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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-H-L-

DATE: SEPT. 28, 2015

APPEAL OF HONOLULU FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of South Korea, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) and § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Honolulu, Hawaii, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of her last departure from the United States. The Applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or material misrepresentation. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, her U.S. citizen spouse filed on her behalf.

The Director concluded that the Applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal the Applicant submits new evidence and states that her spouse will suffer extreme hardship if her waiver application is not approved.

The record includes, but is not limited to: letters and affidavits from the Applicant and her spouse; biographical information for the Applicant, her spouse, and the Applicant's ■■■ year-old daughter; financial records for the Applicant and her spouse; a letter from a psychologist concerning the Applicant's spouse; copies of family photographs; letters of support from friends and community members; and documentation concerning the Applicant's spouse's property. The entire record was reviewed and considered in rendering a decision on the appeal.

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Section 212(a)(9) of the Act provides, in pertinent part that:

(B) Aliens Unlawfully Present.-

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

...

(v) Waiver.-The Attorney General [now the Secretary of the Department of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

Section 212(a)(6)(C) states:

- (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 212(i) of the Act, which provides a waiver for fraud and material misrepresentation, states that:

- (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 record indicates that the Applicant obtained a B1/B2 visa on November 15, 2001, at the U.S. consulate in [REDACTED] Korea, using fraudulent documentation. The visa was revoked on February 16,

2011. The record also indicates that the Applicant accrued one year or more of unlawful presence when she remained in the United States until December 29, 2008, after being admitted on December 4, 2001, as a nonimmigrant visitor.

The record indicates that when the Applicant returned to Korea in December 2008, she reported to the U.S. consulate that her passport and visa had been stolen. The Applicant was issued a new B1/B2 visa and returned to the United States on July 2, 2009. She was authorized to remain in the United States until January 1, 2010. The record does not indicate that the Applicant has departed the United States since her last admission.

The Applicant accrued one year or more of unlawful presence in the United States between February 20, 2002, and her departure from the United States on December 29, 2008. Moreover, the Applicant obtained her original B1/B2 visa, which was issued on November 15, 2001, using fraudulent information. As a result the Applicant was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, for a year or more of unlawful presence, as well as section 212(a)(6)(C)(i) of the Act, for procuring a visa to the United States through fraud or material misrepresentation. She is inadmissible under section 212(a)(9)(B)(i)(II) for a period of ten years from the time of departure from the United States. Her inadmissibility under section 212(a)(6)(C)(i) is a permanent ground of inadmissibility. The Applicant does not contest her inadmissibility on appeal, and we will not disturb those findings.

The Applicant is eligible to apply for a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, the standard for which is the same. Under both provisions of the Act, the Applicant's only qualifying relative is her U.S. citizen spouse. In order to qualify for this waiver, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. Hardship to the Applicant or her child will not be separately considered, except as it is shown to affect the Applicant's spouse. If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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.

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The Board has also held that the common or typical results of deportation, 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, 885 (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 1292, 1293 (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.

In regard to the hardship that the Applicant's spouse would experience if he were to be separated from the Applicant, the record indicates that the Applicant and her spouse were married on [REDACTED] 2011, and reside in Hawaii with the Applicant's [REDACTED] year-old daughter from a previous marriage. The Applicant's spouse states in a letter dated October 28, 2013, that if the Applicant were not granted a waiver of inadmissibility, he would be forced to leave his substantial ties in the United States and relocate to Korea to keep his family together. He states that to remain in the United States supporting two households would leave him penniless. No documentation in the record illustrates that the Applicant's spouse would need to support the Applicant in Korea or, if he

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did, what costs he would incur to support her. The record shows that the Applicant's spouse is retired and receives approximately \$5000 per month in pension benefits; and he also has substantial savings and a property investment. The Applicant's spouse also submits documentation to show that he should be able to obtain employment in the United States as a consultant, based on his extensive experience in law enforcement and public safety. The Applicant does not assert her spouse would experience other types of hardship if he were to remain in the United States and not relocate to South Korea. The hardship of family separation in and of itself does not distinguish the hardship in this case from the hardship normally experienced by families facing separation as a result of immigration inadmissibility. The Applicant bears the burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the Applicant's spouse remain in the United States and be separated from the Applicant, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *See Matter of O-J-O-*, 21 I&N Dec. at 383.

The Applicant states that her spouse, age 62, would suffer extreme hardship upon relocation to South Korea, as a result of his financial, property, and social ties to the United States. The Applicant and her spouse also state that her spouse does not speak Korean or have experience with the Korean culture. The Applicant's spouse also states, in his letter dated October 28, 2013, that he would not have health insurance coverage abroad for himself or his family. In addition, documentation in the record indicates that the Applicant's spouse has substantial property and social ties to the United States, and the Applicant indicates that her spouse wishes to obtain employment to supplement his retirement income. The record contains letters from individuals describing the Applicant's spouse's successful career with the [REDACTED] and addressing his ability to obtain employment in the United States should he wish or have the need. In a letter dated October 9, 2014, a licensed clinical psychologist states that the Applicant's spouse began seeing her a month earlier after he began noticing symptoms of depression as a result of his concern that he would have to relocate to be with the Applicant. The psychologist diagnoses the Applicant's spouse with major depression, taking into his reported symptoms of anxiety, insomnia, fatigue, anhedonia, inability to concentrate, irritability, problems with appetite, lack of motivation, a decrease in energy, and increased drinking.

The evidence, particularly concerning the Applicant's spouse's age, language capabilities, ties to the United States, and health-care needs in retirement, when considered in the aggregate, establishes that the Applicant's spouse would suffer extreme hardship were he to relocate to reside with the Applicant due to her inadmissibility.

We can find extreme hardship warranting a waiver of inadmissibility, however, 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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the Applicant would not result in extreme hardship, is a matter of choice and not the result of

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inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the Applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the Applicant's spouse.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the Applicant's U.S. citizen spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The Applicant has not established extreme hardship to a qualifying relative, as required under sections 212(a)(9)(B)(v) and 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 she 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.

Cite as *Matter of M-H-L-*, ID# 13222 (AAO Sept. 28, 2015)