



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

(b)(6)

DATE: **MAR 23 2015**

OFFICE: NEWARK

File: [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:

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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of South Korea who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), for having procured admission to the United States by falsely representing himself to be a citizen of the United States. 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 and child in the United States.

The Field Office Director determined the applicant had not established extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, dated August 27, 2013.

On appeal, filed on September 26, 2013 and received by our office on September 8, 2014, the applicant asserts U.S. Citizenship and Immigration Services (USCIS) made several erroneous conclusions of law and fact by failing to consider hardship factors, in the aggregate, and the effect that such factors concerning the applicant and his child would have on his qualifying relative. *See Form I-290B, Notice of Appeal or Motion*, dated September 24, 2013; *see also Brief in Support of the Appeal*.

The record includes, but is not limited to: a brief, motions, and correspondence; affidavits and statements by the applicant, his spouse, and their child; letters of support; documents concerning identity and relationships; academic, employment, and financial documents; photographs; and documents on conditions in South Korea. The entire record was reviewed and considered in rendering a decision on the appeal.

The record indicates the applicant, who the Field Office Director found presented another individual's U.S. passport for admission in 1990, is inadmissible under section 212(a)(6)(C)(i), and not 212(a)(6)(C)(ii), of the Act as stated in the Form I-601 denial decision.¹ *See USCIS Policy Manual* (stating, "Foreign nationals who made a false claim to U.S. citizenship prior to September 30, 1996, cannot be found inadmissible under the false claim to U.S. citizenship ground of inadmissibility"), *available at* <http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume8-PartJ-Chapter1.html> (citation and footnote omitted).

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)

¹ We find the Field Office Director's error regarding the statutory citation to be harmless, as the Field Office Director analyzed the hardship evidence in determining the applicant's eligibility for a waiver instead of concluding, as section 212(a)(6)(C)(ii) of the Act requires, that no waiver is available.

a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) Falsely Claiming Citizenship-

(I) In General- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law 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 without inspection by U.S. immigration officials on or about August 9, 1990. Subsequent to his entry, U.S. officials apprehended the applicant, who presented a U.S. passport to them upon their questioning him. When the applicant later admitted the passport did not belong to him, the officials placed him in deportation proceedings. An immigration judge ordered the applicant deported *in absentia* on October 16, 1990, and upon a joint motion to reopen the applicant's deportation proceedings, an immigration judge granted the motion and vacated the deportation order on January 9, 2012. The record reflects that an immigration judge also terminated without prejudice the applicant's reopened proceedings on August 30, 2012, so that he could pursue adjustment of status before USCIS as the spouse of a U.S. citizen. The applicant contends he has remained in the United States since his entry in August 1990.

The record includes a sworn statement taken during the applicant's adjustment of status interview on August 5, 2014, which indicates he claims he was a passenger in a car with his sister and aunt when they sought entry into the United States in 1990, he did not present any documents to U.S. immigration officials, and he did not claim to be a U.S. citizen. The applicant's testimony in August 2014 is inconsistent with his actions as recorded when he was apprehended by U.S. immigration officials in August 1990. The applicant does not provide an explanation for the inconsistencies. Where there are inconsistencies in the record, it is incumbent upon the applicant to resolve them by independent, objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). 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.

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. Though the record contains evidence of hardship to the applicant, his child, and mother-in-law, their hardship is only relevant under the statute to the extent that 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. at 632-33; *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. at 246-47; *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.

The applicant indicates that his family would experience hardship in his absence because of his inadmissibility as: his spouse would need to raise their child alone; his spouse would become depressed by the thought of him alone in South Korea, where he does not have family ties or connections; he would be unable to contribute financially to his family's expenses, as he would become unemployed and homeless in South Korea; his spouse's emotional hardship would be exacerbated by having to support him; their home would be subject to foreclosure without his financial contributions; and his earnings, although they are a smaller portion of the household income, are needed as his income and savings helped during his spouse's previous lay-off from work for 13 months.

In a statement dated September 15, 2013, the applicant's spouse also indicates: their situation "becomes more dire" because of the applicant's inadmissibility; the thought of being away from a loved one is very stressful and affects the entire household; her worries about the applicant being alone in South Korea will affect her job performance; and the cost of a plane ticket to South Korea is about \$3,000, so it will be difficult for her to afford two plane tickets and their mortgage payment on her single income.

To corroborate claims of emotional and psychological hardship to his spouse, the applicant submits psychosocial family assessments by two licensed clinical social workers, the most recent dated September 19, 2013, indicating: the applicant and his spouse have experienced anxiety and depression for several years and their conditions will worsen because of the applicant's immigration matters; the applicant's spouse reports feelings of anger, despair, hopelessness, and pending doom, and it is unlikely she will be able to maintain her emotional wellbeing in the applicant's absence; and she has been able to maintain gainful employment because of the applicant's consistent support, but her ability to focus at work has compromised her performance;. The record also includes a letter from the applicant's spouse's current employer dated September 12, 2013, indicting she has been an "exemplary employee" for the last several years, and her performance is suffering due to "mental distress" from "the considerable energy she must exhaust" because of the applicant's immigration matters and serving as the primary caregiver to their child. The record also contains several letters of support attesting to the relationship the applicant has with his spouse and child and the impact of his immigration matters on his family members.

To corroborate claims of financial hardship, the applicant submits letters of employment and earnings statements, verifying his employment at a camera repair shop, where he earns an hourly salary of

\$10.90. The evidence shows that his spouse's annual salary is \$72,000. The record also includes billing and bank account statements demonstrating monthly expenditures that include a mortgage payment of \$1,270.39, an automobile loan of \$483.74, a cellular phone payment of \$243.63, and credit card payments as well as insurance costs totaling about \$814; copies of cancelled checks that include payments for condominium association fees totaling \$413.26 and cable fees totaling \$164.67; a 2014 real property tax assessment; and a tax return for 2012, indicating a household income of \$83,034.

Although the record does not contain evidence of labor or employment conditions in South Korea to corroborate claims about the applicant's inability to contribute to his spouse's household if she remains in the United States, the record sufficiently shows the applicant and his spouse's marital relationship for over 18 years and the applicant is essential to his spouse's emotional wellbeing. The record also demonstrates the applicant's spouse serves as the family's primary breadwinner and that she may have difficulties meeting those obligations without the applicant, particularly given a past period of unemployment. We thus conclude that the evidence, considered in the aggregate, establishes the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Concerning the hardship his spouse would experience if she were to relocate to South Korea to be with him, the applicant indicates through counsel: his spouse is not fluent in the Korean language and would have problems finding employment there; his spouse would be unable to maintain her standard of living; and their daughter's academic performance "will plummet" along with her self-esteem, which would emotionally affect his spouse. The applicant's spouse also indicates in a statement notarized on May 3, 2011 that her entire family lives in the United States as citizens and lawful permanent residents, and returning to South Korea would be going to a country that has not been home for 30 years.

The applicant's social worker, in her psychosocial family assessment from September 2013, indicates the applicant's spouse would have difficulty obtaining a job in South Korea as she lacks any job experience there, and her verbal and written skills in the Korean language have deteriorated since she has lived in the United States, making it extremely difficult to obtain a job there. According to the social worker, the applicant's spouse also would be viewed as "old" and unemployable in South Korea, and the cost of living there is higher than the United States.

The assessment also indicates the applicant's spouse would have to make the difficult decision whether to relocate with the applicant or to remain in the United States as her mother's primary caregiver, as she assists her mother with her daily activities. The level of care the applicant's spouse provides to her mother is unclear. According to the psychosocial family assessment from March 2013, the applicant's spouse discussed reconciling with her mother and seeing her once a week. As mentioned previously, where there are inconsistencies in the record, it is incumbent upon the applicant to resolve them by independent, objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-592. As the applicant's U.S. citizen mother-in-law is not a qualifying relative under the waiver provision of 212(i) of the Act, we conclude that the record does not sufficiently demonstrate the effect that her hardship would have on the applicant's only qualifying relative, his U.S. citizen spouse.

Although the record includes evidence that the applicant's mother-in-law is a U.S. citizen, it lacks evidence corroborating claims that his spouse's relatives have valid U.S. immigration status.

However, the record demonstrates the applicant's spouse has been a U.S. citizen for over 25 years; has spent most of her life in the United States; and she maintains steady employment and community ties here as well as a relationship with her U.S. citizen mother. We thus conclude that, were the applicant's spouse to relocate to South Korea to be with the applicant due to his inadmissibility, she would suffer extreme hardship given her length of residence in, and ties to, the United States, the emotional hardship she would experience as a result of difficulties raising their U.S. citizen daughter in Korea, and the normal hardships associated with relocation. The record reflects that the cumulative effect of the hardship the applicant's spouse would experience as a result of the applicant's inadmissibility rises to the level of extreme.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. at 301. For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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).

Id. at 301.

The BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

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NON-PRECEDENT DECISION

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The favorable factors in this case include extreme hardship to the applicant's U.S. citizen spouse and hardship to the applicant's U.S. citizen daughter; several letters of support attesting to the applicant's good moral character; his property ties; his steady employment in the United States and the filing of taxes; and the lack of a criminal record. The unfavorable factors include the applicant's misrepresentation in 1990 and his presence in the United States for several years without authorization. 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.

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 been met.

ORDER: The appeal is sustained.