



U.S. Citizenship
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FILE:

Office: LOS ANGELES DISTRICT OFFICE

Date: FEB 27 2008

IN RE:

PETITION: 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 PETITIONER:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant, a citizen of South Korea, was found 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her United States citizen husband.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, counsel contends that the applicant's husband, a citizen of the United States, would suffer extreme hardship if the applicant were required to return to South Korea. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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 states, in pertinent part, the following:

- (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.

A section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. 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).

Thus, the first issue to be addressed is whether the applicant's return to South Korea would impose extreme hardship on the applicant's husband. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion in granting the waiver.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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. 22 I&N Dec. at 565-566.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant entered the United States on a visa obtained via fraud. The applicant entered the United States by making a willful misrepresentation of a material fact (her employer) in order to procure entry into the United States. Accordingly, the applicant is 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).

On appeal, counsel contends that the applicant qualifies for a waiver of inadmissibility. Counsel contends that the applicant's forced return to South Korea would inflict extreme hardship on her husband. Counsel also contends that the applicant's husband would experience extreme hardship if the applicant were required to return to South Korea, regardless of whether he accompanies her or remains behind in California.

The record contains documentation regarding the medical condition of the applicant's husband. According to letters from the applicant's husband's internist and psychiatrist, he has been undergoing medical treatment, including administration of psychotropic drugs, for clinical depression since 1990. He is currently prescribed the drugs Zoloft and Wellbutrin to manage his condition.

In his May 5, 2003 affidavit, the applicant's husband states that he began struggling with depression as a teenager, and sought medical help in his late twenties. He states that, while medication keeps his depression under control, it does not cure the underlying condition, and that medication cannot replace the necessary support from his family and friends. He states his great love for the applicant, that he cannot remember life before meeting her, cannot imagine how devastated he would be without her, and fears losing the applicant would have a catastrophic impact on his mental state from which he could not recover.

According to a July 1, 2003 letter from [REDACTED] M.D., Ph.D., the applicant's husband's psychiatrist, his condition has been worsened since the applicant's immigration problems arose, and required the administration of additional drugs for management. [REDACTED] states that, in his professional opinion, the marital relationship must be maintained in order to prevent relapse into depression.

On appeal [REDACTED] submits a second letter, dated February 2, 2006, in which he states the following:

[The applicant's husband] is currently experiencing symptoms of depression because of the remaining threat of the loss of his family. In spite of his symptoms, only partially responsive to medication, he continues to be a functional, tax paying citizen.

I believe that [the applicant's husband's] mood stability and his chemical balance is tenuous. If his wife and family were to leave or he was forced to uproot in order to be with his family he would relapse.

A depressive relapse at best would result in disability and could lead to suicide. There exists more than mere separation and financial difficulties. . . .

The AAO has carefully reviewed and considered each of the numerous letters, affidavits, medical records and reports, and other documents contained in the record in reaching its decision, and takes particular note of the affidavits from the applicant, her husband, and the family's medical service providers contained in the file. In particular, the AAO notes that the applicant's husband has well-established relationships with his medical service providers.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be considered in the assessment of hardship factors in the present case.

The AAO finds that the applicant's husband would face extreme hardship if the applicant were required to return to South Korea. If he remains in the United States without the applicant, he would face setbacks in his medical treatment, as attested by both doctors treating the applicant's husband. The AAO also finds that he would face extreme hardship if he were to accompany the applicant to South Korea. A citizen of the United States by birth, the applicant does not speak that country's language. As noted by counsel, the applicant's husband is a film editor for a movie studio, and it would be difficult for him to obtain employment outside the Los Angeles area. He would also lose access to his current team of medical care providers. He would also leave behind an extended family network in the United States. Finally, in applying *Salcido-Salcido v. INS*, the AAO notes that separation from family would occur regardless of whether the applicant's husband accompanied her to South Korea or remained in California.

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 extreme hardship the applicant's husband would face if the applicant were to return to South Korea, regardless of whether he accompanied her or remained in the United States, United States citizen spouse, an approved relative petition, gainful employment, and the passage of eight years since the immigration violation. The unfavorable factors in this matter are the

applicant's willful misrepresentation to an official of the United States Government in seeking to obtain admission to the United States, and periods of unauthorized presence.

While the AAO does not condone her actions, the AAO finds that the hardship imposed on the applicant's husband as a result of her 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 grounds 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.