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FILE:

Office: LOS ANGELES

Date: **AUG 03 2009**

IN RE:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of South Korea who 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 attempted to procure a nonimmigrant visa for 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 her 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 Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the applicant has been residing in the United States since May 1994 and her spouse has been residing in the United States since 1993. Counsel states that the applicant's two children reside in the United States. Counsel states that if the applicant departs, her husband has to take care of his business and family alone. Counsel notes that the applicant's spouse is ailing physically, affecting his mental and emotional state of mind. Counsel states that the applicant's spouse needs the applicant to help him through his illness and to manage his business. Counsel indicates that the applicant's spouse may not be able to run his business without the applicant, which would result in financial hardship. As supporting evidence, counsel submitted attestations from the applicant and her family, and a psychological evaluation. The entire record was reviewed and considered in rendering a decision on the appeal.

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 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.

The record reflects that on March 10, 1993, the applicant applied for a B1/B2 visa for herself and her two minor children. In order to establish her ties to South Korea, the applicant claimed that she is a housewife supported by her husband, a business owner. The applicant submitted a certificate of value added tax payment and a certificate of income tax payment. An investigation revealed these documents to be fraudulent. Therefore, the AAO finds the applicant 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 a nonimmigrant visa for entry into the United States by fraud or willful misrepresentation.

A section 212(i) waiver of the bar to admission resulting from 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 hardship 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).

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 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.

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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record reflects that the applicant wed [REDACTED], a U.S. lawful permanent resident, on October 17, 1986. The applicant's spouse is a qualifying family member for section 212(i) of the Act extreme hardship purposes. The applicant and her spouse have two U.S. lawful permanent resident children, [REDACTED] and [REDACTED].

On appeal, counsel furnished an attestation from the applicant's spouse, dated February 27, 2007. The applicant's spouse states that his success in business in the United States was possible because of his family support. He states that he would not be where he is without his wife's support as his spouse and business partner. He indicates that he has obtained various United States and international patents related to dyeing machines, liquid mixing density equipment, golf swing adjusting techniques and equipments, golf gloves, etc., and has contracts with six major golf companies in the United States and 700 golf shops. He states that because of his hard work his health is not good. He indicates that he has paralysis on his left leg and right arm, and chronic pain that affects his daily functions. He states that he goes to various hospitals and lives on painkillers. He indicates that because of his health, his business and personal life cannot be managed without his wife's involvement. He states that his wife takes him to the doctor and business meetings. He contends that he does not know what would happen to his businesses if he moved to Korea. He indicates that his children do not know the Korean language and culture. He states that his thoughts have distressed him, resulting in insomnia at night and his health has worsened. He indicates that he is taking medicine more than five times a day to bear the pain.

As corroborating evidence, counsel furnished a psychological evaluation of the applicant's spouse from [REDACTED], Licensed Clinical Psychologist, dated February 8, 2007. [REDACTED] states that the applicant's spouse has poor health that makes overseeing his large company a difficult job. He states that the applicant's spouse has pain all over his body, and suffers from paresthesia on the upper limb on his right side and left lower leg. He states that the applicant's spouse suffers from spasms which keep him in bed. He indicates that the applicant's spouse has a positive history of stroke with left residual vision. [REDACTED] notes that the applicant's spouse has a distant relationship with his children. [REDACTED] states that the applicant's spouse's mental status evaluation revealed a worried, apprehensive and tense individual. He states that the applicant's spouse is physiologically impaired, and suffers from difficulty sleeping, loss of appetite and preoccupation. He states that the applicant's spouse feel very guilty for not taking care of his wife, avoids people, and engages in solitary activities. [REDACTED] notes that the applicant helps in her spouse's business, takes care of him with his poor physical health, and works as a liaison to his children.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Further, the psychological evaluation only lists the applicant's symptoms without providing a diagnosis of his mental health from the Diagnostic and Statistical Manual of Mental Disorders. There is no indication of the applicant's spouse's prognosis and treatment plan. The conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The AAO also finds that the assertions regarding the applicant's physical health are not supported by documentary evidence in the record. The applicant's spouse indicates that he has paralysis on his

left leg and right arm, and chronic pain that affects his daily functions. [REDACTED] states that the applicant's spouse has pain all over his body, and suffers from paresthesia on the upper limb on his right side and left lower leg, and suffers from spasms which keep him in bed. However, no documentary evidence has been provided in relation to the applicant's spouse's medical condition. There is no information on the diagnosis of the applicant's medical condition and the drugs he is taking for treatment. The record does not contain medical progress reports, hospital records, a physician letter, prescription labels, or any other documentary evidence to corroborate the applicant's claims that he suffers from a debilitating and painful medical condition. 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's unsupported assertions are relevant and have been considered, they can be afforded little weight in these proceedings. Therefore, the AAO cannot conclude that the applicant's spouse suffers from a medical condition that, in combination with other factors, would contribute to a finding of extreme hardship.

Furthermore, the AAO will consider financial hardship as a factor in establishing extreme hardship. However, in this particular case, the hardship is not demonstrated by the record. The AAO notes that the applicant's spouse's assertions that he would suffer a financial loss if the applicant is refused admission to the United States are tied, in large part, to his claim of poor health. The applicant's spouse indicates that because of his health, his business and personal life cannot be managed without his wife's involvement. He states that his wife takes him to the doctor and business meetings. Counsel asserts on appeal that it would be costly for the applicant's spouse to hire a professional nurse or aide to help him if the applicant is denied admission. However, these assertions are unsupported by the record as the applicant's spouse has not provided any documentary evidence to demonstrate his medical condition. Further, the applicant's spouse's assertions that the applicant is involved in his business activities are not supported by the record. In the affidavit the applicant's spouse initially filed with the waiver application, he indicated that his wife is the corporate secretary of the business, and handles all of the internal and external business affairs. However, the record does not contain any company records to demonstrate the applicant's position, duties, influence and authority in the company. As noted, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Therefore, the AAO finds that the unsupported assertions, while relevant, can be afforded little weight in these proceedings.

The record contains an attestation the applicant's spouse initially filed with the waiver application, dated October 31, 2005. The applicant's spouse states that his wife's love for her children is so deep and great that they cannot live separated from each other. He states that he has been married to the applicant for 20 years and it is unimaginable to live apart. He indicates that he cannot move to Korea because his children will have problems readjusting. He states that his child, [REDACTED] was 2 years old and [REDACTED] was 8 years old when they moved to the United States. He indicates that they cannot speak Korean and are unfamiliar with the Korean culture. He states that his children will suffer hardship because they will be unable to adjust to the new environment and education. The record contains letters from the applicant's children, [REDACTED] and [REDACTED], filed with the waiver application on December 4, 2006. [REDACTED] states in her letter that the applicant is her biggest

confidant, closest sister, and loudest cheerleader. She states that her family is above all proud to be Americans. She notes that she cannot fathom life elsewhere or life without the applicant by her side. The letter from [REDACTED] states that he is an American. He notes that he grew up in the United States and belongs in the United States. He states that the applicant provides unconditional support and trust to him. He indicates that he cannot possibly imagine doing anything without the love and support the applicant provides him. He states that he cannot live and succeed in Korea, and needs his mother with him in the United States.

The AAO notes that the aforementioned statements address the hardship that the applicant's children would suffer if the applicant were refused admission. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant's child. In the present case, the applicant's spouse is the only qualifying relative under the statute, and the only relatives for whom the hardship determination is permissible.

The AAO finds that the applicant's spouse has failed to demonstrate the extreme hardship that he would face if he accompanied the applicant to South Korea. In *Matter of Cervantes-Gonzalez*, the BIA noted that the respondent's wife spoke Spanish and the majority of her family was originally from the respondent's country of citizenship, Mexico. The BIA stated that based on these factors the respondent's wife "should have less difficulty adjusting to live in a foreign country." The record in the present case shows that the applicant's spouse is a national and citizen of Korea. He became a U.S. permanent resident, when he was 47 years old. Therefore, he should have less difficulty in readjusting to language, culture and residence in Korea. The applicant's spouse indicated he would suffer hardship if he accompanied the applicant to Korea because his children would have problems readjusting in that country. However, he has failed to describe the hardships related to his children's readjustment in Korea. The AAO notes that the applicant's daughter would not necessarily have to accompany her parents to Korea as she is now an adult at 22 years old.

Finally, the applicant's spouse indicates that they cannot remain in the United States without the applicant because of emotional hardship. The AAO recognizes that the applicant's spouse and children will suffer emotionally as a result of separation from the applicant. Their situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. 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. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship

caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *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.