U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

H5

[redacted]

Date: JAN 10 2012 Office: HAGATNA, GUAM FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and § 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 must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hagatna, Guam. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Korea who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking admission within ten years of his last departure from the United States. He was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

In a decision dated January 28, 2009, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated January 28, 2009.

On appeal, the applicant's attorney submitted an appeal brief in support of the applicant's waiver application. In the brief, the applicant's attorney asserts that the qualifying spouse has family ties to the United States, including her children and mother, whom she assists financially. The applicant's attorney also contends that the qualifying spouse's children cannot relocate with her to Korea because her children do not know the language and would not be able to go to public schools. The applicant's attorney states that relocation to Korea will pose a financial hardship to the qualifying spouse because she will have to send her children to private school. Further, he indicates that the qualifying spouse will face fines in Korea for overstaying her visa. Moreover, the applicant's attorney also indicates that the qualifying spouse would have to renounce her United States citizenship in order to avoid Korea's visa requirements. If the qualifying spouse remained in the United States without the applicant, the applicant's attorney claims that she would face emotional and financial hardships.

The record contains Biographic Information (Form G-325A) regarding the applicant, an approved Petition for Alien Relative (Form I-130), an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), an appeal brief written on behalf of the applicant, a certificate of naturalization for the qualifying spouse's mother, a business license for the qualifying spouse's mother's restaurant, a receipt from the Guam Memorial Hospital indicating the debt owed by the qualifying spouse's mother, a license and marriage certificate for the qualifying spouse's mother's marriage, a letter from the qualifying spouse's mother, a letter from the qualifying spouse, an article regarding Korean families who come to live in the United States without one parent, a bill for the qualifying spouse's children's school tuition and other related school expenses, a currency converter comparing the cost of school in the United States and Korea, country condition materials, a letter from a psychologist, a letter from the qualifying spouse's friend, internet information regarding the benefits of healthy marriages, internet printouts regarding the cost of traveling between Korea and Guam, a declaration signed by the qualifying spouse and applicant, their children's birth

certificates, a criminal record regarding the applicant, the applicant's birth certificate and other identifications and financial documentation.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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 [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.

A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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 his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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.

The applicant's qualifying relative in this case is his spouse, who is a United States citizen.

The record indicates that the applicant was admitted into the United States as a visitor for pleasure until September 6, 1997, and he remained in the United States until October 19, 1998 when he voluntarily departed. The applicant thus accrued unlawful presence from when his visa expired on September 6, 1997 until October 19, 1998, a period in excess of one year. He was readmitted on April 29, 1999 as a non-immigrant visitor for pleasure. Pursuant to section 212(a)(9)(B)(i)(II), the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for applying for a new visa and passport with an altered name, in order to conceal the previous overstay. In addition, USCIS records reflect that the applicant has admitted to this misrepresentation, and the applicant has not disputed his inadmissibility. Therefore, as a result of the applicant's prior misrepresentation and unlawful presence, he is inadmissible to the United States under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act.

A waiver of the bar to admission under sections 212(i) and 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes extreme hardship on a qualifying relative of the applicant. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Korea and in the event that she remains in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The evidence submitted relating to the potential hardships facing the applicant's spouse was Form G-325A, Form I-601, Form I-290B, an appeal brief written on behalf of the applicant, a certificate of naturalization for the qualifying spouse's mother, a letter from the qualifying spouse's mother, a letter from the qualifying spouse, an article regarding Korean families who come to live in the United States without one parent, a bill for the qualifying spouse's children's school tuition and other related school expenses, a currency converter comparing the cost of school in the United States and Korea, country condition materials, a letter from a psychologist, a letter from the qualifying spouse's friend, internet information regarding the benefits of healthy marriages, internet printouts

regarding the cost of traveling between Korea and Guam and a declaration signed by the qualifying spouse and applicant.

As previously stated, the applicant's attorney asserts that the qualifying spouse has family ties to the United States, including her children and mother, whom she assists financially. The applicant's attorney also contends that the qualifying spouse's children cannot relocate with her to Korea because her children do not know the language and would not be able to go to public schools. As the qualifying spouse would have to send her children to private school, the applicant's attorney states that relocation to Korea will pose a financial hardship to the qualifying spouse due to the cost of private school tuition for her children. The applicant's attorney also asserts that fines will be imposed upon the qualifying spouse in Korea for overstaying her visa. Moreover, the applicant's attorney also indicates that the qualifying spouse would have to renounce her United States citizenship in order to avoid Korea's visa requirements. If the qualifying spouse remained in the United States without the applicant, the applicant's attorney claims that she would face emotional and financial hardships.

Although the qualifying spouse's separation from the applicant may cause her potential emotional and financial hardships if she were to remain in the United States without the applicant, the evidence in the record fails to demonstrate that the qualifying spouse will encounter extreme hardship as a result of the applicant's continued inadmissibility. With regard to the qualifying spouse's emotional hardships, should her husband return to Korea without her, the record contains a letter from a psychologist, an article regarding Korean families who are separated and letters from the qualifying spouse, her mother and her friend. The letter from the psychologist indicates that the qualifying spouse's "tentative or Provisional diagnoses are Generalized Anxiety Disorder (Provisional) and Major Depressive Disorder (Provisional)" but also states that the qualifying spouse was "only observed on one day and there exist no other informants related to her behavior or health concerns." Moreover, the psychologist's letter recommends a referral to a psychiatrist "should depressive and anxiety symptoms continue." However, there is no indication in the record that the qualifying spouse has sought out additional treatment. Moreover, the letters from the qualifying spouse, her mother and friend demonstrate that the qualifying spouse is suffering emotionally due to the immigration issues of the applicant. However, the record does not contain any documentation to establish that the qualifying spouse will face emotional hardships that are unusual or beyond what would be expected as a result of inadmissibility or removal. Further, the article submitted, regarding Korean families whose parents separate to educate their children in the United States, discusses family separation of these families in general and their reasons for choosing such separation, largely to pursue an education abroad and increased opportunities for their children. It focuses on one family living in Maryland. The article does not support the applicant's claim that the applicant's wife would suffer emotional hardship beyond the normal results of inadmissibility. Moreover, the applicant's attorney contends that the qualifying spouse will suffer financially because she will be unable to visit her husband in Korea and the qualifying spouse indicates, in her affidavit, that she will be unable to work two jobs as she currently does without the applicant's assistance with child care. The record contains internet printouts regarding the cost of travel between Korea and Guam and financial documentation regarding the income of the qualifying spouse. However, there is no documentation regarding the expenses of the qualifying spouse, other than the children's school

tuition, or details regarding the child care provided by the applicant. Moreover, the cost of travel does not represent a hardship beyond one that would normally be expected as a consequence of separation. As such, the applicant failed to demonstrate that his wife will suffer extreme hardship should she remain in the United States without him.

However, the applicant has demonstrated that his qualifying spouse would suffer extreme hardship in the event that she relocated to Korea. The qualifying spouse indicated that she has lived in the United States for over ten years and has close family ties in the United States including her mother and her children. The record contains birth certificates for her mother and her children. The applicant's attorney also indicates the qualifying spouse helps her mother at her restaurant and also assists her financially to pay for the medical debts incurred by her mother's husband. The record contains proof of the debt owed by the qualifying spouse's mother and proof of the qualifying spouse's mother's restaurant. The applicant also submitted letters from the qualifying spouse and her mother establishing their close relationship and the support that the qualifying spouse appears to offer her mother. With respect to the hardships that the qualifying spouse's children would face if they relocated to Korea, they are only relevant to the extent that they affect the qualifying spouse. The applicant's attorney indicates that the qualifying spouse will have to send her children to private school and that this would pose a financial hardship upon her. Moreover, the applicant's attorney states that the qualifying spouse would have to renounce her United States citizenship and potentially pay fines in order to work in Korea. The record contains country condition documentation regarding these issues. The AAO concludes that, were the applicant unable to reside in the United States due to his inadmissibility, the potential cumulative hardships the qualifying spouse would suffer rises to the level of extreme hardship if she returned to Korea accompanying the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B) and 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.