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U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: SEATTLE, WASHINGTON Date: OCT 29 2009

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:

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).

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Seattle, Washington, 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 South 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 admission into the United States by fraud or willful misrepresentation.

The applicant is the spouse of [REDACTED] a naturalized citizen of the United States. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so as to remain in the United States with her family. The field office director concluded that the applicant 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 Field Office Director, dated May 24, 2007.* The applicant submitted a timely appeal.

Counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. He states that on June 23, 2005, [REDACTED] unsuccessfully attempted to enter the United States on a B-2 nonimmigrant visa at the port-of-entry at Toronto, Canada. He states that [REDACTED] told the inspecting officer that she and [REDACTED], who is now her husband, had a rehearsal marriage ceremony in South Korea for the benefit of her parents, who reside in South Korea. Counsel states that the inspecting officer allowed [REDACTED] to withdraw her admission application. Counsel states that [REDACTED] attempted a second entry into the United States on a B-2 nonimmigrant visa through Toronto, Canada, on June 24, 2006. He states that she and [REDACTED] told the border agent they were returning from their honeymoon in Canada. Counsel states, however, that they did not have a honeymoon because they were not married and he claims that "there was an utter breakdown in communication between the border guard and [REDACTED] and her husband (then boyfriend [REDACTED])." Counsel asserts that the applicant's return airline ticket to Korea has a September 10, 2005 departure date, which proves that [REDACTED] did not have a pre-conceived intent to stay in the United States. Counsel states that since [REDACTED] told the border guard he would follow the border guard's instructions in filing paperwork for the applicant, the border guard granted them entry into the United States. Counsel states that there was no willful misrepresentation, or production of fraudulent or documents of misrepresentation. Counsel claims that "there was a breakdown orally of what was said and what the border guard understood." According to counsel, the applicant and [REDACTED] decided to marry in the United States after learning of the applicant's pregnancy, and they made that decision so [REDACTED] would not need to travel to South Korea to marry and would not have to deal with processing at the U.S. Embassy in Seoul, Korea. The applicant and [REDACTED] married on July 19, 2005 in Kirkland, Washington, and counsel states that not until August 2005, when [REDACTED] filed the immediate relative petition, did [REDACTED] intend to stay in the United States.

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.

U.S. Citizenship and Immigration Services (USCIS) records show that the applicant was unsuccessful in obtaining admission to the United States on June 23, 2005, at the Toronto port of entry as a B-2 nonimmigrant visitor, because the inspecting officer found her to be an intending immigrant without an immigrant visa. At the time, [REDACTED] claimed to be married to [REDACTED], and [REDACTED], in a sworn statement, admitted that it was his intention to file an adjustment of status application for his wife while in the United States. The sworn statement reflects, in part, the following exchange between [REDACTED] and the inspecting officer:

- Q. Is this women [sic] your wife?
A. Yes she is.
Q. What is her citizenship?
A. Her citizenship is S. Korea[.]
Q. Does she have any claim to US citizenship?
A. No[.]
Q. When and were [sic] were [sic] you married?
A. June 11, 2005 in Korea.
Q. What is your wife's current immigration status in the United States?
A. Her status is, she doesn't have any, not yet.
Q. What are her intentions for the future?
A. We are applying for change of status to permanent resident as soon as possible.
Q. Have you currently completed any forms for her adjustment of status?
A. Not yet, we are preparing one.
Q. Is there anything you would like to add to this statement?
A. Yes, just in case were are going to see a marraige [sic] judge in the US, to legalize the marraige [sic] in the US, so we can adjust her status.

The inspecting officer advised [REDACTED] to seek a K-3 visa while outside of the United States or provide proof of the applicant's B-2 nonimmigrant visa status such as her return ticket to Korea and ties to Korea. The applicant was allowed to withdraw her admission application and was served with the Form I-275, Withdrawal of Application for Admission/Consular Notification.

On the next day, June 24, 2005, at the Toronto, Canada, port of entry the applicant and [REDACTED] sought admission into the United States again. They claimed to be newlyweds bound to Seattle, Washington, after a honeymoon in Canada. [REDACTED] told the inspecting officer that he would begin the petition procedure for the applicant upon the applicant's departure from the United States on September 10, 2005. The applicant produced a return airline ticket to Korea purchased on March 31, 2005. Based upon the applicant's testimony and the airline ticket to Korea, the inspecting officer admitted the applicant to the United States.

The AAO agrees with the field officer director's finding of inadmissibility. At the time she sought entry into the United States on June 24, 2005, the applicant and [REDACTED] claimed to be

newlyweds, although they were not married. On July 19, 2005, 24 days after her entry into the United States, the applicant married [REDACTED] and the next month, in August 2005, [REDACTED] filed an immediate relative petition and the applicant filed at the same time an adjustment application. Counsel claims that the applicant's return ticket to Korea demonstrated her intention to return to Korea. The AAO disagrees. In view of the applicant's misrepresentation of her marital status, and in light of her marriage to the applicant within a month of gaining admission into the United States, and the filing of the immediate relative petition and the adjustment of status applicant within a short period after their marriage, the record establishes that applicant is inadmissible under section 212(a)(6)(C) of the Act for willfully misrepresenting the material facts of her marital status and her true intention in coming to the United States so as to procure admission into the United States.

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 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 and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Thus, hardship to the applicant and her U.S. citizen child will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen 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-Morales*, 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 a qualifying relative 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.

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 the applicant, and alternatively, if he joins the applicant to live in South Korea. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

On appeal, counsel states that [REDACTED] relies on his wife to take care of their infant daughter. He states that [REDACTED] is the sole financial provider of his family and that if his wife returned to South Korea his infant daughter would also have to go with her as [REDACTED] lacks the financial resources to provide full-time care for his daughter and support his wife in South Korea. There is no documentation in the record of [REDACTED] income and expenses to establish that he would be unable to both financially support his wife in South Korea and have childcare for his daughter in the United States. Furthermore, there is no documentation demonstrating that his wife would be unable to find gainful employment in South Korea. 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).

With regard to [REDACTED]’s separation from his wife if he were to remain in the United States without her, 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).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent’s bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

Counsel indicates that the applicant is a loving wife and mother. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of family separation. The record

before the AAO, however, fails to establish that the situation of [REDACTED] if he remains in the United States without his wife, rises to the level of extreme hardship. The record is insufficient to show that the emotional hardship to be endured by [REDACTED] is unusual or beyond that which is normally to be expected from an applicant's bar to admission. *See Hassan and Perez, supra.*

Having carefully considered the hardship factors raised, both individually and collectively, the AAO finds that in this case those factors are not sufficient to establish extreme hardship to [REDACTED] if he were to remain in the United States without his wife.

The applicant does not make any claim of extreme hardship to her husband if he were to join her to live in South Korea.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.