

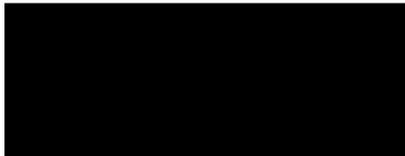
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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



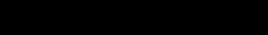
U.S. Citizenship  
and Immigration  
Services



715

FILE:  Office: BANGKOK, THAILAND  
(SEOUL, SOUTH KOREA)

Date: FEB 28 2011

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) and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Bangkok, Thailand. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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), for attempting to procure entry into the United States by fraud or the willful misrepresentation of a material fact and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) and section 212(a)(9)(B)(v) of the Act, in order to reside in the United States with her United States citizen spouse, parents and child.

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 September 9, 2008.

On appeal, counsel asserts that the applicant's husband, her parents and her daughter would suffer extreme emotional and financial hardship if the applicant's waiver application is denied. *See Form I-290B*, dated October 2, 2008, and the accompanying brief in support of the appeal.

The record includes, but is not limited to, counsel's brief in support of the appeal, dated October 8, 2008, a letter from counsel in support of the Form I-601 waiver, dated January 18, 2008, an undated statement from the applicant's husband, a copy of a report from [REDACTED] regarding the applicant's husband, dated November 7, 2007, copies of U.S. Individual Income Tax returns for the applicant and her husband, for the years from 2000 to 2004, copies of medical report from [REDACTED] regarding the applicant's mother, copies of medical reports including diagnostic tests and prescriptions for the applicant's step-father, dated in 2006 and 2007, an undated statement from the applicant's daughter, [REDACTED] a copy of a Lease Extension and Modification Agreement signed by the applicant's husband and [REDACTED] for [REDACTED] a copy of a mortgage statement from National City Mortgage Company, supportive statements from family and friends, and copies of Internet News Articles on the situation of the housing market in the United States, accessed on January 7 and 9, 2008. The entire record was reviewed and considered in rendering this decision on the appeal.

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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the [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 [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....

Section 212(a)(9) of the Act provides in pertinent part:

(B) Aliens Unlawfully Present -

(i) In general

Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver

The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present case, the record reflects that the applicant first entered the United States as a Lawful Permanent Resident on [REDACTED] 1980. The applicant voluntarily departed the United States in 1993 for South Korea. The record reflects that on August 1, 1994, the applicant completed a Form I-407, Abandonment of Lawful Permanent Resident Status, abandoning her lawful permanent resident status in the United States. In April 1999, the applicant submitted an application at the United States Embassy in Seoul, South Korea, for a B1/B2 non-immigrant visa to travel to the United States. The applicant submitted fraudulent employment and tax information in support of the application. The Consular Officer found that the applicant has committed fraud and denied her visa application. In May 1999, the applicant entered the United States without being inspected and admitted or paroled. The applicant was arrested and placed in removal proceedings. On July 16, 2000, the applicant

married her husband, [REDACTED], a United States citizen in Salem, Oregon. On January 29, 2004, the applicant's husband filed a Form I-130 on the applicant's behalf. On September 4, 2004, the applicant departed the United States pursuant to a voluntary departure order by the Immigration Judge. On May 10, 2007, the Form I-130 was approved. On January 24, 2008, the applicant filed a Form I-601 waiver. On September 9, 2008, the District Director denied the Form I-601, finding that the applicant failed to demonstrate extreme hardship to a qualifying relative.

The record reflects that on January 2, 2004, the applicant executed a Sworn Statement admitting that she committed fraud or the willful misrepresentation of a material fact in order to obtain a visa to travel to the United States and that she was unlawfully present in the United States from May 1999 until her departure on September 4, 2004. The applicant does not dispute that she is inadmissible under section 212(a)(6)(C)(i) and section 212(a)(9)(B)(i)(II) of the Act. Since the criteria for a waiver of both section 212(i) and section 212(a)(9)(B)(v) are the same, only one hardship analysis is necessary.

A waiver of inadmissibility under section (212)(i) or 212(a)(9)(B)(v) 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 or her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband and parents are the only qualifying relatives 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-Morales*, 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) (“Mr. Arrieta 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 Mexico, 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 this case, the record reflects that the applicant’s husband, [REDACTED] is a 57-year-old native of South Korea and citizen of the United States. The applicant and her husband have one child. The applicant’s spouse states that he is suffering extreme emotional and financial hardship as a result of family separation and the denial of the applicant’s waiver request.

Regarding the emotional and financial hardship of separation, the applicant’s spouse states that he needs the applicant to come back to the United States so that she can help take care of their daughter, [REDACTED]. The applicant’s spouse states that he was unhappy when his previous marriage ended in divorce, but that his marriage to the applicant brought him happiness, however, because of

separation from the applicant, his happiness "is going away again." The applicant's spouse states that it is difficult for him to take care of their daughter and work 10 hours a day and that he cannot ask the applicant's parents for help because "their health is not good." See *Undated Statement from*

Counsel asserts that the applicant's mother and step-father are elderly and that they have significant health problems, including blindness for the applicant's step-father. He states that the applicant's spouse is the only relative close by to help them with various activities of daily living, such as grooming, preparation of medicines, trips out of the residence and preparation for bathing for the applicant's step-father, and that this demand on the applicant's spouse has created hardship for him that would be alleviated if the applicant were allowed to return to the United States to assist her husband and her parents. *Counsel's Brief in Support of the Appeal*, dated October 8, 2008. Counsel asserts that the applicant's spouse works long hours managing their restaurant business in order to make money to take care of their financial responsibilities, which include child support for his children from a previous marriage, college tuition for his older child, and other family expenses, which leaves him little time to care for their youngest child, [REDACTED]. Counsel asserts that the applicant's spouse is beginning to feel overwhelmed with all the responsibilities and that he exhibits some clinical signs of depression. *Letter from Counsel*, dated January 16, 2008. Counsel also asserts that the applicant and her spouse operated a successful restaurant business, that they managed the business together, however, since the applicant's departure from the United States in 2004, her spouse was forced to hire additional employees which has cut into the revenue realized from the business. See *Letter from Counsel*, dated January 16, 2008, and *Counsel's Brief in Support of the Appeal*, dated October 8, 2008.

The record contains copies of medical records for the applicant's mother and step-father, a copy of a court order showing that the applicant's spouse pays \$600.00 a month for child support, a copy of a report from [REDACTED] dated December 19, 2007, regarding the applicant's spouse, a copy of a lease extension and modification agreement for the restaurant, and a copy of a mortgage statement from National City Mortgage Company regarding the applicant and her spouse's residence in Lake Oswego, Oregon.

The AAO acknowledges that separation from the applicant may have caused various difficulties for the applicant's spouse, however, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the applicant's spouse, when considered cumulatively, meet the extreme hardship standard. The record contains a report from [REDACTED] stating that the applicant's husband has some clinical indication of depression due to his "social structure." [REDACTED] notes that the applicant's husband drinks six cans of beer every night and that he smokes about one-half to one pack of cigarettes per day. [REDACTED] states that the applicant's husband's dependency on alcohol and smoking are harmful to his health, that many people are dependent on his presence, and that he has discussed with him the physical and emotional effects of alcohol and smoking to his health. [REDACTED] concludes that the main physical problems for the applicant's spouse are "due to the difficult social situation he is in, which needs to be resolved in a most efficient way to make all members of his family happy." [REDACTED] recommends further testing for the applicant's spouse to establish a baseline of liver function so as to detect any alcohol induced hepatitis early enough, and

that if his depressive condition does not get better, he might need some counseling with a psychologist.

The AAO notes that the record does not contain any documentation that would support the report by Dr. [REDACTED] concerning the applicant's spouse's mental health and physical health. The report does not clearly demonstrate that separation from the applicant has resulted in emotional or physical hardship to her spouse. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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)). Additionally, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment by [REDACTED] is based on one interview with the applicant's husband. In that the conclusions reached in the submitted assessment are based solely on this single interview of the applicant's husband, the AAO does not find the report to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the report speculative and diminishing its value to a determination of extreme hardship. Although the record contains medical reports pertaining to the applicant's parent's medical condition, the reports do not show that the parents need constant care and that the applicant's spouse is the only one who can provide such care, and that the burden of giving the care has caused extreme hardship to the applicant's spouse. While the applicant's spouse claims financial hardship, the record does not contain detailed information on the family's income and expenses to demonstrate that separation from the applicant has resulted in extreme financial hardship to her spouse. Without such documentation, the AAO cannot conclude that family separation has caused extreme financial hardship to the applicant's spouse. Finally, hardship that the applicant's daughter, [REDACTED] faces as a result of family separation is not calculated in the extreme hardship analysis, except to the extent that the hardship impacts the applicant's spouse. Here, the applicant has failed to demonstrate such hardship to her spouse. Accordingly, the AAO finds that the applicant has failed to demonstrate that the challenges her husband faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship.

Regarding relocation, counsel asserts that the applicant's spouse has family ties and a business in the United States, and that if he is forced to relocate to South Korea to be with the applicant, his family will be negatively impacted, and he would be leaving behind a business that allows him to provide for his family; that it would be very difficult for him to obtain employment in South Korea that will allow him to utilize his specialized skills in Sushi preparation or find an adequate replacement job; and that the financial impact on the applicant's spouse would "not only create a severe hardship for him, but the ripple effect would impact 2-3 other U.S. citizens who are employed at the restaurant and [his children]." Additionally, counsel asserts that the applicant's spouse would be unable to sell his home or business or even rent them out because of the deteriorating housing market in the United States, thereby resulting in financial hardship to the applicant's spouse. *Counsel's Brief in Support of the Appeal*, dated October 8, 2008.

Counsel also asserts that the applicant's spouse would be concerned that [REDACTED] who was born in the United States and has lived all her life here, would have difficulties adjusting to life in South Korea. Additionally, counsel asserts that if the applicant is relocated to South Korea, there will be no other

relatives close by to take care of the applicant's mother and step-father and their health will deteriorate more. *Letter from Counsel*, dated January 16, 2008. The record contains various news articles on the status of the housing market in Oregon.

The AAO notes that the applicant's spouse has resided in the United States for some time and has family ties here, the record however does not contain country condition information on South Korea to demonstrate that the applicant's spouse will not be able to find employment there. There is no evidence in the record showing the applicant's living conditions in South Korea, or otherwise demonstrating the conditions that the applicant's spouse is likely to face if he moves there. There is no evidence to demonstrate that relocation to South Korea would result in severe problems for the applicant's child or that the applicant's spouse would experience extreme emotional hardship because of their child's struggle to adapt to the conditions in South Korea. Thus, based on the record before it, the AAO finds that the applicant has failed to establish that relocation to South Korea would result in extreme hardship to her spouse.

In sum, although the applicant's spouse claims hardships based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.