

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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H5

DATE: NOV 01 2012      OFFICE: SANTA ANA, CA      FILE: [REDACTED]

IN RE: [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]  
[REDACTED]  
[REDACTED]  
[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  
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, Santa Ana, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 procuring a nonimmigrant visa by willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his spouse.

In a decision dated March 3, 2011, the director determined the applicant had willfully misrepresented a material fact on his nonimmigrant visa application in 2006 by answering “no” to questions asking whether his wife or children were in the United States. The director also determined that the applicant failed to establish his U.S. citizen spouse would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

On appeal, counsel contests that the applicant willfully misrepresented a material fact on his nonimmigrant visa application. Counsel indicates that although the applicant knew his children and then-wife had traveled to the United States in 2004 and had not returned to South Korea, he had little contact with them and did not know whether they were in the United States when he filled out his nonimmigrant visa application. Counsel asserts further that the nonimmigrant visa application question pertaining to the location of the applicant’s wife and children was confusing and grammatically incorrect, consisting of two distinct questions: one asking whether certain family members were in the United States, and one asking whether these family members were U.S. citizens or legal permanent residents. This required the applicant to guess which question was being asked, in violation of his due process rights under the Constitution. Counsel asserts that the applicant’s answers were technically correct, in that he correctly answered his wife and children were not U.S. citizens or legal permanent residents. Moreover, counsel asserts that the applicant’s “no” response to a question concerning whether his wife and children were in the United States is not material for nonimmigrant visa determination purposes, because such individuals could not file immigrant visa petitions on the applicant’s behalf. In the event the applicant is found to be inadmissible under section 212(a)(6)(C)(i) of the Act, counsel asserts that new evidence establishes the applicant’s wife would experience extreme hardship in the United States and in South Korea if the applicant were denied admission into the United States.

Counsel submits copies of the former and current nonimmigrant visa applications; letters from the applicant, his wife and step-daughter; medical evidence; and a psychological evaluation to support his assertions. 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.

A misrepresentation is generally material only if by it, the alien would or did receive an immigration benefit for which she or he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759; 108 S. Ct. 1537 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). The willful misrepresentation of a material fact must be made to an authorized official of the government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. *See Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961).

The record contains Form DS-156, the nonimmigrant visa application completed and signed by the applicant on January 10, 2006. Question 37 asks:

Are any of The Following Persons in The U.S., or Do They Have U.S. Legal Permanent Residence or U.S. Citizenship? Mark YES or NO and indicate that person's status in the U.S. (i.e., U.S. legal permanent resident, U.S. citizen, visiting, studying, working, etc.).

Although the record reflects that the applicant knew his ex-wife and children traveled to the United States in 2004 and remained in the country, the applicant answered "no" to question 37, with regard to his wife and children. No explanations were provided.

The AAO finds the assertion that the applicant did not willfully misrepresent a material fact on his nonimmigrant visa application to be unconvincing. The AAO finds that question 37 clearly lists three categories of family members to whom the question pertains: 1) persons in the United States, 2) persons in the United States who are U.S. legal permanent residents, and 3) persons in the United States who are U.S. citizens. Though it is a compound question, it clearly refers to specific family members in any of these three categories. Furthermore, the question clearly requires a written explanation about the family member's presence and immigration status in the United States and lists examples to show that it refers not only to U.S. citizen and legal permanent resident family members, but also to family members who are "visiting, studying, working, etc." in the United States.

The record also fails to corroborate assertions that the applicant's response to this question is not material. As noted above, question 37 refers specifically to certain listed family members in the United States and asks for clarification of the immigration status of such family members. The AAO finds further that knowledge that the applicant's wife and children were living in the United States may reasonably have affected a determination regarding the applicant's nonimmigrant intent and whether he was eligible for a nonimmigrant visa.

Upon review of the totality of the evidence, the AAO finds the record supports the director's conclusion that the applicant procured a nonimmigrant visa in 2006 by willful and material misrepresentation. The applicant thus failed to overcome the finding that he is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

- (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 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. 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, supra* 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 spouse is his qualifying relative under section 212(i) of the Act.*

Letters written by the applicant’s wife reflect she married and came to the United States at the age of [REDACTED], she has been in the United States for nearly thirty years, and she has two U.S. citizen daughters from her first marriage. A death certificate corroborates her statement that her first husband committed suicide in [REDACTED]. The applicant’s wife feels the suicide is her fault. As a result she has become depressed and unable to sleep without medication. She also became lonely and suicidal after her daughters moved to New York in 2006. After she met the applicant in November 2006, her emotional condition improved as their relationship developed. She fears she “won’t be able to take it” if she loses the applicant to deportation. Although she was born in South Korea, she feels she has nothing there; her home, business and family are here; and she could not leave her daughters in the United States. In addition, she indicates that she is at high risk for a stroke or heart attack, and she also has a stomach ulcer condition. She is on medication for her conditions, but she believes only the applicant would assist her if she needed to go to the hospital.

*With regard to his wife’s hardship, the applicant writes that his wife was suicidal when he met her. Though her condition has improved, she is not cured. She has recently become more dependent on sleeping pills, because she fears he will be deported. She needs to be in the United States where she has lived for over thirty years, and where her daughters and business are.*

A letter from the applicant’s stepdaughter attests to her mother’s depression, states her mother became happier and interested in life after meeting the applicant, and expresses fear that her mother will become depressed again if the applicant is removed from the United States.

A psychological evaluation reflects the applicant's wife has been diagnosed with recurrent and severe major depressive disorder "with psychotic features" and generalized anxiety disorder. The applicant's wife "has not been making progress due to the severity of her symptoms." She has been prescribed anti-depressant and insomnia medication. Medical evidence reflects the applicant's wife has been prescribed various medications between 2006 and 2011 for insomnia and depression. The therapist states her mental health will likely "continue to deteriorate without the emotional, physical and financial support" of the applicant. Treatment and therapy on an as-needed basis is recommended, and the applicant's wife was referred to a psychiatrist. The therapist concludes that relocation to South Korea would be detrimental to the applicant's wife's mental condition, because the applicant's wife's fears moving there based on concerns that she would leave her daughters, community, and business behind, and her belief that North and South Korea could go to war.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes that the applicant's wife would experience emotional and medical hardship beyond that normally experienced upon removal or inadmissibility, if she remains in the United States, separated from the applicant. The applicant's wife lost her first husband to suicide, and because she suffers from recurrent and severe depression, she takes anti-depressant and insomnia medication. She fears she would be unable to handle the loss of the applicant. Her psychological evaluation reflects that her mental health condition would likely deteriorate without the applicant's presence and support. The cumulative evidence establishes hardship that rises above that normally experienced upon removal or inadmissibility.

The cumulative evidence also establishes the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission into the United States and she relocated to South Korea to be with him. Although the applicant's wife is originally from South Korea, she has been in the United States for most of her life. Her daughters were born and raised in the United States, and the applicant's wife indicates she has no ties in South Korea. She fears moving there. The applicant's wife suffers from recurrent and severe depression, and a therapist states that relocation to South Korea would be detrimental to her mental condition. The cumulative evidence establishes hardship that rises above that normally experienced upon removal or inadmissibility.

The AAO finds further that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien 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(i) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 s/he is excluded and/or 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The unfavorable factors in this matter are the applicant's 2006 procurement of a nonimmigrant visa by willfully misrepresenting a material fact on his nonimmigrant visa application. The favorable factors are the hardship the applicant's wife and family would face if the applicant is denied admission into the United States, letters attesting to the applicant's good character, and the applicant's lack of a criminal record. The AAO finds that although the immigration violation committed by the applicant is very serious in nature and cannot be condoned, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met his burden of proving eligibility for a waiver of his ground of inadmissibility pursuant to section 212(i) of the Act. The Form I-601 appeal will therefore be sustained.

**ORDER:** The appeal is sustained.