



U.S. Citizenship
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FILE: [REDACTED]

Office: LOS ANGELES, CA

Date: JUN 30 2009

IN RE: [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:



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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Crissom
Acting 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 a citizen of Korea who applied for a student visa to the United States using a fraudulent Form I-20, Certificate of Eligibility for Nonimmigrant Student Status. The applicant 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). She is the wife of a naturalized U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), dated January 22, 2007.

On appeal, counsel asserts that if the applicant is removed, her husband will suffer extreme hardship due to the cumulative financial and emotional impacts on him.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **In general.** 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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 indicates that the applicant used a fraudulent Form I-20 to obtain the student visa that she used to enter the United States on April 1, 2001. Thus the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case the U.S. citizen husband of the applicant. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or 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 of proceeding contains the following relevant evidence: a brief in support of the appeal; a psychological examination of the applicant’s spouse by [REDACTED] statements by the applicant’s spouse; statements by family and friends of the applicant and her spouse; copies of naturalization, birth and marriage certificates for the applicant and her spouse; and financial documentation, including pay stubs, tax documentation and bills.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, counsel asserts that the applicant’s spouse has close family and social ties in the United States, that the applicant’s spouse is suffering from severe depression, anxiety and grief based on his wife’s exclusion, and that the applicant’s spouse would be unable to afford child care if his wife were not present to take care of their two young children. The applicant’s spouse asserts that his entire family resides in the United States, that he has not resided in Korea since he was seven years old, and that it makes him miserable to think of having to choose between returning to Korea with his wife and leaving his family in the United States or residing in the United States without his wife. The applicant’s spouse also asserts that he is dependent on his wife’s support emotionally, would become distressed mentally and emotionally in her absence, would lose the desire to perform at work, that without his wife’s income he would not be able to meet his household expenses, that he would not be able to afford child care, and that he fears the effect that his wife’s exclusion would have on their young children.

The record contains a psychological evaluation of the applicant's spouse by [REDACTED] In the report, [REDACTED] states that the applicant's spouse is experiencing a great deal of stress over his wife's immigration status, that his wife's exclusion would create extreme financial hardship for him and separation anxiety for the applicant's son, and that asking the applicant's spouse to move to Korea would carry harmful emotional and mental consequences. She further states that the applicant's spouse is unable to consider the choice of moving away from his family in the United States to be with his wife in Korea, or remaining here in the United States without his wife, and that such a choice is causing a deep sadness, and feelings of devastation, loneliness, frequent headaches, stomachaches, loss of appetite and a feeling that life will end. [REDACTED] further notes that these are all symptoms of severe stress. Letters from family and friends of the applicant and her spouse also note the emotional impact on the applicant's spouse based on the impending exclusion of the applicant.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview with the applicant's spouse. Further, the report does not reach a diagnosis concerning the applicant's spouse's mental condition, and, more specifically, fails to find that he is experiencing severe depression, as asserted by counsel. Thus, the report does not support counsel's claim that the applicant's spouse is suffering from severe depression. Moreover, as the conclusions reached in the evaluation are based on a single interview, the AAO finds them to be speculative and of diminished value to a determination of extreme hardship. While the AAO acknowledges that the applicant's spouse will suffer emotionally based on the exclusion of his wife, the record does not establish that his suffering will rise above that normally experienced by the relatives of excluded aliens.

The record also does not contain sufficient documentation to establish that the applicant's spouse will suffer financial hardship based on his wife's exclusion. Although the record contains financial documentation, this evidence is not sufficiently probative of the financial situation of the applicant and her spouse to demonstrate the financial impact of the applicant's removal on her spouse. The applicant's spouse asserts that he will not be able to afford childcare for his children without the applicant's presence in the United States. However, it is unclear what the cost of such childcare services might be and its impact on household expenses. In addition, the record does not establish that the applicant will be unable to obtain employment in Korea and financially her spouse and children if they remain in the United States. As such, the record does not demonstrate that the applicant will experience extreme financial hardship based on the exclusion of the applicant.

The applicant's spouse has stated that he fears that the exclusion of the applicant will have a negative impact on his young children and that his children's hardship will affect him. While the AAO accepts that the applicant's children would be better served with the presence of a complete nuclear family, the applicant's children are not qualifying relatives in this proceeding, and thus hardship to them is not relevant to a determination of extreme hardship except as it relates to the applicant's spouse. The record, however, does not establish, e.g., by the submission of an evaluation of the applicant's spouse performed by a licensed mental health practitioner, how the applicant's children's hardship will affect her spouse. As such, the applicant has failed to establish that her spouse will suffer extreme hardship if she is excluded and he remains in the United States.

As previously discussed, extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. Counsel asserts that the applicant's spouse will not be able to move to Korea with her, as he has resided in the United States for the last 27 years, worked for the same company for the last ten years and does not have a functional understanding of the Korean language. The AAO notes that the applicant's spouse has resided in the United States since he was a young child, lacks Korean language skills and that his family ties are to the United States. Accordingly, it finds the preceding factors, when considered in the aggregate, to establish that the applicant's spouse will experience extreme hardship if he relocates to Korea with the applicant.

However, as the record does not also establish that the applicant's spouse will suffer extreme hardship if he remains in the United States, it does not support a finding that the applicant's husband will face extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's husband will suffer hardship as a result of his wife's inadmissibility. The record, however, does not distinguish his hardship from that experienced by other individuals whose spouses have been excluded from the United States, and therefore does not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

In this case, the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. 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 rests 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.