

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

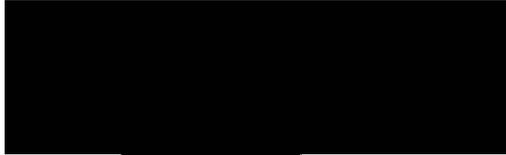
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



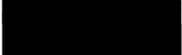
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2



FILE:



Office: LOS ANGELES, CA

Date:

OCT 09 2008

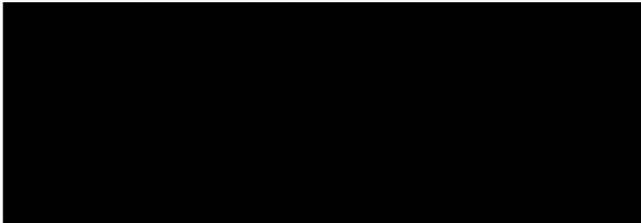
IN RE: Applicant:



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:



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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District 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 citizen of Korea. The record reveals that the applicant presented a passport and visa belonging to another individual when applying for entry to the United States in October 1994. The applicant was found to be 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 having procured entry to the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

The 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 District Director*, dated February 8, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated April 7, 2006 and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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.

Based on the evidence in the record, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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 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 (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 concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the

qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant’s spouse, a naturalized U.S. citizen, is the only qualifying relative, and hardship to the applicant and/or his and/or his spouse’s extended family members cannot be considered, except as it may affect the applicant’s spouse. 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).

Counsel first asserts that the applicant’s U.S. citizen spouse will suffer extreme emotional and psychological hardship if the applicant is removed from the United States. As stated by counsel:

[the applicant’s spouse] is a woman with an extensive history of mental and physical problems. Mrs. [REDACTED] developed diabetes, depression and anxiety due to the stress of being in an unhappy prior marriage. She also attempted suicide in her late twenties due to a breakup with a boyfriend and encountering financial troubles. The fear of losing her husband re-triggered her symptoms of anxiety and depression. Mrs. [REDACTED] was diagnosed with Major Depressive Disorder in January of 2003....

reported contemplating suicide with serious intent. Her health problems also deteriorated to a point she is unable to work at this time.... [REDACTED] is extremely dependent on her husband emotionally....

Added to this level of stress is _____ responsibility of taking care of her niece...who is battling brain cancer. [REDACTED] has been her niece's primary caretaker since 1994. [REDACTED] niece has lost all her mobility and coordination and is in a wheelchair due to the brain cancer. She is in need of 24 hours supervisory care....

[REDACTED] equates of her husband leaving to Korea as another divorce. Furthermore [REDACTED] stated in her evaluation that [REDACTED] dependent personality tendencies makes it very difficult for her to maintain independent living without a major attachment figure like her husband. Emotionally, she is likely to feel abandoned and alone. She may also feel like a failure with all the relationships in her past that did not work out. Consequently, she is likely to become even more anxious and depressed.....

Brief in Support of Appeal, dated April 7, 2006.

In support of the contention that the applicant's spouse will suffer extreme emotional and psychological hardship were the applicant removed from the United States, counsel provides two psychological evaluations. In the evaluation prepared by [REDACTED] MD, Ph.D. in January 2003, based on what appears to be a single interview, [REDACTED] concludes as follows:

[The applicant's spouse] is a person who initially has an anxious brain and may have Generalized Anxiety Disorder, who presents with a probable first episode of Major Depressive Disorder Secondary to severe social stressors. However, by the symptoms of the patient's depression, the patient suffers from Atypical Depression....

Plan: 1) Extensive psychoeducation, some supportive psychotherapy was provided. 2) Discussed with patient risks, benefits, common side effects for treatment with Effexor XR... 3) The patient is to return to clinic in 2 weeks....

Psychological Evaluation from [REDACTED], M.D., Ph.D., Shin Family Medical & Comprehensive Laser Clinic, Inc., dated January 23, 2003.

In an evaluation provided by [REDACTED] Ph.D., Clinical Psychologist, in March 2006, based on three separate consultations approximately two weeks apart, [REDACTED] concludes as follows:

[the applicant's spouse] said she neglected to follow up on [REDACTED]'s treatment recommendations due to lack of motivation.

Since the denial of the Waiver in February of 2006, [REDACTED] symptoms of depression and anxiety appear to have intensified....

The results of this psychological evaluation confirm the impressions of a previous psychiatric evaluation which diagnosed [REDACTED] with a Major Depressive Disorder and indicated the possibility of the presence of anxiety disorders. [REDACTED] currently appears to be severely depressed and anxious. She is also at high risk for suicide, especially given her previous attempt....

Recommendations

1. A cognitive-behavioral therapy to address her anxiety and depression is recommended for [REDACTED]. Her suicidal ideation should be closely monitored at all times. Psychotherapy should also focus on helping [REDACTED] develop a stronger sense of self....
2. A psychiatric consultation is recommended. Medication may help significantly with [REDACTED]'s symptoms of anxiety and depression.
3. An up-to-date comprehensive physical examination is recommended....

Psychological Evaluation from

Ph.D., Clinical Psychologist, dated March 15, 2006.

With respect to the applicant's spouse's diagnosis of anxiety and depression, the record indicates that the applicant's spouse has only met with a mental health professional a total of four times in a period of three years; as such, the evaluations provided do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering their findings speculative and diminishing the evaluations' value to a determination of extreme hardship. Moreover, although [REDACTED] references that the applicant's spouse has been diagnosed with depression and anxiety, no documentation has been provided to establish that since the initial diagnosis in January 2003, the applicant's spouse's has taken the necessary steps to obtain appropriate treatment, such as evidence of regular therapy sessions or other treatment, and/or medications, to further support the gravity of the situation. It has also not been established that the applicant's spouse is unable to travel to Korea, her home country, on a regular basis, to visit with the applicant. Finally, the applicant's spouse's situation does not appear to be extreme as she is able to care for her niece on a full-time basis, physically and emotionally, as she has been doing for over a decade, due to her niece's medical condition.

The evaluations provided indicate that the applicant has a very loving and devoted spouse who is extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative,

administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases.

In addition, counsel references the financial hardship the applicant's U.S. citizen spouse would experience were the applicant removed from the United States. As stated by the applicant's spouse:

the loss of my job has caused a host of financially related problems for me. Having forfeited my entire income, while my expenses are increased by my medical difficulties, I am relying entirely on my husband's income for financial support.... The absence of a steady income and the knowledge that I cannot support myself financially is wreaking havoc on my already strained nerves....

Letter from [REDACTED]

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

No documentation regarding the applicant and his spouse's financial situation, including income and expenses, has been provided to establish that a relocation abroad would cause the applicant's spouse extreme financial hardship. Moreover, counsel provides no evidence to substantiate that the applicant, currently employed as a sushi chef, would not be able to obtain gainful employment were he to relocate to Korea, or any other country of his choosing, thereby assisting the applicant's spouse with the U.S. household expenses. Finally, no objective documentation has been provided that further details why the applicant's spouse is unable to obtain gainful employment in the United States, thereby assisting herself financially. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Although the applicant's spouse may need to make alternate arrangements with respect to her own care and the maintenance of the household were the applicant removed, it has not been established that such arrangements would cause her extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. Counsel asserts that the applicant's spouse will suffer extreme hardship were she to accompany the applicant to Korea. As stated by the applicant's spouse:

my beloved niece...suffered with brain tumor.... However, 12 times of brain surgery failed to recover her and she is still under medication treatment and side-effects.... She cannot move her limbs at all. Any meals must be made liquid that is fed to stomach through a plastic tube and even she is not free at all to settle the affairs of bathroom alone.

Now all those difficult works, but rather my responsibility I would like to call it, are on my shoulder. Such a situation made them move nearby my location...just half block away from my home to make me easier to tend the medication treatment, go to the rehabilitation clinic center for her limbs (3 times weekly) and bring her to Sunday worship.... I can not imagine going to Korea and not able to take care of her. I have been taking care of her for the past 12 years. I would not forgive myself if my niece does not survive.... She needs all the supports she can get....

In addition, I am afraid of going to Korea because it would be impossible for me to find adequate employment.... My husband [the applicant] and I will be in poverty if relocate to Korea.

Another reason why I must live here is that if I am forced to return to Korea with my husband, I would be socially ridiculed for not having any children.... if I am forced to return to Korea, where the society is very homogenous, patriarchal, and closed-minded [sic], I would be ridiculed for not having any children....

I am also afraid to relocate to Korea because it is culturally not acceptable in Korea for two people with same last name to be married. My husband and I have the same last name. We will not be accepted if forced to return to Korea....

Letter from [REDACTED], dated April 6, 2006.

No supporting evidence has been provided to establish that the applicant and/or his spouse, both natives of Korea, would be unable to find gainful employment in their home country, thereby ensuring the family's financial viability. Moreover, it has not been established that the applicant's spouse would be unable to return to the United States on a regular basis to visit her niece. In addition, it has not been established that the fact that the applicant's spouse does not have children, and has the same last name as her husband, would cause her extreme hardship were she to relocate to Korea. In addition, although the AAO recognizes that the applicant's spouse plays an important role in her niece's care, no documentation from a licensed medical professional has been provided to establish the applicant's spouse's niece's medical situation, its gravity, its short and long-term treatment plans, what support she needs from the applicant's spouse specifically, and what hardships she will face were the applicant's spouse to relocate abroad, thereby causing the applicant's spouse extreme hardship. Finally, the record indicates that the applicant's spouse's niece is married; it has not been established that her husband is unable to provide the support that she needs during the applicant's

spouse's relocation abroad. As referenced above, statements without supporting documentary evidence do not suffice to establish extreme hardship.

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 will face extreme hardship if the applicant is removed. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. There is no documentation establishing that her financial, emotional or psychological hardship would be any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the financial strain and emotional and psychological hardship she would face rise to the level of "extreme" as contemplated by statute and case law.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.