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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

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Date:

Office: CHICAGO FILE:



NOV 14 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)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of South Korea who was 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 misrepresentations regarding her marital status in her Petition for Alien Relative (Form I-130) application, filed December 15, 1989.¹ The applicant is the beneficiary of an approved Form I-130. 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 with her qualifying spouse and family.

In a decision dated June 22, 2009, the Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 22, 2009.

On appeal, the applicant submitted a brief in support of her waiver application. The applicant asserted that she is not inadmissible because her material misrepresentations were not willful. The applicant states in her appeal brief that her home and family are in the United States and that separating from them at her age, after having lived with them for all her life, would cause a "strong hardship." There were no claims made regarding any additional hardships that the qualifying spouse would face or any additional evidence to support the waiver application provided on appeal.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), an appeal brief written by the applicant, copies of the applicant's and qualifying spouse's passports, a copy of the qualifying spouse's permanent resident card, tax returns, affidavits from the applicant and the qualifying spouse, affidavits from their three children, identification documents for their children indicating that they are United States citizens, photographs, financial documentation, a copy of their Korean family census register and other documentation submitted in conjunction with the Application to Adjust Status (Form I-485).

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 AAO notes that the applicant's inadmissibility for misrepresenting a material fact when she applied for a nonimmigrant visa in Seoul, Korea in 1983 was waived in a decision dated July 16, 1993.

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 husband 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-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-I-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.

In the present case, the record reflects that the applicant made misrepresentations regarding her marital status on her Form I-130 filed December 15, 1989, and during her application for an immigrant visa, stating that she was married to the petitioner when she was not. The applicant provided a brief wherein she contends that the agent who helped her and the qualifying spouse advised them to say they were married during their consular interview despite their divorce in the United States. She further states that the same agent who told her to tell the U.S. consular officers that she was married, later told her to file for a divorce and then remarry in Korea and then to file another petition. Although she states that she believed that this was the “right way,” the record indicates that the applicant and her husband had divorced in the United States and had not remarried each other at the time she applied for an immigrant visa as his spouse, and she has not established that this misrepresentation was not willful. As such, there is insufficient evidence to prove that her misrepresentations were not willful. When an applicant is seeking waiver of inadmissibility, the burden of proof is always on the applicant to establish by a preponderance of the evidence that she is not inadmissible. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. INA § 291; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). The applicant has not provided any evidence to support her claim that she did not seek to procure an immigrant visa and admission to the United States by misrepresenting her marital status, and she is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant's qualifying relative is her husband, who is a lawful permanent resident. The documentation provided that specifically relates to the qualifying spouse's hardship includes Form I-601, Form I-290B, an appeal brief, affidavits from the applicant and the qualifying spouse, identification documents for their children indicating that they are United States citizens, financial documentation and documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO finds that the applicant has failed to establish that her qualifying spouse will suffer extreme hardship as a consequence of being separated from her. In his affidavit, the qualifying spouse asserts that the applicant is his "life-long friend" and "irreplaceable soul mate," and that his "heart will be stricken with unexplainable sadness" thinking that he let this happen to her. However, other than indicating that the applicant and qualifying spouse have a very close and lengthy relationship, and that the qualifying spouse would experience sadness, the record failed to provide sufficient detail to demonstrate the types of emotional hardships that the qualifying spouse would face if he remained in the United States without the applicant. Assertions are evidence and will be considered. However, 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 qualifying spouse, in his affidavit, mainly focuses on the hardships to his children if the applicant were to return to Korea, which are only relevant to the extent that their hardships affect him. The record also contains letters from the applicant and qualifying spouse's children describing the hardships that they would face upon their separation from the applicant. However, there was no evidence provided regarding how the children's hardships would cause hardship to the qualifying spouse.

The applicant also failed to establish that the qualifying spouse would experience hardship upon relocation to Korea. In his affidavit, the qualifying spouse indicates that he would suffer financially upon relocation because he stated that he would "not be able to make a living" and that the economy is "terrible" there. However, the record contains no evidence regarding country conditions in Korea to support such assertions. As previously stated, 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* at 165. Further, in a sworn statement made by the qualifying spouse on June 4, 2009, he indicates that he owns two investment properties in Korea, a property in the United States and two cars, all of which have been paid off. The qualifying spouse also indicated that his mother gave him a million dollars. Further, one of the applicant's daughter's, [REDACTED] indicated in her letter that the applicant and qualifying spouse's dry cleaning business is "mainly managed by my younger sister and me." As such, it is unclear how the qualifying spouse would suffer financially by relocating to Korea with a safety net of income and his family members running his business. Further, in his sworn statement, the qualifying spouse indicates that he has family in Korea, including his mother and brother. As such, the applicant has not met her burden of demonstrating that her qualifying spouse will suffer extreme hardship in the event that he relocates to Korea with her.

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 her qualifying 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.