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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services

H2

[Redacted]

DATE: OCT 24 2011

Office: HONOLULU

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and 1182(h)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Korea who was found 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 having procured a nonimmigrant visa and entry to the United States by fraud or willful misrepresentation. Specifically, in May 2004 and again in May 2005, the applicant procured entry to the United States with a nonimmigrant visitor visa with the intent of engaging in employment at massage parlors. In addition, as the applicant admitted to having performed acts of prostitution while in the United States in 2004 and 2005, the applicant was found to also be inadmissible under section 212(a)(2)(D) of the Act, 8 U.S.C. § 1182(a)(2)(D), for prostitution and commercialized vice. The applicant does not contest the district director's findings of inadmissibility. Rather, she is applying for a waiver of inadmissibility pursuant to sections 212(i) of the Act, 8 U.S.C. § 1182(i) and 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her U.S. citizen spouse.

The district director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 1, 2009.

Section 212(a)(2) states in pertinent part:

(D) Prostitution and commercialized vice.

Any alien who-

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status [is inadmissible].

....

(F) Waiver authorized.- For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

Section 212(h) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of [subparagraph] . . . (D) of subsection (a)(2) . . . if-

....

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

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

- (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:

- (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 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 (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...

Waivers of inadmissibility under sections 212(i) and 212(h) of the Act are dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the applicant's spouse's financial clients can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's U.S. citizen spouse contends that he will suffer emotional hardship were he to remain in the United States while his spouse relocates abroad due to her inadmissibility. In a declaration, the applicant's spouse states that it is his hope and dream to start a family but were he to be separated from his wife, he would not be able to start a family, thereby causing him hardship. *Declaration from* [REDACTED] dated April 1, 2008. The applicant's spouse's father further details that as a Christian, a husband is not supposed to live apart from his wife and long-term separation from the applicant would cause his son hardship. *Letter from* [REDACTED] dated June 26, 2009. Said declarations from the applicant's spouse and father-in-law fail to establish that the emotional hardships the applicant's spouse contends he would experience were his wife to relocate abroad are beyond the common results of removal or inadmissibility.

With respect to relocating abroad to reside with the applicant due to her inadmissibility, the applicant's spouse asserts that he is in the process of establishing his career with New York Life Insurance and were he to relocate abroad, he would experience career disruption. He also contends that he would experience emotional hardship as a result of the guilt he would experience in leaving the clients who depend on him for financial expertise. Further, the applicant's spouse asserts that his immediate family resides in Honolulu and he has no ties to Korea and long-term separation from his family and community and his unfamiliarity with the language would cause him hardship. Further, the applicant's spouse explains that he is the son of the pastor of his church and were he to relocate abroad, he would not be able to perform his religious duties. Finally, the applicant's spouse asserts that as a foreigner in Korea, he would be subject to racial inequality and prejudice. *Supra* at 1-2.

With respect to the emotional hardship referenced with respect to long-term separation from his immediate relatives, his church, his community and his gainful employment, it has not been established that said hardships are beyond the common results of removal or inadmissibility. It has not been established that the applicant's spouse's immediate relatives would not be able to visit him in Korea or alternatively, that the applicant's spouse would be unable to return to the United States regularly to visit his immediate relatives. Nor has it been established that the applicant's spouse would not be able to practice his religion and perform his religious duties while in Korea. Further, it has not been established that the applicant's spouse's client would be unable to receive financial advice from other advisors, thereby alleviating the guilt referenced by the applicant's spouse with respect to relocating abroad.

As for the career disruption referenced by the applicant's spouse in regards to relocating abroad, no supporting documentation has been provided establishing that the applicant's spouse would not be able to obtain gainful employment in Korea. Although a letter has been provided establishing that New York Life in Korea does not have a position available for the applicant's spouse, it has not been established that other companies in Korea would be unable to employ him. Finally, in regards to the applicant's spouse's assertion that he will be subject to racial inequality and prejudice in Korea due to his Filipino ethnicity, the record does not contain documentary evidence to support this assertion. The AAO notes that articles in Korean on this topic with English translations were submitted, but the specific sources, authorship, and publication dates of the articles were not clear from the record, and these documents will therefore be accorded little weight. The evidence on the record does not

establish that the applicant's spouse would face any specific hardship in Korea based on his ethnicity.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. 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 and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.