



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

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

MATTER OF J-S-K-

DATE: APR. 29, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Korea, seeks a waiver of inadmissibility for fraud or misrepresentation. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). A foreign national seeking to be admitted to the United States as an immigrant or to adjust to lawful permanent resident must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The District Director, Los Angeles, California, denied the Form I-601. The Director concluded that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, specifically for using fraudulent employment documents to support his application to change status. The Director then determined that the Applicant's removal from the United States would not result in extreme hardship to his qualifying relatives. We subsequently dismissed the Applicant's appeal.

The matter is now before us on a motion to reopen. We will deny the motion.

In the motion, the Applicant submits additional documentation and claims that the Director erred in not taking into account hardship to his parents and children.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a fraud or misrepresentation for seeking to procure a visa by using fraudulent employment documentation to support his application to change status.

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

Section 212(a)(6)(C)(i) of the Act states:

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, 8 U.S.C. § 1182(i), 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.

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship “is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists “only in cases of great actual and prospective injury.” *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was “no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent’s parents by reason of their alleged physical defects”). The common consequences of removal or refusal of admission, which include “economic detriment . . . [,] loss of current employment, the inability to maintain one’s standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment,” are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); but see *Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

II. ANALYSIS

The only issue presented on motion is whether the Applicant’s spouse or parents would experience extreme hardship if the waiver is denied.¹ The Applicant does not contest the finding of

¹ The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative

inadmissibility for fraud or misrepresentation, a determination supported by the record.² The claimed hardships to the Applicant's spouse from separation are loss of income and the emotional hardships of separation. The claimed hardships to his parents from separation are the emotional hardships of separation. The Applicant and his spouse and parents do not address whether his spouse or parents would experience hardship upon relocation to Korea.

The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant's spouse or parents would experience extreme hardship if the waiver is denied. The record does not contain sufficient evidence to establish the hardship claimed, and for the hardship demonstrated, the record does not show that it rises above the common consequences of removal or refusal of admission to extreme hardship. Because the Applicant has not demonstrated extreme hardship, we will not address whether he merits a waiver as a matter of discretion.

A. Waiver

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case his spouse or parents. In support of his claim of hardship the Applicant submitted the following evidence. With the Form I-601, he provided statements from himself, his spouse, and his parents. He also submitted a copy of a letter from his mother's physician. On motion, the Applicant submits an affidavit from his spouse, income tax records, wage statements, a property deed, escrow documentation, loan statements, utility and car invoices, tuition receipts, and a psychological assessment of the Applicant's spouse, parents, and children.

In the appeal, the Applicant's spouse claimed that the Applicant was the principal bread-winner in their family. We found that the evidence in the record did not demonstrate her claim. The record showed that the Applicant's spouse was gainfully employed and had immigrated to the United States based on her employment and that the Applicant was her derivative. We further stated that the Applicant's parents claimed that they lived with the Applicant and spouse and cared for their children while they were at work. We also concluded that the evidence in the record was insufficient to show that the emotional hardship, which would be endured by the Applicant's spouse and parents, was unusual or beyond that which is normally to be expected upon removal.

In the motion, the Applicant's spouse claims that if she remains in the United States without him, she will suffer emotional and financial hardship. She maintains that she has a close relationship with

or qualifying relatives, in this case his spouse or parents. The Applicant's children are not qualifying relatives under section 212(i) of the Act.

² The record contains fraudulent employment documents that the Applicant used in his motion to overcome the Director's denial of his Form I-539, Application to Extend/Change Nonimmigrant Status, to change from the B-2 to the F-1 classification. The fraudulent documents were used to establish that the Applicant intended to depart the United States and return to Korea and show that he did not have a preconceived intent to study in the United States. The Applicant is therefore inadmissible under section 212(a)(6)(C)(i) for fraud or willful misrepresentation.

(b)(6)

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the Applicant and that they live with their two children, born in [REDACTED] and [REDACTED] and the Applicant's parents. She states that she worries about the impact that long-term separation from the Applicant will have on their children. She further maintains that the Applicant is her and her children's only source of income. She states that her in-laws stopped taking care of their grandchildren after their health declined, and she now takes care of her children full time. She asserts that without the Applicant's income she would not be able to meet the family's living expenses.

In support of financial hardship, the Applicant submitted income tax records reflecting that his spouse is a homemaker, he is self-employed, and his annual income ranged from about \$29,000 to \$43,000 a year. The Applicant's spouse asserts that the Applicant works at several jobs to support their family. The record contains copies of wage statements and documentation of their monthly expenses of loan mortgage statements, car loan statements, utility statements, and school fee statements. The record reflects that the Applicant's spouse was previously employed. The Applicant has not established that his spouse would be unable to obtain gainful employment to financially support her and her children. Although the Applicant's spouse claims that her in-laws stopped taking care of the children because their health declined, the Applicant has not provided evidence in support of that claim. The record contains only a physician's letter that stated that the Applicant's mother has been under his care since 1996 for anxiety, depression, hypertension, chest pain, and headaches. Further, he has not shown that his spouse would be unable to obtain alternate care for their children while she is at work. Nor has he demonstrated that he will be unable to assist in the finances of the household while residing abroad.

The Applicant's spouse and parents assert that they will suffer emotional hardship if separated from the Applicant. His parents maintain that they have a close relationship with the Applicant and began living with him and his family in 2002 after their health declined. They indicate that they took care of their grandchildren while the Applicant and his spouse were at work. The Applicant's parents state that they have constant pain and that the Applicant helps alleviate it through acupuncture.

In support of the claimed hardship, the Applicant submitted an evaluation of his spouse and parents from a licensed marriage and family therapist. Regarding his spouse, the licensed marriage and family therapist states that the Applicant's spouse worries that she will not be able to obtain gainful employment to support herself and her children in the Applicant's absence. As we stated above, the Applicant has not demonstrated that his spouse would be unable to financially support her and her children in his absence. He has not demonstrated that his spouse would be unable to obtain alternate care for their children, or that parents would be unable to care for their grandchildren. He has not demonstrated that he will be unable to assist in the finances of the household while residing abroad. Regarding his parents, the licensed marriage and family therapist states that the Applicant's mother has a stress disorder and anxiety brought on by the possibility of separation from the Applicant. The record contains a letter from her physician stating that she has emotional stress from the Applicant's immigration problems. However, from the statements of the Applicant's parents and the licensed marriage and family therapist and the evidence of the physician's letter, we are unable to distinguish the emotional or psychological hardships in this case from hardship that is the common consequence of removal or refusal of admission. The licensed marriage and family therapist also states that the Applicant's mother relies on the Applicant for acupuncture, massage, and special herbs and could

not otherwise afford these treatment interventions. The Applicant, however, has not provided evidence that would demonstrate that his parents are unable to afford these treatments. Taken together, the evidence does not show that the emotional hardship alone would constitute extreme hardship.

The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant's spouse or parents would experience extreme hardship if they remained in the United States without him.

The Applicant and his spouse and parents do not address whether his spouse or parents would experience hardship upon relocation to Korea.

Therefore, the record does not establish that refusal of admission would result in extreme hardship to the Applicant's spouse or parents if they remained in the United States or relocated to Korea.

B. Discretion

As the Applicant has not demonstrated extreme hardship to a qualifying relative or qualifying relatives, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we deny the motion.

ORDER: The motion to reopen is denied.

Cite as *Matter of J-S-K-*, ID# 16005 (AAO Apr. 29, 2016)