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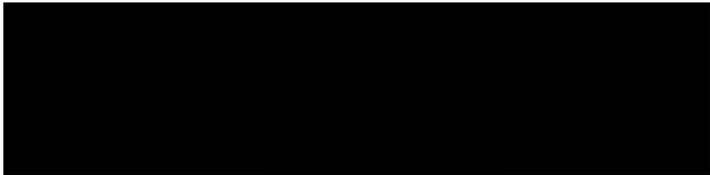
U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



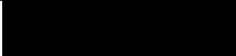
U.S. Citizenship
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Services

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FILE:



Office: WASHINGTON

Date: JUN 15 2009

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.

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, Washington District, located in Fairfax, Virginia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], is a native and citizen of Korea who was found to be inadmissible to the United States pursuant to 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 by fraud or willful misrepresentation.

sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The district director concluded that [REDACTED] had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated April 5, 2006. The district director affirmed the denial on motion, and the applicant submitted a timely appeal.

On appeal, counsel states that [REDACTED] flew from Korea to Los Angeles, California, on October 4, 2002, arriving in Los Angeles under the transit without a visa (TWOV) program on October 4, 2002. From Los Angeles counsel states [REDACTED] flew to Mexico, entering Mexico on October 4, 2002, and later entered the United States from Mexico without inspection. She states that at the time [REDACTED] arrived in Los Angeles on October 4, 2002, she did not seek to immigrate because she was only in Los Angeles in order to transit to Mexico. Counsel states that [REDACTED] inadmissibility charge should be for entering without inspection, which inadmissibility ground has a waiver under section 212(i) of the Act, and provides for adjustment of status under section 245(i) of the Act. Counsel points to previously submitted documentation as well as a recent letter by the Korean Community Service Center of Greater Washington to establish extreme hardship to the applicant's spouse.

The AAO will first address the finding of inadmissibility.

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.

In the denial letter, the district director states that [REDACTED] was refused a nonimmigrant visitors visa on August 30, 2001, because she misrepresented her employment and presented fraudulent employment and tax documents to a consular officer. She states that [REDACTED] obtained a new passport in January 2002 even though her previous passport did not expire until March 2006 and that [REDACTED] used this new passport to enter the United States under the TWOV procedure on October 4, 2002. The director states that the applicant failed to depart from the United States as required under the TWOV program and used the program as a means to eventually immigrate to the United States. Furthermore, the district director states that at the InfoPass appointment on February 22, 2006, Ms. [REDACTED] stated under oath that she entered the United States through Mexico without inspection and had no knowledge of a fraudulent visa. The director states that the applicant's claim in the adjustment of status application, that is to have entered the United States without inspection, is inconsistent with

the information given at her February 9, 2005 adjustment interview. At that interview she claimed to have last entered the United States without inspection on October 1, 2001. The director states that entry without inspection is inconsistent with the evidence submitted indicating that she entered the United States in transit without a visa on October 4, 2002.

The AAO notes that in the adjustment of status application dated February 24, 2003, the applicant indicates that she last entered the United States without inspection on October 1, 2001. The passport contained in the record is issued to [REDACTED] by the Republic of Korea. It has several stamps, including one by the Republic of Korea issued on October 4, 2002 for departure from Korea, one from Mexico issued on the same date, and a third issued by U.S. Immigration Los Angeles. The stamp by the U.S. Immigration Los Angeles shows the applicant as admitted as a transit visitor without a visa on October 4, 2002.

Documentation in the record shows that the applicant made material misrepresentations in order to procure a visa or admission into the United States. [REDACTED] made a false employment claim to a consular officer and presented fraudulent employment and tax documents in support of that claim in an attempt to obtain a nonimmigrant visa. [REDACTED] claimed to have no knowledge of a fraudulent visa at the InfoPass interview.

In light of the aforementioned discussion, the applicant is inadmissible under section 212(a)(6)(C) of the Act for willfully misrepresenting material facts: her employment status in order to obtain a nonimmigrant visa, the fact that she had been refused a nonimmigrant visa so as to gain access to the transit without visa program, her failure to disclose that she had been refused a nonimmigrant visa at the InfoPass interview, and her false claim of last entering the United States on October 1, 2001.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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 waiver under section 212(i) of the Act requires the applicant to show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant or to his or her child is not a consideration under section 212(i) of the Act. Thus, hardship to the applicant and her three lawful permanent resident step-children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's lawful permanent resident spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant’s spouse must be established in the event that he remains in the United States without her, and alternatively, if he joins the applicant to live in Korea. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

██████████ and her husband claim that their family members would experience extreme hardship if they remained in the United States without ██████████. Collectively, the affidavits of the applicant’s husband convey that he has a close relationship with the applicant, whom he met in a restaurant in Korea soon after his first wife abandoned him and his three young children in December 1997. The notarial certificate shows the applicant’s husband divorced his first wife on August 3, 1998. ██████████ states that when he left for the United States the applicant took care of his children for three years in Korea before the children joined him in the United States. ██████████ states that he now works from 10:30 A.M. to 10:30 P.M. and his wife takes care of his children and that she is the only mother they have known. ██████████ asserts in her affidavit dated April 28, 2006, that her step-children were emotionally unstable when they learned that she may need to leave the United States. The Permanent Resident Cards show the applicant’s step-children were born on February 5, 1991; January 25, 1994; and December 21, 1996. ██████████ states that his income as a cook is barely enough to support his family and if his wife leaves the United States he would not be able to afford childcare. Income tax records for 2005 reflect the applicant’s family’s income as \$27,465. A mortgage interest statement reflects a monthly mortgage payment of \$1,502.

The letter dated October 10, 2006, by ██████████ of the Korean Community Service Center of Greater Washington, states that ██████████’s first wife had severely abused their children, especially their oldest daughter. It states that after the divorce ██████████ cohabited with the applicant, who was 12 years his senior, because they knew each other well and the applicant had compassion for the

children. They could not marry in Korea because their age difference was disapproved of by family members. The applicant cared for her future husband's children in Korea from 2000 to 2002 while he was in the United States. When the applicant came to the United States, they married. [REDACTED]

[REDACTED] conveys that the applicant's step-children have a bond with the applicant and that the children indicated they would prefer to live with the applicant in Korea rather than with their father in the United States. [REDACTED] states that [REDACTED]'s oldest step-daughter may have mild developmental delays and that the applicant and her husband convey that it is the oldest daughter who was most traumatized by the birth mother's physical abuse and neglect. [REDACTED] states that he saw his first wife beat their oldest daughter several times even though their daughter had not misbehaved.

[REDACTED] states that the children, especially the oldest daughter, had behavioral problems including stealing minor items from home and from stores, but those problems have been eliminated and the older daughter's academic performance has improved. The oldest daughter requires continued support from her parents to restore basic trust towards her caregiver, states [REDACTED]

[REDACTED] also indicates that [REDACTED] would experience extreme hardship if separated from his wife because of a strong emotional attachment to her that developed after his first wife abandoned him and the children, and because his first wife mistreated him and his children. [REDACTED] states that in accordance with his children's wishes [REDACTED] would allow his children to join their step-mother in Korea, but that the children would either be rejected by [REDACTED] family members because they have already rejected his marriage, or they would be taken away from the applicant by [REDACTED] family members. [REDACTED] states that [REDACTED]'s youngest son would have to confront the reality that his step-mother is not his birth mother if the waiver application were denied. [REDACTED]

[REDACTED] states that [REDACTED] conveys that he would not be able to attend to his children's needs if they remain in the United States with him. Finally, [REDACTED] conveys that [REDACTED] would lose his permanent resident status and the hope of a better life for his children if he returned to Korea, and that [REDACTED] would have difficulty finding suitable employment in Korea because of his age and educational level.

Courts have stated that "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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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).

The AAO finds that the hardship presented if [REDACTED] were to remain in the United States without his spouse is largely emotional in nature. Although [REDACTED] claims that his income would not be sufficient to afford childcare services if he were to remain in the United States without the applicant, the AAO finds that [REDACTED] 18-year-old daughter would be able to assist in the care of her younger siblings, who are now 15 and 12 years old. [REDACTED] emotional hardship would stem primarily from separation from his wife and his concern about the impact her separation would have on his children. [REDACTED] states that his children were mistreated and abandoned by their birth mother, and that they now regard the applicant as their mother. [REDACTED] states that his youngest child believes the applicant to be his birth mother. Further, [REDACTED] states that his emotional hardship would be caused by his inability to attend to his children's needs because his work hours are long, from 10:30 A.M. to 10:30 P.M.

The AAO finds that based on the evidence in the record, the applicant has established that the cumulative emotional effect that family separation would have on her husband, combined with the increased familial burdens that [REDACTED] would face if his wife were removed from the United States, render the hardship in this case beyond that which is normally experienced in most cases of removal. Accordingly, the AAO finds that the applicant has established that her husband would suffer extreme hardship if her waiver application were denied.

In regard to [REDACTED] joining his wife to live in Korea, the record shows that [REDACTED] and his children are lawful permanent residents in the United States. The AAO agrees with [REDACTED] in that [REDACTED] would lose his lawful permanent resident status if he were to join his wife to live in Korea. That loss, the AAO finds, would constitute extreme hardship.

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). In evaluating whether relief is warranted in the exercise of discretion, the factors adverse to the alien may include the nature and underlying circumstances of the removal ground at issue:

[T]he presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must:

[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.

Id. at 300. (Citations omitted). The favorable factor in this matter is the extreme hardship to the applicant's spouse.

The adverse factors in this matter are the applicant's misrepresentation of her employment status to a consular officer in August 2001 so as to obtain a nonimmigrant visa; the applicant's disposal of her passport so as to conceal her inadmissibility under section 212(a)(6)(C) of the Act and avail herself of the transit without visa program on October 4, 2002; the applicant's entry without inspection; her misrepresentation of her last entry into the United States as October 1, 2001 in her adjustment of status application dated February 24, 2003, and at her February 9, 2005 adjustment interview; and the applicant's claim to not have any knowledge of a fraudulent visa application at the InfoPass interview on February 22, 2006.

The record shows that the applicant has repeatedly and flagrantly violated U.S. immigration laws. Accordingly, the AAO finds that the hardship imposed on the applicant's spouse as a result of her inadmissibility fails to outweigh the unfavorable factors in this matter. Therefore, a favorable exercise of the Secretary's discretion is not 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. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.