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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**

H5

[REDACTED]

Date: FEB 07 2012

Office: LOS ANGELES, CALIFORNIA
(SANTA ANA, CALIFORNIA)

FILE: [REDACTED]

IN RE:

Applicant: [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.

Thank you,

Perry Rhew for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted. The previous decision of the AAO will be withdrawn. The waiver application will be approved.

The applicant is a native and citizen of Korea who applied for a student visa to the United States using a fraudulent Form I-20, Certificate of Eligibility for Nonimmigrant Student Status. On October 10, 2006, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On January 22, 2007, the District Director denied the applicant's Form I-601, finding the applicant had entered the United States by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative. *Decision of the District Director*, dated January 22, 2007. On February 26, 2007, the applicant, through counsel, filed an appeal of the District Director's decision with the AAO. On June 30, 2009, the AAO dismissed the applicant's appeal. On or about July 29, 2009, the applicant, through counsel, filed a motion to reopen and reconsider the AAO's decision.

In its June 30, 2009, decision, the AAO found that the applicant had failed to demonstrate extreme hardship to a qualifying relative under section 212(i) of the Act. Although the AAO noted that the applicant had established that her United States citizen husband would experience extreme hardship if he relocated to Korea, it also observed that the applicant had failed to address how her spouse would be affected if he remained in the United States without her. On motion, the applicant, through counsel, asserts that her husband will suffer extreme hardship if he remains in the United States and submits evidence in support of her claim. According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The record in support of the applicant's motion includes, but is not limited to, counsel's brief in support of the motion to reopen; a statement from the applicant; payroll statements for the applicant's husband; birth certificates for the applicant's children; household and utility bills; mortgage documents; insurance documents; an article on childcare in California; and articles on salaries, expenditures, and renting property in Korea. The entire record was reviewed and all relevant evidence considered in rendering this decision.

As the applicant, through counsel, has submitted new documentary evidence to support her claim, the motion to reopen will be granted.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) In general.-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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (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...

In the present case, the record indicates that on or about March 8, 2001, the applicant filed a Certificate for Eligibility for Nonimmigrant Student Status (Form I-20). On April 1, 2001, the applicant entered the United States as an F-1 student. The consular officer in Seoul, Korea, determined that the Form I-20 was fraudulent. As a result, the student visa was revoked on February 6, 2002.

In counsel's brief in support of the applicant's motion to reopen, dated August 7, 2009, counsel claims that even if the I-20 submitted by the applicant was fraudulent, she "was entirely ignorant of this fact, and as such, did not (and could not) have any fraudulent intent when she submitted the I-20." Counsel states that an associate of the applicant's father prepared her Form I-20, and the applicant would not have submitted the I-20 if she knew that it was fraudulent.

The AAO finds counsel's contention that the applicant is not inadmissible to the United States for willfully misrepresenting a material fact to be unpersuasive. The AAO observes that in waiver proceedings the burden of proof is on the applicant to establish admissibility. See section 291 of the Act, 8 U.S.C. § 1361. As noted above, the record establishes that the applicant submitted a fraudulent Form I-20 in order to obtain a student visa. The AAO notes that in the applicant's Form I-601, she stated that she "accept[s] [her] responsibility for not thoroughly checking the procedures in getting the Form I-20 and applying for [an] F-1 visa. By carelessly and recklessly using such a Form I-20 without learning the details of applying for admission into the school and getting the Form I-20 directly from the school, [she] committed or at least participated in making [a] fraudulent misrepresentation to the United States consular officer." Additionally, the AAO notes that the applicant had previously filed Form I-20's to attend school in the United States, and therefore, she had knowledge of the proper procedure to file a Form I-20. Further, the AAO notes that there is not sufficient evidence in the record to support finding that the applicant had no knowledge that she was submitting a fraudulent Form I-20. The AAO also notes that there is no evidence in the record that the applicant attempted to attend the school listed in the Form I-20. Given that the applicant failed to provide evidence to support her claim that she was unaware of the document fraud, the AAO finds that the applicant's misrepresentation was willful. Accordingly, the AAO finds that the applicant is inadmissible under

section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to seek admission into the United States.

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 the applicant or her children 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 Service (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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 of Immigration Appeals (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 determined in its June 30, 2009 decision that the applicant demonstrated that her spouse would suffer extreme hardship if he joined the applicant in Korea. The AAO affirms its previous finding with respect to hardship to the applicant's spouse if he joined the applicant in Korea.

As noted above, the record in support of the applicant's motion includes counsel's brief in support of the motion to reopen; a statement from the applicant; insurance and mortgage documents; utility and household bills; a birth certificate for the applicant's daughter; payroll statements for the applicant's husband; and articles on childcare in California, renting property in Korea, and salaries and expenditures in Korea.

Counsel states that the applicant's husband is suffering from "extreme anxiety and depression." In a psychological evaluation dated March 21, 2007, [REDACTED] states the applicant's husband is experiencing stress over the applicant's immigration status. Counsel states that the applicant's husband's mental health has "progressively become worse as [the applicant's] case has progressed." [REDACTED] indicates that if the applicant's husband were to remain in the United States without the applicant, the applicant's husband's level of anxiety will increase. Additionally, [REDACTED] states that the applicant's husband will suffer extreme financial hardship which "will perpetuate his pre-existing anxiety." [REDACTED] reports that the applicant's husband cannot imagine being separated from the applicant. He states that the applicant's husband is exhibiting symptoms of severe stress, including but not limited to, sadness, "a feeling that life will end, loneliness, [and] physical reactions such as frequent headaches, stomachaches, loss of appetite, and high temperature." [REDACTED] states that there is concern that the applicant's husband may develop severe anxiety. In a statement dated September 15, 2006, the applicant's husband states his son will suffer emotional hardship by being separated from the applicant. He states his son's "hardship will give [him] hardship." While the applicant's son is not a qualifying relative for the purposes of a section 212(i) waiver proceeding, the AAO notes the impact on the applicant's son of being separated from his mother. The AAO acknowledges that the applicant's husband and son may suffer some emotional problems in being separated from the applicant.

Counsel claims that the applicant's "departure to Korea would have a devastating financial impact on her husband." Counsel states that the applicant's husband's monthly income is \$4,581, while the family's total monthly expenses are \$5,237. The AAO notes that counsel submitted payroll statements for the applicant's husband and household and utility bills in support of her claim. Counsel states that the applicant's husband is "currently the sole source of income for the family...and the couple has been unable to make ends meet having a net monthly loss of \$656." Counsel states the applicant stays at home and is the primary caregiver for her two children, who are 21 months and 5 years old. Counsel claims that if the applicant returns to Korea, her husband would have to pay "\$1,651 per month for childcare services." The AAO notes the financial concerns of the applicant's husband regarding having to obtain childcare for his children. Counsel states the applicant can expect to earn in Korea approximately \$1,825 a month, and "the couple's net monthly loss would be raised to \$2,307." The AAO notes that the applicant submitted an article on salaries in Korea. Counsel states that the applicant and her husband "do not have sufficient income/savings to pay the significant cash deposit that will be required for [the applicant] to rent an apartment in Korea, such a deposit ranging from approximately \$41,889 to \$163,558." The AAO notes that the applicant submitted an article on renting property in Korea. However, other than the payroll statements for the applicant's husband, no documentation has been submitted establishing the applicant's lack of savings.

The AAO notes that there is no documentary evidence in the record establishing that the applicant would be unable to obtain employment in Korea and, thereby, financially assist her husband from outside the United States. However, considering the applicant's spouse's hardships in the aggregate, specifically his mental health issues; financial issues; and raising his children without the assistance of the applicant, the AAO finds the record to establish that the applicant's husband would face extreme hardship if he remained in the United States in her absence. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(i) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the

alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant’s misrepresentation, and her periods of unlawful presence and employment in the United States. The favorable and mitigating factors are the applicant’s United States citizen spouse and children, the extreme hardship to her husband if she were refused admission, and the absence of a criminal record.

The AAO finds that the violations committed by the applicant were serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the AAO will withdraw its prior decision and the waiver application will be approved.

ORDER: The prior decision of the AAO is withdrawn. The waiver application is approved.