



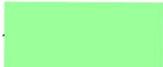
U.S. Citizenship
and Immigration
Services

(b)(6)

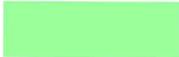


DATE: **SEP 10 2013**

OFFICE: HONOLULU, HAWAII

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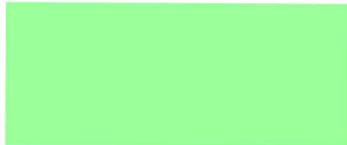
IN RE:

Applicant: 

APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The waiver application was denied by the Field Office Director, Honolulu, Hawaii and 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 to be inadmissible to the United States pursuant to section 212(a)(2)(D)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D)(i), for engaging in prostitution, and section 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The record indicates that the applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. § 1182(h) and § 1182(i), in order to reside in the United States.

The field office director concluded 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. *See Decision of the Field Office Director*, dated September 19, 2012.

On appeal, counsel asserts that the field office director failed to evaluate the applicant's recent testimony that she never entered the United States with the intent of engaging in prostitution, and failed to evaluate significant evidence which establishes that if a waiver is not granted, the applicant's spouse will suffer extreme hardship. *See Form I-290B, Notice of Appeal or Motion*, received October 19, 2012.

The record contains, but is not limited to: Form I-290B and counsel's statement thereon; various immigration applications and petitions; hardship declarations from the applicant's spouse; a letter from the applicant's criminal attorney; a psychologist's letter; letters from the applicant's spouse's employer and coworker; professional credentials; Korea country conditions information; birth and marriage records and family photos; financial records; documents related to the denials of the applicant's earlier waiver application and appeal; earlier letters of character reference and support; and documents related to the applicant being a material witness in a criminal prosecution. The entire record was reviewed and considered in rendering this decision on the appeal.

The record contains evidence showing that the applicant admitted to having received money for sex while working at [REDACTED] in San Francisco, California, where, on June 30, 2005, she was present during the service of a search warrant and taken into Immigration and Customs Enforcement (ICE) custody for immigration violations. A Notice to Appear served on the applicant on July 2, 2005, charged her with engaging in unauthorized employment for wages or other compensation on June 30, 2005, and placed in removal proceedings. Proceedings were deferred so that the applicant could serve as a material witness in the prosecution of the owner of [REDACTED]. The record shows that during an interview with ICE on July 2, 2005, the applicant stated that she entered the United States in May 2004 and May 2005 specifically to work at massage parlors. On June 1, 2009, the district director found that the applicant stated that she

entered the United States in May 2004 and on May 10, 2005 to work at massage parlors. Based on the foregoing, the district director found the applicant inadmissible under section 212(a)(2)(D)(i) of the Act, for engaging in prostitution, and under section 212(a)(6)(C)(i) of the Act for misrepresentation as she entered the United States with the intention of engaging in employment in violation of the terms of her B-2 nonimmigrant visa. The applicant appealed, but her then counsel of record did not contest either ground of inadmissibility in the appeal, which was dismissed by the AAO on October 24, 2011.

On February 13, 2012, a second Form I-601 was filed. It was denied on September 19, 2012 by the field office director who found that the applicant stated she had entered the United States in May 2004 and on May 10, 2005 for the purpose of working at massage parlors. On appeal, current counsel asserts that the applicant testified during her May 2012 adjustment interview that she entered the United States three times and on none of these occasions did she do so to engage in prostitution. It is noted that the applicant's Form I-601 lists only two entries, one on May 10, 2005 at San Francisco, and another on an undesignated date at Honolulu, both with B-2 visas. A review of the record confirms that during her May 22, 2012 interview the applicant testified that she entered the United States on three occasions: on May 5, 2004 as a B-2 visitor, remaining until September 4, 2004, a period during which she worked at [REDACTED], which she avers was not a massage parlor; on December 15, 2004 as a B-2 visitor, remaining until February 2005, a period during which she intended to marry her then boyfriend and did not engage in any employment in the United States; and on May 10, 2005 as a B-2 visitor, still intending to marry her then boyfriend, but later, after splitting from him, engaging in employment at [REDACTED], where she claims she worked a total of two weeks during which the establishment was raided by ICE. Counsel contends on appeal that this testimony was ignored by the field office director. Counsel does not, however, address on appeal why it is only now that the applicant contests the findings on numerous occasions by ICE and USCIS that she is inadmissible under sections 212(a)(2)(D)(i) and 212(a)(6)(C)(i) of the Act, or why the applicant has never before challenged the accuracy of her prior statements and other evidence showing that she entered the United States in May 2004 and May 2005 for the purpose of working at massage parlors in violation of the terms of her B-2 nonimmigrant visas, and that she was involved in prostitution during her employment at those massage parlors. The AAO cannot ignore that the record of the applicant's testimony during her May 2012 interview is materially inconsistent with all previous statements and evidence, and the applicant has not sufficiently addressed these inconsistencies. For example, the applicant's July 2, 2005 testimony was recorded as follows, in pertinent part:

[REDACTED] first entered the U.S. in May of 2004, on a direct flight from Korea to San Francisco with a visitor visa. [REDACTED] stated that she came to the US specifically to work at massage parlors. [REDACTED] stated that she arranged for travel to the U.S. through a broker, named [REDACTED] or "[REDACTED]." [REDACTED] stated that [REDACTED] travels back and forth between Korea and Los Angeles, and that she first met [REDACTED] in Korea. [REDACTED] helped [REDACTED] arrange her travel to the U.S. and set [REDACTED] up with a job at the [REDACTED] prior to her arrival in the U.S. For his services [REDACTED] charged \$2,000, which [REDACTED] paid up front in Korea.

[REDACTED] returned to Korea in December of 2004.

returned to the U.S. in May of 2005, on a direct flight from Korea to San Francisco. stated that she bought her ticket herself this time, using her original passport and visitor visa that she acquired for her 2004 trip. She again stated that she entered the U.S. specifically to work at massage parlors. stated this time, arranged for to work at when she arrived in the U.S.

stated that at she was paid \$50 per customer, of which she kept \$20 and \$30 went to management. stated that at , she engaged in sex with customers for money.

Also, the application for issuance of a material arrest warrant for the applicant in the case of *United States v. Young Joon Yang*, submitted by the applicant's former counsel, contains the following information:

(1) worked at three separate massage parlors known to be fronts for prostitution, of which at least one, , was a part-owner; and (2) Court-authorized wire interceptions reveal numerous phone conversations between and in which the discuss: problems between a manager and employees of , the number of customers at , transportation to various massage parlors known to be fronts for prostitution, and how to deposit thousands of dollars in cash in specific bank accounts.

The affidavit supporting the application for a material witness warrant states that the information was obtained over the course of two months, from May through June 2005, based on numerous intercepted phone conversations.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the applicant has submitted a new factual account, she has not sufficiently reconciled this account with past statements and other evidence in the record. Accordingly, the AAO will not disturb previous determinations that the applicant is inadmissible under sections 212(a)(2)(D)(i) and 212(a)(6)(C)(i) of the Act. She requires a waiver under sections 212(h) and 212(i) of the Act.

A waiver of inadmissibility under sections 212(h) and 212(i) of the Act is 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. Hardship to the applicant and her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is her only 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 32-year-old spouse is a U.S. citizen who asserts separation-related extreme hardship of an emotional/psychological nature. He states that he has become very depressed and unstable, including suicidal thoughts, because he has built his life around the applicant and their 3-year-old daughter from whom he now faces separation. [REDACTED] diagnoses the applicant's spouse with major depressive disorder and writes that he has referred him to a local psychiatrist for psychotropic medication. No documentary evidence has been submitted to demonstrate that the applicant's spouse has consulted a psychiatrist or was prescribed psychotropic medication, nor has the effect of any such treatment been addressed. 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)). [REDACTED] avers that separation would impact the applicant's spouse considerably as he comes from a fundamentalist Christian background and does not believe in multiple marriages. The possibility of the applicant's spouse visiting the applicant in Korea is not addressed in the letter. The applicant's spouse indicates that his work has suffered as a result of depression and his employer has recently given him a performance warning. A managing partner's letter confirms that the applicant's spouse was placed on performance warning because his numbers have not been up to standard.

The AAO acknowledges that separation from the applicant would cause various difficulties for the applicant's spouse. However, we find the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that he would lose his current employment through which he earns more than \$116,000 annually plus medical and dental insurance. He maintains that because he is unable to speak, read or write the Korean language, he could not attain licensure as an insurance agent or securities broker in Korea and thus would be unable to earn sufficient income to support himself and his family. While the applicant's spouse may not earn the same salary in Korea he does in the United States, no documentary evidence in the record demonstrates that he would be unable to secure employment therein or support his family in the event he decides to relocate. The applicant's spouse explains that he has resided in the United States since he was 2 years of age, has close family ties to his parents and brother in the United States, and no family ties to Korea. He adds that the thought of relocation depresses him as he would be separated not only from family and friends but from his clients who depend on him and those in his church for whom he serves as an assistant pastor. The applicant's spouse writes that there is only one English-speaking mental health professional in Korea and that Koreans have largely resisted western psychotherapy. Supporting internet printouts from the American Consulate in Seoul and a *New York Times* article have been submitted. He thus avers that cultural

barriers would affect his health care. The applicant's spouse states that he and his daughter would be discriminated against in Korea as he is of Filipino descent and she is of mixed ethnicity. Counsel references a 2007 United Nations report and related *Korea Joongang Daily* article which indicate that Korea has long emphasized ethnic homogeneity, and discrimination against foreigners and multiethnic children is widespread. In its report the United Nations committee also welcomed the Korean government's adoption of a National Action Plan for the Promotion and Protection of Human Rights, the Act on the Treatment of Foreigners in Korea, the establishment of the Interpretation Support Center for Foreign Migrant Workers, and the Educational Support Plan for Children from Multicultural Families.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including readjusting to a country in which he has never resided and does not speak, read or write the language; his lengthy residence in the United States since he was 2 years old; his close family ties to his young daughter, his parents, and his brother; his close community, church and business ties as demonstrated by multiple letters of character reference and support; the loss of his steady employment in the United States of significant salary and employer-provided benefits; and his asserted economic, employment, health-related, and ethnic discrimination-related concerns about Korea. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Korea to be with her.

Although the applicant has demonstrated that her qualifying relative spouse would experience extreme hardship were he to relocate to Korea to join her, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to a qualifying relative in this case. Accordingly, the applicant has not established that he is statutorily eligible for a waiver under sections 212(h) and 212(i) of the Act.

Even were we to find extreme hardship, the applicant has not demonstrated that she warrants a favorable exercise of discretion. The record reflects serious immigration violations by the applicant, showing a lack of candor and her involvement in prostitution. Her current account of her past actions, which manifests material inconsistency with past statements and other evidence without reconciling that inconsistency, downplays her misdeeds rather than demonstrating genuine remorse and rehabilitation. While we would consider hardship to the applicant's husband as significant positive factor in a discretionary determination, the negative weight we must give to the applicant's violations would outweigh it absent persuasive evidence showing that the applicant has taken responsibility for her actions and been rehabilitated.

(b)(6)

NON-PRECEDENT DECISION

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In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.