



**U.S. Citizenship
and Immigration
Services**

(b)(6)

[Redacted]

DATE: **OCT 01 2014** OFFICE: CHICAGO

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]

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Republic of Korea (South Korea) who 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), for having procured a benefit under the Act through willful misrepresentation. The applicant, through counsel, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside with his U.S. citizen spouse in the United States.

The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative and therefore denied his Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated January 3, 2014.

On appeal, counsel asserts U.S. Citizenship and Immigration Services (USCIS) erred as a matter of law because it did not consider all evidence in support of the applicant's waiver application in the aggregate, and it did not consider the effect that hardship to his daughter would have on his only qualifying relative, his spouse. Counsel also asserts USCIS abused its discretion by speculating that the applicant's spouse's depression and anxiety were caused by concerns other than the applicant's immigration status. *See Form I-290B, Notice of Appeal or Motion*, dated January 21, 2014; *see also Brief in Support of Appeal*, dated February 20, 2014.

The record includes, but is not limited to: briefs and motions; correspondence; affidavits by the applicant, his spouse, and daughter; letters of support; documents concerning identity and relationships; academic, business, employment, financial, and mental health documents; photographs; and restaurant reviews. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6) of the Act provides, in relevant part:

(C) Misrepresentation.-

- (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(i) of the Act provides, in relevant part:

- (1) The Attorney General [now 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 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 record reflects the applicant entered the United States at the San Francisco Port of Entry as a nonimmigrant visitor on March 29, 1998 and was granted permission to stay until September 28, 1998. The applicant subsequently extended his status until March 28, 1999. The record also reflects the applicant changed his nonimmigrant status from B-2 visitor to F-1 student upon submitting multiple Forms I-20, Certificate of Eligibility for Nonimmigrant Student Status (Form I-20) to pursue programs in New York and California. The applicant did not attend a program in New York or California. The record indicates the Form I-20 concerning the program in New York was a forged document. Based on the foregoing, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act. The applicant does not contest this finding of inadmissibility.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his daughter is not relevant under the statute and is considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. 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-Morales*, 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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. INS*, 138 F.3d 1292, 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.

Counsel contends the applicant's spouse would suffer hardship in the applicant's absence as: her depression and anxiety would be exacerbated if the applicant is forced to leave the United States as they are serious conditions, which if left untreated, could lead to physical symptoms and suicidal ideations; the applicant is the family's sole breadwinner, relying on the income of their family-owned restaurant; and she struggles with choosing between supporting their daughter, who is able to work only in a limited capacity as she pursues her doctoral studies, and leaving the United States to be with the applicant.

The applicant indicates separation from his family would tear him “away from the life [he] worked so hard to create for [himself] and everyone [he] love[s]” and give his life “no purpose or meaning”; and in Korea, retirement is mandatory after 40 years of age; his spouse would lose the security to which she has grown accustomed; and their daughter still needs his support during her studies.

The applicant’s spouse, in her statement, claims: she is distressed and has lost weight because “each day for [her] is like hell, living with fear and confusion”; their family has “lost a sense of direction, purpose, and motivation”; and their daughter’s deep depression causes the applicant’s spouse serious emotional pain. The applicant’s daughter further states: the applicant is a source of strength and support for her and her mother, and he has emotionally supported her during her depression; and she is especially worried about how her mother would be affected by the applicant’s absence because of her health issues, which include “digestive and knee problems.” The applicant’s daughter explains that her mother now is on a restrictive diet and medications; she is unable to assist the applicant with her mother’s care because of her doctoral studies in Missouri; and she is working very hard to complete her education so she can afford to assist her parents.

The applicant’s appeal also includes a letter dated February 14, 2014, in which his spouse’s clinical psychologist indicates she previously evaluated his spouse in 2009, and her anxiety and depression have become “significantly more serious” as a result of stress related to the applicant’s immigration matters as well as her sister and mother’s recent deaths, resulting in various symptoms and suicidal ideations that are passive in nature. The psychologist’s letter does not discuss treatment. The applicant’s spouse also claims that their daughter’s depression has affected her emotionally; however, a letter from the daughter’s counseling center discussing her depression is dated January 14, 2009, about five years before the instant appeal. Moreover, the applicant’s spouse’s clinical psychologist, in her letter dated June 2, 2009, recommends that their daughter “continue to live with both of her parents until her symptoms improve.” The record reflects the applicant’s daughter currently lives in [REDACTED] Missouri. Without more details about the daughter’s current mental health or treatment, it is not possible to reach conclusions concerning the severity of her psychological condition and the effect it has on the applicant’s spouse.

The applicant further indicates: he and his spouse were able to save enough money to purchase a family restaurant, at which he could work as a chef and his spouse could work as the hostess and waitress; his spouse would be unable to manage and run the business in his absence; his spouse would lose the security to which she has grown accustomed; and their daughter still needs his support during her studies. The applicant’s spouse also indicates she does not know how she could maintain the family’s sushi restaurant as the applicant manages it, and its closure would result in “financial, psychological and emotional downfall in our family.” Their daughter states: the applicant “plays a central role in running the restaurant” as the owner, chef, and manager, and her mother “takes care of all the finances from the business” and the customers and staff; they are unsure whether they could sell the restaurant given the current economy; her mother would have to return to work as a waitress or cleaner given her lack of a degree and language skills; her graduate assistantship of \$1,200 per month would not be enough to support her and her mother; and the demands of her doctoral program would not allow her to obtain an additional job.

To corroborate the financial hardship his spouse may experience in his absence, the applicant submits an individual income tax return for 2013, showing his family's adjusted gross income was \$37,441; business documents consisting of income tax returns, licenses, and sales contracts as well as positive restaurant reviews; and bills and bank account statements indicating the applicant's spouse remains current with her monthly financial obligations, including full payment on October 7, 2013 of a large debt owed on their family restaurant.

Although the record shows that the applicant's spouse co-owns their restaurant, it does not appear to include recent evidence distinguishing her income from the applicant's income. The record also does not contain sufficient evidence to establish that the applicant's spouse's business interests would be adversely affected by the applicant's absence. And, although the record contains evidence of some of their financial obligations, it does not demonstrate his spouse's inability to meet those obligations in his absence. Moreover, the record does not include evidence of labor or employment conditions in South Korea, to corroborate claims that the applicant would be unable to assist his spouse in the maintenance of their households or that, given his age, he would be required to retire there.

Though the record is sufficient to establish the applicant's spouse and daughter may experience certain hardships in the applicant's absence, the evidence, considered in the aggregate, does not establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Concerning the hardship the applicant's spouse would experience if she were to relocate with the applicant, counsel contends the spouse's family has assimilated to the American culture. The applicant also indicates "there is absolutely nothing [he] can do" and "society won't even accept [him]" in South Korea as he is almost 50 years old. His spouse further contends that she is distressed by the prospect of having to choose between following the applicant to South Korea and remaining with their daughter in the United States, because their daughter does not have siblings and is still dependent on them. The record does not appear to contain additional claims of hardship based on relocation.

The record reflects the applicant's spouse is a native of South Korea and literate in the Korean language. Accordingly, she should have minimal difficulties acclimating to the Korean culture. Moreover, the record lacks information concerning social, political, or economic conditions in South Korea that would impact the applicant's spouse's ability to return there. And, as mentioned previously, the record does not include evidence of labor or employment conditions in South Korea to show whether the applicant would be able to financially support his spouse there.

We thus conclude that were the applicant's spouse to relocate to South Korea to be with the applicant due to his inadmissibility, considering the evidence submitted in the aggregate, the record is insufficient to establish that she would suffer extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's qualifying relative, considered cumulatively, rises beyond the common results of

removal or inadmissibility to the level of extreme hardship. We therefore find the applicant has not established extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.