



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: AUG 26 2015

File: [Redacted]

APPLICATION RECEIPT: [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]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

f.s. Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg  
Chief, Administrative Appeals Office

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

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 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 determined that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director*, dated January 3, 2014.

On appeal we found that although the record establishes the applicant's spouse may experience certain hardships in the applicant's absence, the evidence does not establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant. We also concluded that the record is insufficient to establish that the applicant's spouse would suffer extreme hardship were she to relocate to South Korea to be with the applicant due to his inadmissibility. *See Decision of the AAO*, dated October 1, 2014.

On motion the applicant asserts that we did not consider in the aggregate the hardship to his spouse due to her age, lack of education, depression, loss of business, and forced separation. With the appeal the applicant submits a brief, a psychological assessment of his spouse, information about wages in the [redacted] metropolitan area, and country information for South Korea, including a news article about income for those more than 50 years old and information about the cost of living. The record includes affidavits from the applicant, his spouse, and daughter; letters of support; academic, business, employment, financial and mental health documents; and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). 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 that the applicant entered the United States at the [redacted] Port of Entry as a B-2 nonimmigrant visitor on March 29, 1998, with permission to remain until September 28, 1998, and subsequently extended his status until March 28, 1999. The record also reflects that the applicant changed his nonimmigrant status from a B-2 visitor to an F-1 student by submitting multiple applications of the Certificate of Eligibility for Nonimmigrant Student Status (Form I-20) to pursue programs in New York and California, but did not attend a school or program. The record indicates that the Form I-20 for a program in New York was a forged document. Based on this information the field office director found the applicant inadmissible under section 212(a)(6)(C)(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 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. The applicant's spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, we consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *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.

As noted above, on appeal we determined that the record fails to establish that the applicant's spouse would experience extreme hardship if she remained in the United States without the applicant or if she were to relocate abroad to reside with the applicant due to his inadmissibility. We noted that a letter from a psychologist indicated that the applicant's spouse suffers anxiety and depression over the applicant's immigration situation, but does not discuss treatment. We noted that although the

applicant's spouse claims that their daughter's depression has affected her emotionally, a letter from the daughter's counseling center discussing her depression is dated about five years before the appeal, and thus without more details about the daughter's current mental health or treatment, we are unable to reach conclusions concerning the severity of her psychological condition and the effect it has on the applicant's spouse. We also found that the record does not contain sufficient evidence to establish that the spouse's business interests would be adversely affected by the applicant's absence, to demonstrate the spouse's inability to meet financial obligations in his absence, or to corroborate claims that the applicant would be unable to assist his spouse from South Korea. Further, we found that 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 or evidence of employment conditions to show whether the applicant would be able to financially support his spouse there.

On motion the applicant states that he owns a restaurant that employs four others, that he works long hours to support his family, and that his spouse has no college education and is a homemaker who assists in managing their restaurant. The applicant asserts that denial of his waiver application would be devastating to his spouse's mental health as she relies on his emotional support, and his presence is indispensable to their business as he is the chef and creator of recipes. He states that together they earn about \$50,000 annually, and he cites federal wage figures that show a chef's salary would be \$45,000 annually to support the assertion that if it had to replace him, the restaurant would shut down. He asserts that because of his spouse's age and lack of education, she is probably not employable so she would go on food stamps and public housing, and depression would be a risk to her life. He further states that they have been married more than 28 years and that without him and their daughter his spouse's life would be at risk.

In an assessment dated October 14, 2014, a licensed counselor states that the applicant's spouse meets the criteria for chronic *Adjustment Disorder with Mixed Anxiety and Depressed Mood* and shows psychosomatic symptoms. The assessment states that the applicant and his spouse are in an interdependent relationship of mutual support, that the spouse sees the applicant invaluable as a partner, and that she is convinced that she cannot run the restaurant without him. The assessment states that the spouse reports chronic anxiety with racing thoughts, difficulty sleeping and concentrating, bouts of spontaneous crying, headaches, and suicidal ideation. The assessment states that the spouse would experience debilitating anxiety that would impact her ability to function in daily life and surmises that any psychological event would impact her ability to care for herself and manage her daily life, so that denial of the applicant's waiver application would have a devastating effect on the spouse's mental health. The assessment also states that the applicant's daughter will undergo severe psychological distress that would vicariously impact the applicant's spouse. The assessment recommends psychotherapeutic treatment with specific goals.

A February 14, 2014 psychological evaluation of the spouse references a 2009 session and states that the spouse has ongoing stress over the applicant's immigration status and that her depression has progressed significantly. The evaluation notes disturbed sleep, hopelessness, loss of interest in activities, social isolation, panic, inability to focus, and suicidal ideations, although passive in nature. It states that the spouse lives in constant fear and is traumatized, and that her mother and sister had recently died. A June 2, 2009, evaluation stated that the applicant's daughter has stress from her

father's immigration situation and was diagnosed with major and chronic depression that caused struggles, anxiety, suicidal ideations, and required consistent care from her parents. The evaluation stated that the family has been isolated in the United States with no extended family or friends for support.

In a July 9, 2009, statement the spouse stated that the applicant leaving will destroy the family. She stated that their daughter is depressed due to anxiety over her father being deported and that seeing her daughter suffering made her shed tears.

In statement dated February 16, 2014, the daughter states that she worries about the effect of her father's absence on her mother. She states that she cannot take care of her mother because she is away at school and states that her educational program forbids her getting another job so the applicant is crucial to family income as he has a central role in their restaurant and without him the business would close. In a June 20, 2009, statement the daughter states that she suffers depression that causes her parents to worry and that the applicant provides emotional support.

A letter dated January 14, 2009, from a university counseling center states that the daughter shows symptoms consistent with major depressive disorder and that her parents are her primary emotional support. The letter recommended the daughter see a psychiatrist. A letter dated October 16, 2014, from the daughter's current university counseling center notes that she reports having a very close family with a history of depression, and the letter surmises that any negative impact on the family would impact the daughter's well-being.

Financial documentation submitted to the record includes tax returns, bank statements, credit card statements, and documents related to the applicant's business.

Having reviewed the preceding evidence, we find it to establish that the applicant's spouse would experience extreme hardship due to separation from the applicant. In reaching this conclusion we note the spouse's emotional condition. Statements by the applicant, his spouse, and their daughter and the mental health assessments submitted to the record show that the spouse experiences emotional trauma due the possibility of separation from the applicant, to whom the record shows she has been married since 1986, and that her condition has worsened. Although documents submitted to the record are insufficient to establish that the spouse's business interests would be significantly affected by the applicant's absence and or demonstrate the spouse's inability to meet personal or business financial obligations, we find that statements from the applicant, spouse, and daughter indicate that the applicant is primarily responsible for the success of the business. Further, although the record indicates that the spouse assists the applicant in operating the business it appears unlikely, based on the mental health assessments, that she would be able to operate the business without the applicant. Therefore we find the record to establish that the applicant's spouse would experience extreme hardship due to separation from the applicant.

We find, however, that the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate to South Korea. On motion the applicant asserts that as he is

more than 50 years of age and last had a job in South Korea more than 17 years ago he would be unemployable with no chance to provide financial support for his spouse and daughter, and that a return to South Korea would mean no education, housing, or financial opportunities. He asserts that in South Korea uneducated, older individuals, especially those who have not been in South Korea during the past 15 to 20 years, have no opportunities, so he could not acquire a similar business there. The applicant asserts that society will not accept him due to his age and further asserts that there is a stigma of having departed during crisis times and returning during dynamic times that would cause his business to fail.

The applicant submits a translated news article that reports that people in their 50s are facing dramatically decreasing income, so the 49 percent poverty rate for elders in South Korea is the highest of countries belonging to the [REDACTED]. He also cites statistics of the high cost of living in South Korea. In a psychological assessment dated October 14, 2014, the applicant's spouse reports that she believes it is impossible for the applicant and her to find work at their ages and that they would feel like a burden upon any family members if they could provide support. The applicant asserts that his spouse last visited South Korea 10 years ago and has a shaky relationship with a brother and a sister there, so she has no close relatives since her mother and a sister have died.

Although the applicant asserts that he would be unemployable and unaccepted by society and unable to support his family, there is no indication that the applicant and his spouse would not be able to obtain loans or employment or that they do not have transferable skills they could deploy in South Korea, as they have operated a business in the United States. The news article and cost of living statistics submitted to the record describe general conditions, but do not establish that the applicant's spouse would experience extreme hardship by relocating to South Korea. The applicant has also not submitted evidence that he and his spouse would be stigmatized by returning to South Korea, nor made assertions of any other hardships his spouse would experience by relocating. Statements by the applicant and the submitted country information do not establish that the applicant's spouse would be at risk as a result of relocating to South Korea, her native country, where the record indicates she lived until she was nearly 40 years old.

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.

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.

(b)(6)



*NON-PRECEDENT DECISION*

Page 8

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 and the motion will be denied.

**ORDER:** The motion is denied.