support letter indicates that she performs office and clerical work for her husband's export business, there is no evidence that the business could not hire someone else to perform these tasks. Tax returns from 2009 and 2010 indicate that her husband's self-employment income from business is the sole source of household income. Based on the record, we conclude that the applicant has not shown her absence will impact her husband's ability to manage the activities of daily living beyond the usual consequence of inadmissibility, or make him unable to meet his financial obligations.

For all these reasons, the cumulative effect of the emotional and financial hardships the applicant's husband will experience due to the applicant's inadmissibility does not rise to the level of extreme. We are sensitive that the applicant's inability to remain in the United States will impose some hardship on her husband. We conclude, however, based on the evidence that, were her husband to remain in the United States without the applicant due to her inadmissibility, he would not suffer extreme hardship that is beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has not established that her spouse will suffer extreme hardship if she is unable to live in the United States.

We recognize that the applicant's husband will endure hardship as a result of the applicant's inability to immigrate. However, his situation is typical of individuals affected by removal or inadmissibility, and we thus find that the applicant has failed to establish extreme hardship to her husband as required under the Act.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.