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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE

[Redacted]

Office: HONOLULU, HI

Date:

SEP 18 2008

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:

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, Honolulu, Hawaii, 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 in 1991, the applicant presented fraudulent documents and provided false information on Optional Form 156 (Form OF-156) when applying for a visitor visa at the U.S. Embassy in Seoul, Korea.¹ The applicant was thus 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 attempted to procure entry into 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 and children, born in 2003 and 2005.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 18, 2005.

In support of the appeal, counsel submits, *inter alia*, a brief, dated April 11, 2006; a copy of the applicant's child's U.S. birth certificate; a copy of the applicant's spouse's 2001 U.S. Individual Income Tax Return; evidence of the applicant's property ownership; letters in support of the applicant's waiver request; a letter regarding the applicant's father-in-law's medical situation; and documentation with respect to the applicant's spouse's mental health. 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.

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...

¹ Pursuant to the record, an investigation by the U.S. Embassy in Seoul, Korea disclosed that the applicant's "...claimed employment with the Daemi Trading Co., Ltd., his employment certificate, business license, and income tax certificate are all BOGUS. Investigation also disclosed that subject's home address, business address, home phone # and business phone # are all FALSE...." As a result of this investigation, the applicant was denied a nonimmigrant visa.

With respect to the finding that the applicant is inadmissible under section 212(a)(6)(C) of the Act because he previously attempted to procure a nonimmigrant visa by presenting fraudulent documents and providing false information to a consular officer at the U.S. Embassy, Seoul, Korea, counsel contends that the applicant did not intend to defraud the government and that the applicant was unaware that the agent he hired to assist him with the nonimmigrant visa application compiled fraudulent documentation on his behalf. As stated by counsel:

In or about fall of 1991, the Applicant hired a travel agent in Korea to prepare for his U.S. visitor's visa to visit his aunt living in the U.S. We understand that it is a common practice in Korea to hire travel agents to prepare for U.S. visitors' visas. Although the Applicant did sign his visa application, the travel agent did all of the necessary preparation of the visa application. The Applicant provided requested documents by the travel agent such as his national identification card, passport, pictures, family census registrar, etc. He later signed the visa application where he was told to sign and did not carefully check either the content of the application or the supporting documents, which were submitted to the U.S. Embassy. In fact, the travel agent did not even show the supporting documents to the Applicant. The Applicant only saw the visa application and signed it....

...the Applicant did not willfully or deliberately mislead or misrepresent.... If he had known what was written on the visa application was incorrect, and if he indeed intended to misrepresent himself...his answers would have been based on the incorrect information written in the visa application. Instead, he answered truthfully about himself at the visa interview.... Again, if the Applicant indeed deliberately and willfully intended to defraud the U.S. Embassy and disregard the U.S. immigration laws...he would have told the consular officer the untrue answers matching the information provided in the visa application at the time of the visa interview....

Brief in Support of Appeal, dated April 11, 2006.

The Department of State Foreign Affairs Manual states, in pertinent part, that in order to find an alien ineligible under section 212(a)(6)(C)(i) of the Act, it must be determined that:

- (1) There has been a misrepresentation made by the applicant;
- (2) The misrepresentation was willfully made; and
- (3) The fact misrepresented is material; or
- (4) The alien uses fraud to procure a visa or other documentation to receive a benefit....

DOS Foreign Affairs Manual, § 40.63 N2. Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, it has not been established, by a preponderance of the evidence, that the applicant did not attempt to obtain an immigration benefit by fraud and/or misrepresentation. As the record indicates, the applicant signed his name, under penalty of perjury, on a nonimmigrant visa form that contained fraudulent information. Moreover, documentation was presented by him to a consular officer that was blatantly false. The applicant had the duty and the responsibility to review the forms and the compiled documentation prior to the nonimmigrant visa interview. As such, the AAO concurs with the district director that the applicant is inadmissible under section 212(a)(6)(C) of the Act .

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

This matter arises in the Honolulu 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.

Numerous references are made to the hardships the applicant's two U.S. citizen children would face were the applicant removed. 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. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's spouse, a naturalized U.S. citizen, is the only qualifying relative, and hardship to the applicant, their U.S. citizen children and/or the applicant's lawful permanent resident father-in-law cannot be considered, except as it may affect the applicant's spouse. It has not been established that the emotional, psychological and/or physical repercussions to the applicant's father-in-law and two children due to the applicant's absence would cause the applicant's spouse extreme hardship.

Counsel further contends that the applicant's U.S. citizen spouse will suffer emotional hardship if the applicant is removed from the United States. As the applicant states in his declaration:

If we were separated, my wife [redacted] has explained that she would be emotionally, physically, and mentally devastated to be apart from me. Losing a spouse and raising an infant son without a father would be emotionally painful and physically draining on anyone....

My wife [redacted] is currently suffering from severe depression with vague suicidal ideation... [redacted] is experiencing insomnia, forgetfulness, loss of interest, feelings of helplessness and hopelessness....

Affidavit of [redacted].

In support of the applicant's statements, counsel offers a letter from [redacted] M.D., Bilingual Boards Certified Psychiatrist. As [redacted] states:

I saw Mrs. [redacted] [the applicant's spouse] today, for psychiatric evaluation for stress related anxiety and depression....

Apparently, [redacted] was suffering from severe recurrent depression with vague suicidal ideation...

[redacted] agreed to receive psychiatric treatment without medication....

Letter from [redacted] M.D., dated May 13, 2004.

Although the input of any health professional is respected and valuable, the AAO notes that the submitted letter from [redacted] was based on one interview with the applicant's spouse. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the conclusions reached in the submitted letter do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [redacted]'s findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Finally, although [redacted] in her evaluation of May 13, 2004 recommends that the applicant's spouse receive psychiatric treatment, the record does not indicate whether the applicant's spouse has followed through with this recommendation, and if she has followed through with the recommendation, no documentation has been provided by the applicant's spouse's treating psychiatrist to further outline the applicant's spouse's current mental health situation, the gravity of the situation and the short and long-term treatment plan.²

² The AAO notes that counsel submits a Report of Psychological Consultation, dated January 31, 2006, prepared by [redacted] Ph.D., who met with the applicant's spouse on two separate occasions, once in December 2005 and once in January 2006. However, as referenced above, the record shows no treatment of the applicant's spouse's mental health conditions between May 2004, when [redacted] concluded that the applicant's spouse needed psychiatric treatment,

The letters provided with respect to the applicant's spouse's mental health 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 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.

The applicant further references the financial hardship his U.S. citizen spouse would experience were the applicant removed from the United States. As the applicant states:

My wife, [REDACTED], my father-in-law and I jointly own a condo.... We all live together.... [REDACTED] would lose our home if the Services [sic] does not approve my waiver, and I am required to return to Korea.

... [REDACTED] will lose our home as she is a full-time housewife and does not make the required monthly mortgage payments....

[REDACTED] used to work as a hair stylist prior to our marriage but did not make a lot of money.... Obviously, even if she worked as a full-time hairstylist, her income falls well short of meeting the monthly mortgage payments...the condo maintenance fee...and...normal living expenses....

Additionally, she would have to pay for child care expenses for our son Jacob³....

Supra at 5-7.

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

and December 2005, when [REDACTED] met with the applicant's spouse based on a referral by counsel. As such, the applicant's spouse's mental health situation does not appear to be extreme.

³ At the time the Form I-601 was submitted, the applicant and his spouse were the parents of a U.S. citizen son, [REDACTED] born in 2003. The record indicates that in July 2005, the applicant and his spouse had a second U.S. citizen child, [REDACTED]. As such, despite the fact that numerous statements in the record reference one U.S. citizen child, the AAO is cognizant of the fact that the applicant and his spouse have two U.S. citizen children at this time.

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 has been provided by counsel that outlines the applicant’s and his family’s income and expenses, to establish that without the applicant’s income and physical presence in the United States, his spouse will experience financial hardship. Moreover, it has not been established that the applicant’s spouse would be unable to find affordable care for her children and/or flexible and gainful employment, thereby ensuring that she earns sufficient income to support the household and at the same time, has quality time with her children. Finally, the record indicates that the applicant’s spouse has 22 extended relatives residing in the United States, including her father, who resides with the applicant and his family, grandmother, aunts, uncle, cousins and nephews, and the applicant has 18 extended relatives residing in the United States, including an aunt, uncle, cousins, nieces and nephews; it has not been established that such a support network of extended family would be unable to assist the applicant’s spouse should the need arise. Although the applicant’s spouse may need to make alternate arrangements with respect to her employment and housing situation and the care of the children, it has not been established that such arrangements would cause her extreme hardship.

Finally, counsel provides no evidence to substantiate that the applicant, employed since 2001 as a baker/store manager at a grocery store, would be unable to secure 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. 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)).

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. As the applicant states:

If... [the applicant’s spouse] were to reside in Korea, she would be deprived of the love, care and comfort of her immediate family members and relatives, that is, her father and her close family and relatives listed above. Also, she would be emotionally burdened by the fact that she could not care for her father as the only child and immediate family for him. She would also be emotionally stressed by the fact that she, as the only child, would not be able to visit and care for her mother’s grave at the Valley of Temple if she were to move to Korea with me. In addition, she would have to make drastic lifestyle changes....

Supra at 9.

No documentation has been provided to establish that the applicant and/or his spouse would be unable to obtain gainful employment in Korea, their home country, ensuring financial stability for the family. Moreover, no documentation has been provided that details the applicant's father-in-law's medical and financial situation, the short and long-term medical plans, the gravity of his medical conditions, and what assistance he needs from the applicant's spouse in particular. The AAO notes that the physician letter provided by counsel merely lists the medical conditions suffered by the applicant's father-in-law and asserts that regular follow-ups and maintenance medications are required. As such, the record fails to establish that the applicant's father-in-law's continued medical care and survival directly correlate to the applicant's spouse's physical presence in the United States.

Counsel further contends that the applicant's father-in-law is unable to reside in Korea because "his medical insurance is only available in the U.S. and he cannot afford to cover his medical expenses without the insurance in Korea..." *Supra* at 14. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, as referenced above, the applicant and his spouse have numerous relatives that reside in the United States. It has not been established that they would be unable to assist the applicant's father-in-law with respect to his care, were the applicant's spouse to relocate abroad. Finally, it has not been established that the applicant's father-in-law would be unable to travel to Korea periodically to visit with the applicant's spouse and/or that the applicant's spouse would be unable to return to the United States to visit with her father and/or her extended family. While the applicant's father-in-law may need to make alternate arrangements with respect to his continued care, it has not been established that any new arrangements would cause extreme hardship to the applicant's spouse. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from her father and extended relatives. However, her situation does not rise to the level of extreme hardship based on the record.

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 U.S. citizen 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.