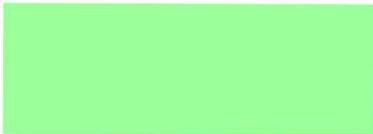




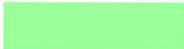
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: AUG 01 2014

Office: LOS ANGELES, CA

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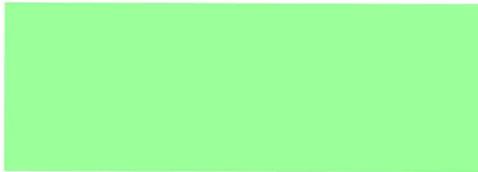
IN RE:

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, California, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of South Korea who used false documents in an attempt to obtain a visa to enter the United States. The applicant 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). He is the spouse of a Lawful Permanent Resident (LPR) and has two LPR daughters. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his LPR spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 1, 2013.

On appeal, counsel for the applicant asserts that the Field Office Director failed to apply any analysis or consideration of the hardship factors, individually or in the aggregate, and failed to address a medical report submitted into the record.

The record contains, but is not limited to, the following documentary submissions: briefs from counsel for the applicant; statements from the applicant, his spouse and their daughters; tax returns, pay stubs and W-2s for the applicant's spouse; copies of court records related to the applicant's convictions; documents relating to the cost of setting up a hair salon in South Korea; background materials on retirement benefits in South Korea and the social impacts of retirement in South Korea; copies of the applicant's birth certificate; medical reports regarding the mental health of the applicant's spouse, and each of his daughters; copies of a prescription receipt for the applicant's spouse; statement of support from the applicant's spouse's church; and copies of the applicant's passport.

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

- (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 chapter is inadmissible.

The record indicates that the applicant used false documents in an attempt to obtain a visa to enter the United States in 1999, and misrepresented his employment status to the consular officer during his visa interview. The record contains a statement from counsel for the applicant admitting that he used false documents in an attempt to enter the United States in 1999, and that when he was not admitted he entered without inspection through the Canadian border. As the applicant attempted to procure a visa with fraudulent documents he is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.¹

¹ The record also indicates that the applicant was arrested for Driving Under the Influence on March 2, 2005, in Los Angeles, California, under California Penal Code 23152(A). He was convicted of this charge and subsequently charged

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 their 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 the adjudicator must then determine 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 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,

with two probation violations, which resulted in a continuation of his probation for the initial charge. Counsel also refers to a "domestic violence" arrest in a January 17, 2012, letter, but it appears from the record that counsel may have been referring to an arrest for "disturbing the peace" in 2012. Neither this DUI conviction, nor other traffic related convictions, constitute Crimes Involving Moral Turpitude, and thus the applicant is not inadmissible pursuant to section 212(a)(2)(A) of the Act.

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 entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel for the applicant has submitted a brief outlining the hardships to the applicant's spouse that will arise due to his inadmissibility. Counsel explains that the applicant and his spouse have been married for 23 years and have raised two daughters together during that time, both of whom are now LPRs and living in the United States. Counsel also discusses the financial and physical hardship on the applicant's spouse, including a loss of revenue, inability to finance their daughters' college aspirations, and the emotional hardship of separation from the applicant if he were removed. Counsel explains that the applicant's spouse is suffering mental health consequences from the stress related to the applicant's waiver denial, and that she has strong ties to the U.S. community through her church related volunteer activities.

Counsel also discusses the hardship the applicant's spouse would experience upon relocation, stating that the applicant's spouse would not be able to afford to open her own hair salon in South Korea, that she has a strained relationship with family members and would not have any family support, and that she would likely have to separate from her daughters who would remain in the United States. Counsel also notes that the applicant's spouse is currently being treated for mental health issues in the United States, and that relocating to South Korea would likely disrupt this care and cause a delay her treatment. Counsel also explains that the applicant and his spouse would likely have to take minimum wage jobs in South Korea and that it would be hard for them to compete due to their age (he is 54 and she is 44).

The applicant's spouse has submitted a letter explaining the hardship that she is experiencing and would experience if the applicant were removed. She states that she and the applicant have been married for 23 years and have raised two daughters together, and that the prospect of having to reside apart from either her spouse in South Korea, or her daughters in the United States, is so shocking to her that she can barely function at home and work, feels very depressed and cannot sleep. She states that she sometimes just wants to die, and that she has had to seek the help of professionals to help her cope with the situation. She explains that she has been prescribed Nortriptyline every day for depression.

The applicant's spouse also expresses that she would have a hard time finding employment in her field of expertise in South Korea because of her age, lack of a developed client base and the costs of opening a salon business in South Korea. She explains that her daughters would not likely relocate with them because they have lived in the United States since they were young and would not be able to pass the Korean Language tests required to transfer to college there.

The applicant has submitted a letter to explain the hardship upon his family due to his inadmissibility. He states that he would not be able to find commensurate employment in South Korea due to his age and inexperience, and would likely have to accept a minimum wage job and live in poor conditions. He states would be unable to help finance his daughters' college education because of this, and would be unable to provide any financial support for his spouse. He notes that if he were admitted to the United States he could earn up to \$2,500 per month as a [REDACTED]. The applicant states that his departure would result in an emotional hardship on his spouse and daughters, and that his spouse would have to interrupt her psychiatric treatment for depression in order to relocate, and that the strain of relocating and separating from her daughters would exacerbate her depression. He notes that his spouse and daughters are LPRs in the United States.

The record contains a mental health report related to the applicant's spouse. The report details the psychological impact on her due to the immigration status of the applicant, listing symptoms that include heightened anxiety and fear, insomnia and suicidal ideation. The doctor submitting the report diagnoses the applicant's spouse with depression and states that the applicant's spouse would be referred to a psychiatrist for medication. The record reflects that the applicant was prescribed [REDACTED] and includes a receipt for the medication from a pharmacy. The report indicates that the applicant's spouse's depression will worsen if the applicant is removed.

The record also contains mental health reports related to the applicant's two daughters. While children are not qualifying relatives in this proceeding, the resulting emotional impact on the applicant's daughters will result in a greater emotional impact on the applicant's spouse who is already struggling with her own depression. Based on this evidence the record reflects that the applicant's spouse has been diagnosed with depression, a fact that will result in emotional and physical hardships upon separation and relocation.

The record contains copies of pay stubs, W-2 forms and tax returns for the applicant's spouse, as well as a 2012 W-2 for the applicant. The applicant's 2012 W-2 is for "nonemployee compensation" which is not explained in the record. The evidence that has been submitted is not probative of any financial support provided by the applicant during his residence in the United States. The documentation submitted regarding the applicant's spouse's income reflects that she earns roughly \$24,000 annually, but there is insufficient evidence documenting the applicant's spouse's financial obligations to establish what, if any, financial hardship she would experience.

The record contains statement from a licensed M.D. at the [REDACTED] stating that the applicant's spouse has been under psychiatric care for Major Depressive Disorder and Generalized Anxiety Disorder. The record also includes statements from the applicant's spouse and the applicant's daughters attesting to their long-term relationship and life together as a family. Based on this evidence the record reflects that the applicant's spouse will experience psychological hardship if the applicant is removed and that this psychological hardship rises above the common emotional hardship associated with removal of an inadmissible relative. Statements in the record from the applicant's daughters and the applicant's spouse support the assertions that the applicant and his spouse have been married since 1990, a period of 24 years, and have raised two daughters together during that time. When the totality of the evidence regarding the hardship upon separation is examined, the record reflects that the applicant's spouse would experience hardship rising to the degree of extreme hardship due to separation.

The record contains background documentation on hair salons in South Korea, reflecting on the expenses and efforts it would take to open a hair salon there, the applicant's spouse's primary employment skill. The record also contains background documentation on the retirement wages and benefits in South Korea, as well as an article describing high suicide rate related to the low benefits paid to retirees. The applicant and his spouse have indicated that, as a part of the generation discussed in the background article, they would have trouble finding finding employment sufficient to financially support themselves upon relocation, a situation that has led to an increased suicide rate among persons in their generation. This evidence indicates that, due to her fragile mental state, discussed above, the applicant's spouse would put her at higher risk of mental health issues upon relocation.

The applicant's spouse notes that her mother, who resided in South Korea, was bed-ridden at the hospital for 15 years, during which she and her siblings had to assume the financial burden for her care. She explains that for several years she was unable to contribute to the care of her mother and that this has resulted in tension between herself and her brothers and sisters residing in Korea. She further states that her father is on life-support in the hospital at the moment. Because of this, the applicant's spouse explains, she would not be able to expect any help from her family upon

relocation. While this evidence is not sufficient to establish that the applicant's spouse would experience extreme hardship based on economic and physical impacts alone, it does reflect that she would experience some economic difficulties upon relocation to South Korea. Based on the medical evidence in the record, the record also reflects, as asserted by the applicant, that the applicant's spouse would experience a disruption in the continuity of her medical care in order to relocate. Expert testimony in the record supports that the emotional strain of relocating and separating from their daughters would worsen the applicant's spouse's depression and suicidal ideation.

The record reflects that the applicant's spouse would also have to sever community ties in the United States upon relocation. Statements from the applicant's spouse's church indicate that she volunteers her time to support the church. The record reflects that the applicant's daughters are residing in the United States, representing the family ties the applicant's spouse has to the United States. Statements from the applicant's daughters in the record also indicate that the applicant's spouse has close community ties to the United States because they would likely remain in the United States and attend school. When these hardships upon relocation are considered in the aggregate, they rise to a level of extreme hardship.

The record establishes that a qualifying relative will experience extreme hardship due to the applicant's inadmissibility, and as such, we may now determine whether the applicant warrants a waiver 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(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-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 record reflects that the unfavorable factors in this case include the applicant's misrepresentation, entry without inspection, periods of unauthorized presence and his criminal record. The applicant's convictions are not for CIMTs, and are not considered serious crimes. The favorable factors in this case include the presence of the applicant's spouse and daughters, the extreme hardship his spouse would experience if he were removed, the affidavits of his daughters who attest to the applicant's close involvement in their life and family, and a statement from the Pastor of [REDACTED] attesting to the applicant's support of the church's congregation and communities.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.