

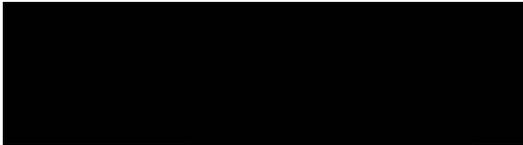
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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services



H2

FILE:



Office: CLEVELAND, OH

Date:

SEP 21 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 Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, Cleveland, Ohio. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 denied.

The applicant 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). The applicant seeks a waiver of his ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director found that the applicant had failed to establish a qualifying family member would experience extreme hardship if the applicant were refused admission into the United States. The Form I-601 was denied accordingly.

On appeal the applicant asserts, through counsel, that his U.S. citizen wife and children will suffer extreme hardship if he is denied admission into the United States and they either remain in the U.S. without him, or they move with him to South Korea.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

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)(1) of the Act provides that:

The Attorney General [now Secretary, Department 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 the applicant was admitted to the United States on August 14, 1994 as an F-1 student to attend Central Missouri State University. On August 21, 1994, he was granted a school transfer to the New York Institute of Technology. He attended classes at the New York Institute of Technology from September 1995 to December 1995. On January 12, 1995, he was granted a school transfer to Cleveland State University. The applicant's Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status, from Cleveland State University reflects that he was scheduled to commence his studies on June 17, 1996. On April 9, 1996, the applicant departed the United States and traveled to South Korea to marry his wife who was then a U.S. lawful permanent resident. On April 26, 1996, the applicant returned to the United States for admission with his F-1 student visa at Honolulu International Airport.

The regulation at 8 C.F.R. § 214.2(f)(4) provides:

An F-1 student returning to the United States from a temporary absence of five months or less may be readmitted for attendance at a Service-approved educational institution, if the student presents: (i) A current SEVIS Form I-20 (or, for readmission prior to August 1, 2003, a current Form I-20ID which was issued prior to January 30, 2003), properly endorsed by the DSO for reentry if there has been no substantive change to the most recent Form I-20 information; or (ii) A new SEVIS Form I-20 (or, for readmission prior to August 1, 2003, a current Form I-20ID which was issued prior to January 30, 2003), if there has been a substantive change in the information on the student's most recent Form I-20 information, such as in the case of a student who has changed the major area of study, *who intends to transfer to another Service approved institution* or who has advanced to a higher level of study. (emphasis added).

Instead of presenting at the port-of-entry a new Form I-20 from Cleveland State University, as required by the cited regulation, the applicant presented the Form I-20 from the New York Institute of Technology, even though he was no longer a student at the institute. The applicant presented the Form I-20 with a forged signature to appear as if it was properly endorsed by the New York Institute of Technology's designated school official (DSO) authorizing his reentry. The record contains an affidavit from the applicant, dated September 9, 1998, in which he states that he allowed his friend in Korea to sign his previous Form I-20 for his admission to the United States. The applicant noted that he did this because when he was in Korea he realized that he forgot to obtain his new Form I-20 from Cleveland State University. The record reflects that during the applicant's sworn testimony before an immigration inspector at Honolulu International Airport, the applicant admitted that he knew having his friend sign the form was fraud. Accordingly, the record supports the District Director's finding that the applicant misrepresented material facts to gain entry into the United States. The applicant has not disputed his inadmissibility on appeal. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.¹

The record reflects that the applicant married his wife on April 21, 1996. The applicant's wife became a naturalized U.S. citizen on February 7, 1997. She is thus a qualifying family member for section 212(i) of the Act purposes. The AAO notes that U.S. citizen and lawful permanent resident children are not included as qualifying relatives for section 212(i) of the Act purposes. Accordingly, hardship to the applicant's U.S. citizen children may only be taken into account insofar as it contributes directly to hardship suffered by the applicant's wife.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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;

¹ The AAO notes that the District Director also found the applicant inadmissible under 212(a)(6)(C)(i) of the Act for concealing the fact that he was returning to the United States to reside with his U.S. citizen spouse. Because the AAO has already found the applicant inadmissible for misrepresentation by attempting to procure entry into the United States by forging a signature on a Form I-20, we will decline to make a determination on this finding of misrepresentation.

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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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 applicant asserts, through counsel, that his wife _____ will suffer extreme emotional and financial hardship if he is denied admission into the United States. In support of his assertion, the applicant submits the following evidence:

A January 11, 2006 affidavit signed by _____ reflecting in pertinent part that she came to the United States in the 1980s with her sister and widowed mother. _____ states that she and the applicant married on April 21, 1996, and that they have two U.S. citizen children, born January 26, 1997 (11 years old) and May 27, 1999 (9 years old). _____ indicates that she has a successful retail clothing business with three stores in Columbus, Ohio, and she states that she and her husband also own a home together. Ms. _____ indicates that she would not return to South Korea with her husband because she has only one brother there; she would be unable to achieve the same level of business success in South Korea; and her children's lives and prospects are brighter in the United States. _____ indicates that she and her children would suffer an emotional void if the applicant did not live with them in the United States. She indicates further that she would suffer emotionally and financially if she had to raise her children and operate her business simultaneously.

A January 11, 2006 affidavit signed by the applicant reflecting that his wife started her retail clothing business in 2002, and stating that by 2004 his wife had three successful stores. The applicant states that he is a vital component in maintaining his family's household and in supporting his wife as relates to her business, and he states that his wife would be unable to raise their children and continue to operate her business at the same time if he were not living with her in the United States. The applicant states that due to the economic situation in South Korea, he would not be in a position to assist his family financially, and he indicates that his children would also suffer if he were not in the U.S. to assist his family.

A psychological report prepared by [REDACTED], of the Jewish Family Services, Center for Victims of Torture, reflecting that [REDACTED] was seen for a psychological evaluation on April 17, 2006. The report states that [REDACTED] suffers from Major Depression, Single Episode, Severe, Chronic, and that she also suffers an Anxiety Disorder Not Otherwise Specified. The report indicates that [REDACTED] would sink into a chronic depressive state if the applicant were deported and were no longer able to help raise his children and to provide for his family's financial security. The report indicates further that [REDACTED] depression is directly related to the stress and uncertainty of her future, and that it is causing her difficulty in parenting her children. The report additionally states that [REDACTED] would benefit from some counseling to help her with her depression.

An article on single parenting and its effect on children, reflecting in general that raising a child on one's own can be very stressful, but that it can also have the benefits of strengthening parenting and family management skills.

2006 articles on South Korea reflecting generally that South Korea is a highly developed, stable, democratic country with a modern economy. The articles indicate that U.S. citizens and the general Korean population may be at risk for harm from terrorists due to their government's participation in the Iraq war. The articles suggest that U.S. citizens in South Korea should be alert to any unusual activity and should report any significant incidences to the local police.

Family photos of the applicant and his wife and children.

The AAO finds, upon review of the all of evidence, that the applicant has failed to establish that his wife would suffer hardship beyond that normally experienced upon removal of a family member if the applicant is denied admission into the United States and she either remains in the U.S., or moves with the applicant to South Korea.

The applicant failed to establish that his wife would suffer extreme emotional and financial hardship if she remained in the U.S. without the applicant, and she had to raise their children alone. The AAO notes that the psychological report submitted on appeal is based on one interview with Ms. [REDACTED]. Neither the report nor the record contain evidence to indicate that [REDACTED] obtained further treatment for her depressive episode or her general anxiety, and the report does not, in and of itself, reflect that [REDACTED] would suffer extreme emotional hardship if the applicant were denied admission into the United States. The general article on single parenting also fails to establish that being a single parent causes extreme emotional hardship. Moreover, the evidence in the record fails to establish that [REDACTED] would be unable to care for, or arrange for childcare if her children remained in the United States with her. The record additionally lacks corroborative evidence to indicate that the applicant helps to financially support his family, or that he is vital to the operation of his wife's business. Accordingly, the applicant failed to establish that his wife would suffer emotional or financial hardship beyond that normally experienced upon removal of a family member, if the applicant's Form I-601 were denied and [REDACTED] remained in the United States.

The applicant additionally indicates that his wife would suffer extreme financial hardship if she returned to South Korea to live with him, because she would be unable to replicate the business success and life style she and her family have in the United States. It is noted that 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.” *Shoostary v. INS*, 39 F.3d 1049, 1051, (9th Cir. 1994.) “The mere showing of economic detriment to qualifying family members is [also] insufficient to warrant a finding of extreme hardship.” *INS v. Jong Ha Wang*, 450 U.S. 139 (1981.) Additionally, the Board held in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, does not rise to the level of extreme hardship. The present record lacks evidence to demonstrate that [REDACTED] would be unable to hire help to run her business in the U.S. if she chose to do so, and the evidence submitted by the applicant concerning the South Korean economy is general and does not establish that the applicant or Ms. [REDACTED] would be unable to find work in South Korea. The AAO notes further that the country condition information submitted by the applicant fails to establish that the applicant’s family would be at significant risk for attacks in South Korea. Moreover, the record indicates that [REDACTED] is familiar with the culture in South Korea as she was born and raised in South Korea, and she married the applicant in South Korea. The applicant has therefore failed to establish that his wife would suffer hardship beyond that normally experienced upon removal of a family member if she moved to South Korea with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant’s spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under sections 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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 establishing that the application merits approval 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.