

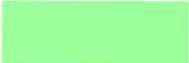


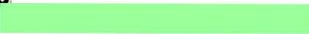
U.S. Citizenship  
and Immigration  
Services

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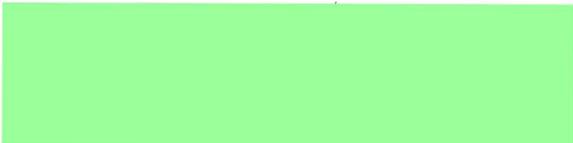
Date: Office: LOS ANGELES, CA

FILE: 

**JUN 21 2013**  
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 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 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The applicant filed a motion to reopen the AAO decision, which was rejected as untimely filed. The matter is again before the AAO on motion. The motion will be granted, the previous motion will be accepted as timely filed and the AAO will consider the motion on its merits. The underlying application will remain denied.

The applicant is a native and citizen of 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 having attempted to procure admission into the United States by fraud or willful misrepresentation on September 20, 1994 when an Alien Relative Petition (Form I-130), Application to Register Permanent Residence or Adjust Status (Form I-485), and supporting documents based on a fictitious marriage were filed. The applicant is married to a lawful permanent resident and has a U.S. citizen daughter. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In a decision dated December 12, 2007, the field office director found that the assertions provided by the applicant's spouse and the evidence in the record did not support a finding that the applicant's spouse would experience extreme hardship as a result of the applicant's removal.

In an undated Notice of Appeal to the AAO (Form I-290B), counsel stated that there had been no adequate finding of fraud in the applicant's case. She stated that the applicant had no knowledge of an application filed on his behalf that was based on a fraudulent marriage. Counsel also stated that the applicant did not know the spouse who allegedly filed the petition nor did he know the attorney who filed the petition. Counsel stated further that the applicant was never informed of the basis for the conclusion that he filed a petition for an immigration benefit based on a fraudulent marriage nor was he given the opportunity to rebut the information.

On appeal, the AAO found that the applicant was inadmissible under section 204(c) of the Act for having sought immediate relative status as the spouse of a U.S. citizen by reason of a marriage that was entered into for the purposes of evading immigration laws. We then found that because the Act provided no waiver for an applicant in violation of section 204(c) of the Act no purpose would be served in discussing his eligibility for a waiver under section 212(i) of the Act.

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.

Section 204(c) of the Act provides that:

[N]o petition shall be approved if (1) the alien has previously . . . sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General [now Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The corresponding regulation at 8 C.F.R. § 204.2(a)(1)(ii) states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

On motion, counsel states again that the applicant had no knowledge of an application filed on his behalf that was based on a fraudulent marriage. Counsel states that the applicant did not know the petitioner who allegedly filed the petition nor did he know the attorney who filed the petition. Counsel states again that the applicant was never given the opportunity to rebut the derogatory information regarding the 1994 filing. Counsel also states that the applicant's family register, submitted in 1994, was not translated in its entirety and thus, failed to show his current marriage and children. Counsel states that the applicant was unaware of this incorrect translation. Finally, counsel states that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility.

We now find that the record does not contain evidence that the applicant previously entered into or attempted or conspired to enter into a fraudulent marriage and the applicant is not in violation of section 204(c) of the Act. While the applicant submitted fraudulent documentation to establish a 1994 marriage to a U.S. citizen, that marriage was a fiction, an invention of the fraudulent documents he submitted.

The Board of Immigration Appeals (BIA) in *Matter of Concepcion*, 16 I&N Dec. 10 (BIA 1976) and *Matter of Anselmo*, 16 I&N Dec. 152 (BIA 1977) found that where no marriage has taken place in connection with the filing of a prior immediate relative petition, section 204(c) is not applicable. We note that both decisions were issued prior to the amendment of section 204(c) by the Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537, which added subsection (2), but find the holdings articulated in *Concepcion* and *Anselmo* – that a fictitious marriage is not marriage fraud

under section 204(c) of the Act – to be relevant to the case before us. The BIA has determined that to constitute marriage fraud there must be evidence in the record to indicate that an alien previously conspired to enter into a fraudulent marriage. *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988). Marriage fraud has been found in cases where the record includes an admission by the beneficiary or the former spouse that he or she colluded to evade U.S. immigration laws, where the former spouse was paid to marry the beneficiary, where the marriage was never consummated, where the spouses never cohabited and where the spouses never presented themselves to family and friends as being married. See *Ghaly v. INS*, 48 F.3d 1426 (7<sup>th</sup> Cir. 1995); *Salas-Velazquez v. INS*, 34 F.2d 705 (9<sup>th</sup> Cir. 1994); *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975). In the present case, the record fails to indicate either that the applicant married the petitioner of the Form I-130 filed in 1994 or that he attempted or conspired to do so. Accordingly, we conclude that the record contains insufficient evidence to invoke section 204(c) of the Act and we withdraw our previous finding in this regard.

However, we affirm the field office director's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission into the United States or a benefit under the Act by willful misrepresentation

As stated in our previous decision, the record indicates that on September 20, 1994 a Form I-130 was filed on the applicant's behalf by a [REDACTED]. At the same time, a Form I-485, based on the fictitious marriage, was filed by the applicant. The Form I-130, which is documented in the record, states that the applicant and [REDACTED] were married on August 22, 1994. Submitted in support of the Form I-130 and Form I-485 is a copy of the applicant's Korean passport and I-94 card showing an entry into the United States on December 31, 1989. Also included in the record is a family register from Korea, dated July 22, 1994, stating that the applicant was born on October 15, 1947 and that he married a [REDACTED] on January 10, 1974 who died on June 18, 1978, and that he had no children. The record includes a fraudulent certificate of marriage from the County of Nassau, New York, which states that the applicant and a [REDACTED] were married on August 23, 1994. The AAO notes that the record indicates that the Form I-130 and Form I-485 were denied on April 5, 1996 because the applicant and his U.S. citizen spouse failed to appear for an interview on February 7, 1995.

The applicant's current Form I-130, filed by his daughter on December 26, 2006, states that he is married to [REDACTED] and has three children. Included as supporting documentation for this Form I-130 petition is a family register from Korea, dated July 25, 2006, which states that the applicant was married to [REDACTED] and that this marriage was reported to the register as of August 24, 1982. This register also indicates that the applicant has a son, born in 1974, a daughter, born in 1975, and a second daughter, born in 1983. Furthermore, on the applicant's current Form I-485 he states that he previously applied for permanent resident status about 10 years ago, but withdrew the application.

Evidence of the applicant's attempt to procure admission willful misrepresentation is clearly documented in the record in the form of the Form I-130, Form I-485, and supporting documentation filed in 1994 and the contradictory evidence submitted with his current application. Moreover, as stated on appeal, the record indicates, through statements from counsel and the applicant, that during

the applicant's adjustment interview on July 20, 2007 the applicant was informed of the basis for his inadmissibility and was provided an opportunity to rebut the derogatory information during his interview. The applicant states that during his interview the interviewing officer told him that his record showed that he filed a petition based on a marriage to [REDACTED] filed by an attorney named [REDACTED]. In addition, the applicant had the opportunity to rebut this information on appeal and again has the opportunity for rebuttal on motion.

The record includes statements from counsel and the applicant asserting that the applicant does not know [REDACTED] the attorney of record for the fraudulent petition. The applicant states that in 1994, while in Korea, he met an immigration broker and paid her \$7,000 to start the immigration process in the United States. He states that the immigration broker told him that she was filing an employment-based petition for him. She also asked him to come to the United States several times where he had his fingerprints and pictures taken. He states that the broker had him sign many forms, which he did because he trusted that the broker was filing a petition based on employment. We note that the first page of the Form I-485 states that the applicant was filing the form based on the status of a family member. The record also contains a letter from [REDACTED] dated August 23, 2007, stating that he does not recall the applicant or [REDACTED] and that his records do not show having a client by either name. However, [REDACTED] also states that due to the passage of time, it is possible that the records were destroyed or misplaced.

The AAO finds that the applicant's explanation is not credible when weighed against the documentary evidence against him in the record. Of particular concern is the discrepancy in the applicant's family registers from Korea and the applicant's signature on his Form I-485. The register submitted in 1994 does not include the information for his current spouse, whom he had married in 1982 or the births of his three children. Furthermore, the register submitted in 2006 states that the applicant was married to his current spouse, [REDACTED] and reported the marriage as of August 24, 1982 and that the applicant had three children. The submission of these contradictory documents is inconsistent with the applicant's claims as to the immigration broker submitting an employment-based petition on his behalf that he knew nothing about and indicates that he made a willful misrepresentation about his true marital status in an attempt to gain an immigration benefit. On motion, counsel states that the applicant submitted his family register, in its entirety, to the immigration broker handling his petition, which showed his current marriage and children, but that the broker failed to have the register translated fully. The applicant states that he did not see the translation before it was submitted.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant's statements, the statement from the immigration broker, and the statement from [REDACTED] are not objective evidence. For [REDACTED] to admit that he knew of the applicant and his application would be for him to admit to having committed fraud. Similarly, for the immigration broker to admit that she knew of the nature of the applicant's immigration filings would be to also implicate herself in immigration fraud. Moreover, the applicant is responsible for the translation of documents he submits and the information contained on the forms he signs. Part 4 of the Form I-485, states, that an applicant certifies, with his or her signature, under penalty of perjury under the laws of the United States that the application and evidence submitted with it is all true and correct. The applicant signed his Form I-485, dated September 20, 1994, and must be held to account for the misrepresentations within the application under the present circumstances.

Thus, we affirm the field office director's decision that the applicant attempted to obtain an immigration benefit through fraudulent documentation and willful misrepresentations when, in 1994, he filed a fraudulent New York marriage certificate, fraudulent family register from Korea, and signed Form I-485 based on this fraudulent marriage. Therefore, the record shows that he is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

Section 212(i) of the Act provides:

- (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.

The applicant's qualifying relative is his lawful permanent resident spouse. Hardship to the applicant or his U.S. citizen daughter is not considered in section 212(i) waiver proceedings unless it is shown that hardship to the applicant or his daughter is causing hardship to the applicant's spouse. 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*, 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 record of hardship includes: a statement from the applicant, a statement from the applicant's spouse, a statement from the applicant's daughter, medical documentation, a psychological evaluation, and letters from the community in support of the applicant and his family.

We find that the current record indicates that the applicant's spouse would suffer extreme hardship as a result of separation, but does not indicate that the applicant's spouse would suffer extreme hardship upon relocation.

The record indicates that the applicant and his spouse have been married for over 25 years, that the applicant married his spouse when she was 23-years-old, and has been her only source of financial and emotional support. The applicant's spouse states that she has no motivation to live without the applicant. The psychological evaluation in the record diagnoses the applicant's spouse with major depressive disorder and anxiety disorder. The record shows that the applicant's spouse was prescribed medication for her anxiety and depression. The record also indicates that the applicant's spouse has seen an acupuncturist for her depression.

Contributing to the applicant's spouse's hardship upon separation would be her medical condition, segmental joint dysfunction of the lumbar spine. The record indicates that in 2006 and 2007 the applicant's spouse was treated for this condition. The applicant's spouse states that she has chronic pain in her spine, cannot make it in and out of bed without assistance, and that every physical movement is crippling. The medical documentation in the record states that in 2006, when the applicant's spouse first saw a doctor for her chronic pain, the doctor described her as being in "moderate distress" and noted that she could not lie down without assistance. She was treated and reevaluated in 2007. The documentation indicates that although she will always have some discomfort and should not lift more than 15 to 20 pounds, her range of motion showed a 60% improvement. The medical documentation indicates that the applicant's spouse could have flare ups of her condition and should continue follow-up treatment. The record does not indicate what her follow-up treatment would entail.

Given the length of the applicant's marriage, his spouse's reliance on him for emotional and financial support, his spouse's mental health condition, and her physical health condition, we find that separating from the applicant would cause the applicant's spouse extreme hardship.

However, we do not find that the applicant's spouse would suffer extreme hardship upon relocation to Korea. Counsel states that the applicant's spouse cannot travel to Korea due to her medical condition because she cannot sit for a 12-hour flight and she cannot lift her luggage. We note that the medical documentation in the record does not support a finding that the applicant's spouse would be unable to travel to Korea. The applicant and his spouse state that they no longer own a home in Korea and their business is dissolved, leaving them with no source of income in the country. Counsel states that the applicant's spouse would not be able to afford medical treatments for her medical conditions. The record fails to include any evidence to support these statements. The record indicates that the applicant and his spouse lived in Korea until 2003, when they moved to the United States. The applicant's Biographic Information Form (Form G-325A), dated December 14, 2006, states that the applicant has been the owner of a restaurant in Korea from 1990 to the present. No

documentation has been submitted to show that the applicant is no longer a business owner in Korea. We note that by returning to Korea, the applicant's spouse would be separating from her stepchildren, but the record indicates that the applicant and his spouse chose to separate from their children at a young age, sending the children to school in the United States. Thus, we find that the current record does not show that the applicant's spouse would suffer extreme hardship upon relocation to Korea.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. See *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 his U.S. citizen spouse as required under section 212(i) of the Act.

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 motion will be granted. The underlying application will remain denied.

**ORDER:** The motion is granted and the underlying application remains denied.