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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



#5

DATE: **SEP 27 2011**

Office: ATLANTA, GA

FILE:

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:



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 Field Office Director, Atlanta, Georgia. The matter 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 obtaining an immigration benefit through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is the spouse of a United States citizen and the father of a United States citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated May 21, 2009.

On appeal, counsel asserts that the applicant's spouse has been experiencing physical and mental hardship. *Form I-290B, Notice of Appeal or Motion*, dated June 19, 2009; *see also letter from counsel*, dated June 19, 2009.

The record includes, but is not limited to, letters from counsel; statements from the applicant, his spouse, his father and his mother-in-law; a statement from the applicant's pastor; copies of medical records relating to the applicant's spouse; copies of the applicant's father's mortgage statements; copies of tax returns and W-2 Wage and Tax Statements relating to the applicant's spouse; bank statements; copies of an automobile insurance policy and statements; and documentation relating to the applicant's procurement of F-1 student status in the United States. The entire record was reviewed and all relevant evidence considered in reaching a 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.

The record reflects that the applicant obtained F-1 student status based on the submission of fraudulent Form I-20s and supporting documentation. On appeal, the applicant asserts that he consulted an agent to help him change his status and that he was unaware that the agent had submitted false information on his behalf. The applicant contends that he did not intend to misrepresent himself or to commit any fraud in obtaining his immigration benefit.

The AAO notes that the fact that the applicant seeks to change his status through an agent does not insulate him from liability for misrepresentations made by the agent on his behalf if he was aware of the actions being taken by the agent in furtherance of his application to change status. *See Department of*

State Foreign Affairs Manual, § 40.63 N4.5 (CT: VISA-998; 08-26-2008). In this case, the record reflects that the applicant signed all the fraudulent Form I-120s that were submitted to obtain his student status. As a result, the applicant's signature on these forms is proof of his knowledge of the agent's actions. Accordingly, the AAO finds the applicant to have obtained an immigration benefit under the Act through fraud or the willful misrepresentation of a material fact and to be barred from admission to the United States under section 212(a)(6)(C)(i) of the Act.

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 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. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 United States Citizenship and Immigration Services (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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel asserts that the applicant’s spouse has been experiencing physical and mental hardship as a result of the denial of the applicant’s waiver request. Counsel asserts that the applicant’s spouse has been diagnosed with insomnia, depression, anorexia, and hair and weight loss, as well as post partum depression. He also asserts that the applicant’s spouse has been referred to a specialist for her depression. The applicant’s spouse asserts that since receiving the Field Office Director’s denial notice, she has been suffering from insomnia and depression; that she has had a hard time breast-feeding her child, which makes her feel unqualified as a mother; that she often cries worrying about her family and that she occasionally goes to the doctor for advice and medication.

In support of these assertions, the record contains a copy of New Patient History/Examination Record prepared by [REDACTED] dated June 19, 2009, relating to the applicant’s spouse. The record, indicates that the applicant’s spouse who delivered a baby girl four months before the visit, is experiencing

insomnia, mood swings, somnolence, and anorexia and that she has lost ten pounds. [REDACTED] indicates that the applicant's spouse's symptoms may be related to post partum depression, and she wants to try psychotherapy. The record also contains a Primary Care Physician Referral Form prepared by [REDACTED] referring the applicant's spouse to a psychologist and indicating the basis for referral as depressive mood.

The AAO notes the applicant's spouse's claims regarding the physical, emotional and psychological impacts she has experienced as a result of her concerns regarding her potential separation from the applicant. However, while the input of any health professional is respected and valued, we find [REDACTED] report to be of limited use in determining the physical or emotional impacts of the applicant's inadmissibility on his spouse. We note that the medical records appear to indicate that [REDACTED] notations are based on a first-time interview with the applicant's spouse and, further, consists of brief, handwritten notations that offer no information concerning the severity of the symptoms he notes, how they are affecting the applicant's spouse and how long, if related to post partum depression, they can be expected to persist. As a result, there is little information for the AAO to be able to reach any conclusions as to whether the symptoms and conditions described would result in extreme hardship for the applicant's spouse if the applicant is removed.

The applicant's father asserts that he is too old to work, and that he needs the applicant because he is the only one he can depend on. The applicant's father asserts that the applicant has been providing him with financial support and that he would not be able to survive without it.

The AAO notes the claims by the applicant's father. However, the applicant fails to provide evidence to establish that his father is a qualifying relative. Although the applicant indicates his father is a Lawful Permanent Resident, the record does not contain documentation to establish this status. As the applicant has failed to establish that his father is a qualifying relative, the AAO will not consider claims of hardship from the applicant's father.

Based on our review of the record, the AAO finds that the claimed hardship factors, even when considered in the aggregate, fail to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and she continues to reside in the United States without the applicant.

The applicant has not addressed the hardships that his spouse would face if she returned to South Korea to live with him. In the absence of clear assertions from the applicant, the AAO may not speculate as to what hardships, if any, his spouse would encounter in South Korea. Therefore the record does not demonstrate that the applicant's spouse would experience hardship upon relocation to South Korea.

Accordingly, the AAO finds that the record does not contain sufficient evidence to establish the applicant's eligibility for a waiver of inadmissibility under section 212(i) of the Act. Having found him statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* 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.