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



U.S. Citizenship  
and Immigration  
Services



HLS

DATE: AUG 21 2012

OFFICE: PHILADELPHIA, PA

FILE: 

IN RE: 

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 PETITIONER:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal was rejected by the AAO as untimely on June 7, 2012, and the matter was returned to the director for consideration as a motion to reopen or motion to reconsider. The AAO now moves to reopen the matter *sua sponte* based on submission of evidence that the appeal was timely filed. The June 7, 2012, AAO decision will be withdrawn. The appeal will be dismissed, and the I-601 application denied.

The applicant is a native and citizen of the Republic of Korea (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 procuring admission into the United States by willfully misrepresenting a material fact. The applicant's mother is a U.S. citizen, and the applicant is the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that he may remain in the United States with his mother and family.

In a decision dated March 31, 2010, the director determined the applicant had failed to establish that his U.S. citizen mother would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that his mother would experience emotional, physical and financial hardship if he were denied admission into the United States. In support of the assertions, counsel submits letters from the applicant's mother and brother, medical and financial information, and a letter from his mother's pastor. 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 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 on February 4, 1994, the applicant applied for a B1 visitor visa by submitting fraudulent documentation and by making material misrepresentations during his nonimmigrant visa interview. The applicant used the B1 visa on April 30, 1994, to gain admission into the United States. He has remained in the country since that time. The applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for procuring a visa and admission into the United States by willfully misrepresenting a material fact. Counsel does not contest the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

- (1) The [Secretary] may, in the discretion of the [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 [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(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 U.S. citizen mother is his qualifying relative under section 212(i) of the Act.

The record reflects the applicant's mother is a 77 year-old widow who became a naturalized U.S. citizen in 2008. The applicant's mother states in a letter that she lives with the applicant and his family; she cannot live alone due to her age, health, and forgetfulness; she receives a total of \$477 a month in Social Security and state benefits; she relies on the applicant to support her financially; and she also relies on the applicant to pick up her medication and take her to church and to doctor appointments. She would have to move into a nursing home if the applicant moved to South Korea. She also believes that dual citizenship is not recognized in South Korea and that she lost her South Korean citizenship when she became a naturalized U.S. citizen. As a result she is unsure she would be allowed to move to South Korea with the applicant and his family. She states further that she would have no medical care in South Korea, nursing homes are rare, she would be a financial burden to the applicant and his family, and her U.S. citizen grandchildren's anxiety about relocating to South Korea causes her sadness.

Bank statements corroborate the applicant's mother's statements about her income and address. Medical evidence reflects the applicant's mother takes several medications and that she has hyperthyroidism, hypertension, hypercholesterolemia, gastritis, fasting glucose intolerance, poor memory, and low back pain. Her doctor states that it would be dangerous for the applicant's mother to live on her own, due to her memory problems and physical condition. He recommends against her traveling to South Korea, and he recommends nursing-home care in the event the applicant is unable to care for his mother.

Letters from a pastor and from the applicant's brother indicate the applicant's mother lives with the applicant, and that the applicant and his family help her with her medication and with her daily routines. The applicant's brother also states that his mother is unable to live on her own because she cannot drive, has no short term memory, and does not remember to take her medication. He

and his wife would be unable to care for their mother in the applicant's absence, because they own a diner and are at the diner "24/7."

Upon review, the AAO finds that the evidence in the record fails to establish that the hardships faced by the applicant's mother, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship if the applicant were denied admission and she remained in the United States. Although the evidence reflects the applicant brings her to doctor's appointments and church and helps her remember to take medication, the record does not corroborate the assertion that the applicant and his family are the only persons able to provide such assistance to his mother. Claims that the applicant's brother and his wife are unable to care for their mother because they own a diner and must be there all of the time are uncorroborated. Furthermore, the evidence in the record fails to address how other living arrangements, such as a nursing home, would cause the applicant's mother to experience extreme hardship.

The cumulative evidence also fails to establish that the applicant's mother would experience hardship that rises above that normally experienced upon removal or inadmissibility if she moved with the applicant to South Korea. The record lacks documentary evidence to corroborate assertions that the applicant's mother would experience medical hardship either by traveling to or living in South Korea. Country-conditions information reflects western-style medical facilities are available in South Korea, and that hospitals there generally have state-of-the-art diagnostic and therapeutic equipment. See U.S. Department of State, Republic of Korea, Country Specific Information, [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1018.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1018.html). This report notes no economic problems in South Korea, and the record lacks evidence to corroborate assertions that the applicant's mother would experience financial hardship if she relocated with the applicant and his family to South Korea. The claim that the applicant's mother lost her South Korean citizenship by becoming a naturalized U.S. citizen is also uncorroborated, and the AAO notes that South Korea passed legislation in April 2010 that allows dual citizenship. *Id.*

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.