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

[redacted]

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FILE: [redacted] Office: PORTLAND, OREGON Date: DEC 27 2010

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:

[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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Portland, Oregon. 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 the South Korea who applied for adjustment of status on June 4, 2007 and was interviewed by an immigration officer on January 7, 2008. He has been found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for making false statements on his non-immigrant visa application in 1994. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130), and his wife, a United States citizen, is his petitioner. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in an "extreme hardship" to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated August 25, 2008.

On appeal, the applicant's attorney provided a Motion to Reopen/Reconsider in support of the applicant's appeal. In the motion, the applicant's attorney asserted that the qualifying spouse has been living in the United States for 36 years, that she is 63 years old, nearing retirement and "unemployable in Korea." The applicant's attorney also asserted that the qualifying spouse would lose her retirement benefits and medical benefits, if she were to relocate to Korea. Moreover, the applicant's attorney indicated that the qualifying spouse suffers from diabetes, high blood pressure and high cholesterol. He further contended that the qualifying spouse would not be able to afford the expensive prescription drugs she takes, currently paid for by Medicare, if she were to move to Korea. Lastly, the applicant's attorney asserts that the qualifying spouse has no family members in Korea who could help to support her, aside from her mother and mother-in-law who are elderly.

The record contains the following evidence; the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), a Motion to Reopen/Reconsider, affidavits from the qualifying spouse and applicant, a letter from the qualifying spouse's doctor, a marriage certificate, a copy of the qualifying spouse's social security check, tax returns, Form I-130 and an Application to Register Permanent Residence or Adjust Status (Form I-485), as well as the accompanying materials submitted in conjunction with the application. The entire record was reviewed and considered in rendering a decision on the appeal.

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, in pertinent part:

> (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.

A waiver of inadmissibility under section 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. The applicant's wife is the only qualifying relative in this case. 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-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at

811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ([redacted] was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to the Phillipines, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-,* 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In the present case, the record reflects that the applicant applied for a non-immigrant visa in of 1994. In that application, the applicant indicated that he was married to [redacted]' and that his occupation was a "Ship's Officer/Real Estate Agent." However, the biographic information (Form G-325A), which the applicant signed and dated, indicated that he had never been married to So-Hyun Park and did not list her as a former wife with the two former wives that he listed, and that he was Merchant Sailor. The applicant's attorney did not contest the issue of the applicant's inadmissibility. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act to the United States for making false statements on his non-immigrant visa application in 1994.

The applicant's qualifying relative is his wife, and as aforementioned, his Form I-130 has already been approved.

The evidence provided which specifically relates to the applicant's hardship includes Form I-601, Form I-290B, a Motion to Reopen/Reconsider, affidavits from the qualifying spouse and applicant, a letter from the qualifying spouse's doctor, a copy of the qualifying spouse's social security check, tax returns and Form I-485 with the accompanying materials submitted in

conjunction with the application. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant's attorney provided a Motion to Reopen/Reconsider in support of the applicant's appeal which detailed the hardships that the qualifying spouse would encounter if she were to relocate to Korea. The applicant's attorney asserted that the qualifying spouse has been living in the United States for 36 years, that she is 63 years old, nearing retirement and "unemployable in Korea." Further, the applicant's attorney contended that the qualifying spouse would lose her retirement and medical benefits, if she were to relocate to Korea. The applicant's attorney also indicates that the qualifying spouse suffers from diabetes, high blood pressure and high cholesterol, and that she would not be able to afford the expensive prescription drugs she takes, currently paid for by Medicare, if she were to move to Korea. Lastly, the applicant's attorney asserts that the qualifying spouse has no family members in Korea who could help to support them.

Although the qualifying spouse's separation from the applicant may cause her hardships if she were to remain in the United States and the applicant were to return to Korea due to his admissibility, there is very little evidence in the record to demonstrate the hardships that she may encounter. The only hardships alleged in this instance can be found in the qualifying spouse's affidavit wherein she indicates that she suffers from diabetes, high blood pressure and high cholesterol and that she relies on prescription medicine. The record contains a letter from the qualifying spouse's doctor which confirms that she is being treated for such health issues and that she is taking several prescription medicines. However, the treating physician's letter fails to describe the exact nature and severity of the qualifying spouse's conditions, the nature of the treatment she is receiving from the doctor or the family assistance needed, if any. As such, the AAO is not in the position to reach conclusions concerning the severity of her medical conditions or the treatment she needs, and whether such conditions would pose an extreme hardship to the applicant's spouse if she is separated from the applicant. As such, the applicant failed to demonstrate that his wife will suffer extreme hardship as a result of the waiver being denied.

The AAO likewise finds that the applicant has not met his burden in showing that his spouse would suffer extreme hardship if she relocated to Korea. The record contains no documentation regarding country conditions in Korea, particularly in the location where the applicant and his spouse would likely reside. The applicant's attorney asserted that the applicant's qualifying spouse is 63 years old, nearing retirement and "unemployable in Korea." However, other than assertions made by counsel, the applicant and the qualifying spouse, there was no evidence, such as country condition evidence, to support that the applicant's spouse would be unable to work or find work in Korea. Likewise, the applicant's attorney also indicated that the qualifying spouse would not be able to afford the expensive prescription drugs she takes, currently paid for by Medicare, if she were to move to Korea. However, there was no documentary evidence provided to show that she is currently being covered by Medicare or that she would be unable to afford her medicine in Korea. The applicant's attorney also asserted that the qualifying spouse has no family members in Korea who could help to support them. However, there was also no proof of such assertions. While the assertions made by the applicant's attorney, the applicant and the qualifying spouse are evidence and have been considered, going on record without supporting documentary

evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). Further, the applicant's attorney contends that the qualifying spouse would lose her retirement benefits, if she were to relocate to Korea. The record includes evidentiary support that the applicant's wife receives social security benefits. However, the record fails to demonstrate that the applicant would face a hardship if she were unable to receive such benefits due to relocation to Korea.

Lastly, the applicant's attorney indicates that the qualifying spouse has lived in the United States for 36 years. There is evidence in the record to support the qualifying spouse's length of stay in the United States. We do find her length of stay to be a hardship for the applicant, if she were to relocate. Nonetheless, we do not consider this hardship by itself to be enough to make a finding that the applicant's spouse would encounter extreme hardship if she were to relocate to Korea.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. 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.