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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H5

DATE: FEB 2 9 2012 OFFICE: SAN FRANCISCO, CALIFORNIA 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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Burma (Myanmar) who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen aunt.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director,* dated November 10, 2009.

On appeal, counsel contests the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act. See *Counsel's Brief*, dated December 3, 2009.

The record contains, but is not limited to: Forms I-601, I-485 and denials of each; applicant's personal statement; visa application; immigration interview notes; Forms G-325A and I-140. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. See *Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts; or

2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

In the instant case, the record reflects that before leaving his native Burma the applicant obtained an employment verification letter, dated May 14, 1996, which asserts that he worked as a cook for [redacted] restaurant from March 1993 to May 1996. On April 5, 2005 a USCIS interviewing officer asked the applicant why he obtained the letter before entering the U.S. as a non-immigrant visitor and the applicant replied: "For purpose of applying for a green card and preparing for permanent residence in the U.S." During a second USCIS interview on June 25, 2009 the applicant stated that his only employment in Burma was as a cook. On the applicant's *Form OF-156*, Non-Immigrant Visa Application, signed and dated May 6, 1996, he indicates at question #24 that his present occupation is "Construction Materials Shop Owner." Accordingly, the Field Office Director found that the applicant is inadmissible to the United States under Section 212(a)(6)(C) of the Act.

Counsel asserts that the applicant's statement on April 5, 2005 does not demonstrate an intention to immigrate, but rather that he "truthfully stated that the verification letter was needed for his immigration applications." Counsel's assertion is unpersuasive as the applicant referred not to potential immigration applications for Jamaica or elsewhere, but specifically to applying for a U.S green card and preparing for U.S. permanent residence. The applicant states that he paid a Burmese travel agency $10,000 for a Jamaica tour which included a U.S. "transit visa" and that en route to Jamaica he was required to exit the airport in Los Angeles for three days. The applicant states that he went to visit his aunt in San Francisco and that only after her warm reception did he decide to remain in the U.S. The applicant does not address why, if he did not previously intend to immigrate to the United States, he stated that the employment verification letter was needed to apply for a U.S. green card and prepare for U.S. permanent residence. The AAO finds that the applicant concealed his intention to immigrate to the United States because his visa would not have been granted on the true facts, and that his Jamaica tour plans tended to cut off a line of inquiry relevant to his true intention of immigrating, which again would have resulted in the rejection of his visa application. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Counsel further asserts that the applicant is a victim of a Burmese travel agent who represented the applicant's job as in construction on the visa application form without the applicant's knowledge. The applicant states that the travel agent completed and submitted all the visa application forms to the U.S. Embassy without explaining the contents or allowing him to review before signing. The AAO notes that the applicant is also rendered inadmissible under section 212(a)(6)(C)(i) of the Act, § 8 USC 1182(a)(6)(C)(i) for having intentionally submitted false documents, regardless of who prepared the documents or what his motivation was in submitting them. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288 (1975) and *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1961).

Section 212(i) of the Act provides, in pertinent part:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

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.

Section 291 of the Act, 8 U.S.C. §1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. The applicant in the instant case has not met that burden, in that the evidence in the record does not establish that he is the spouse, son or daughter of a U.S. citizen or lawful permanent resident. The applicant's aunt is not a qualifying relative for purposes of a waiver under section 212(i) of the Act. Because the applicant does not have a qualifying relative, he is ineligible to seek a waiver under Section 212(i). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.