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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: NOV 0 6 2012 OFFICE: WASHINGTON, D.C. FILE: [redacted] CONSOLIDATED

IN RE: APPLICANT: SUNG HO LEE

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Washington, D.C., and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of South Korea who has resided in the United States since May 20, 2000, when he entered without inspection. The applicant previously applied for a nonimmigrant visa at the U.S. Embassy in Seoul, Korea. He 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 having attempted to procure that visa through fraud or misrepresentation. The applicant is the son of U.S. Citizens and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen parents.[1]

The Field Office Director concluded that the applicant failed to establish the existence of extreme hardship to a qualifying relative given his inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated August 6, 2009.

On appeal, counsel contends the applicant's misrepresentation was not material because he did not receive the visa. Counsel additionally asserts that the applicant's mother and father would experience extreme hardship upon separation from the applicant due to financial, medical, and emotional issues.

The record includes, but is not limited to, statements from the applicant and his parents, financial and medical documents, other applications and petitions, evidence of birth, marriage, divorce, residence, and citizenship, and photographs. 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:

> (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 provides:

> (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

[1] The record reflects that [redacted] filed a Form I-130 Petition for Alien Relative seeking to classify the applicant as her spouse. This Petition has not been adjudicated, and the applicant has not listed [redacted] a qualifying relative on the Form I-601 waiver application. Therefore, hardship to [redacted] will not be considered by the AAO on appeal.

> result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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 present case, the record reflects that in a nonimmigrant visa application, the applicant claimed that he owned a small business and submitted documentation to support that claim. A subsequent investigation revealed the applicant falsified the documentation and did not in fact own the business.

Counsel and the applicant claim the applicant hired a Korean immigration consultant to prepare the application package, and the applicant did not understand English well enough to know that the employment certification was not truthful. In making this assertion, both counsel and the applicant fail to note that the nonimmigrant visa application the applicant submitted was in Korean as well as English. *See Nonimmigrant visa application, Optional Form 156,* dated May 4, 2000. The applicant makes no claim that he also does not know the Korean language. As such, the AAO finds that applicant fully understood the nonimmigrant visa application, including the question about his employment, when he signed and submitted the forms.

Counsel additionally contends that because the applicant did not actually receive the visa, he did not make a material misrepresentation. However the statute does not require the applicant to procure the visa in order for inadmissibility to apply; section 212(a)(6)(C) of the Act states that an alien is inadmissible if he "seeks to procure (or has sought to procure or has procured) a visa" through fraud or misrepresentation of a material fact. Section 212(a)(6)(C) of the Act (emphasis added). Counsel moreover references *Kungys v. United States,* 485 U.S. 759 (1988) as support for the claim that the misrepresentation was not material because he did not procure the immigration benefit he sought. However, counsel's reliance on *Kungys* as support for that specific assertion is misplaced. In *Kungys*, the U.S. Supreme Court outlined the test to determine whether a misrepresentation is material, which is set forth above. Unlike the present case, where a determination of admissibility under section 212(a)(6)(C) of the Act is required to evaluate the applicant's eligibility to adjust status

or obtain an immigrant visa, the Supreme Court in *Kungys* analyzed whether an alien who had become a naturalized citizen could have his naturalization revoked under section 340 of the Act. Section 340 of the Act requires an alien to have procured a benefit, namely, naturalization, in order for revocation to occur, whereas the plain language of section 212(a)(6)(C) of the Act also applies to aliens who seek to procure, or has sought to procure a visa, other documentation, admission, or another benefit under the Act.

In the present case, the applicant sought to procure a nonimmigrant visa by misrepresenting his employment, and therefore, his ties to South Korea. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure a visa through misrepresentation of a material fact. The applicant's qualifying relatives for a waiver of this inadmissibility are his U.S. Citizen parents.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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,* 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 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.

The Board 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 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, 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 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 at 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's mother asserts she and the applicant's father rely on the applicant for financial support. She explains that her husband runs a small carry-out restaurant, but has difficulty maintaining it, and the restaurant's income has decreased. The mother adds that she and her husband are both elderly, and cannot work full-time anymore. Paystubs for the mother's employment with Fairfax County public school systems are submitted in support. She further states that she and her husband lost their house pursuant to a short sale, and are now living with the applicant. A lease agreement is submitted on appeal. The applicant's mother indicates that her and her husband's credit have been ruined by the economic downturn and the decline of their small business, adding to their financial hardship. Credit reports are submitted in support. She contends that her daughter and her younger son are in dire financial straits and cannot help her and her husband financially. The applicant explains that he works as a sushi chef and supports his family. His mother additionally states that the daughter and her two children have moved in with her, her husband, and the applicant. In an earlier affidavit, the applicant's mother claims she cares deeply for the applicant, as he is her eldest son, and that helping care for his skin condition has created an even closer bond between them. Letters from medical services providers are submitted on the applicant's psoriasis and "severe chronic xerotix eczenia." *Letter from* [redacted] April 25, 2009, *see also letter from* [redacted] April 23, 2009. The applicant's mother moreover asserts that she has a long history of depression and stress related anxiety problems. A psychiatrist opines in a letter that the mother's reported anxiety and depressive symptoms will likely be exacerbated as a result of being separated from the applicant.

The applicant's mother claims people with emotional and psychiatric problems are shunned in Korea, and are seen as a shame to the family. She adds that she wants to remain in the United States where all of her family, social, and economic support exists.

The applicant's mother contends that the applicant's father has a heart condition and is on medication. She adds that the applicant owns 49% of the stock in their business, and he helps out when her husband cannot due to his health. A physician confirms in a letter that the applicant's father is undergoing recurring medical therapy due to his DCM and atrial fibrillation.

The applicant has submitted evidence to demonstrate that his parents currently experience financial difficulties. His mother's paystub indicates that she works 12 hours every 2 weeks, and earned a net income of $85.21, after taxes and insurance. Moreover, the applicant has submitted documentation to show that his parents' house was sold pursuant to a short sale. However, although the applicant and his mother claim he earns enough money to support the family as a sushi chef, the record does not contain any documentation of this income. The applicant also fails to submit evidence of his siblings' incomes to support claims that they are unable to assist their parents financially. Although these assertions on income are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without documentation of the applicant's income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's parents will face upon separation from the applicant.

The record contains a psychiatric evaluation based on a consultation with the applicant's mother. Therein, [redacted], indicates the applicant's mother reports having a long history of anxiety and depressive symptoms. The psychiatrist opines that the mother will likely experience exacerbation of these symptoms upon separation from the applicant. Although the evaluation notes that the applicant's spouse has symptoms of anxiety and depression, nothing therein shows that her emotional/psychological hardship goes beyond that normally experienced by family members of inadmissible aliens.

While the AAO acknowledges that the applicant's mother would face difficulties as a result of the applicant's inadmissibility, such as emotional difficulties, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's mother are cumulatively above and beyond the hardships commonly experienced, the

AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to South Korea without his mother.

The record contains no documentation to support the applicant's mother's claim that she will be shunned or treated unfairly in South Korea due to her psychological or emotional difficulties. No other assertion is made with respect to the mother's or the father's hardship upon relocation. The AAO therefore finds the applicant has failed to demonstrate that his mother or father would experience extreme hardship upon relocation to South Korea.

The applicant has submitted sufficient evidence to show that the applicant's father has medical conditions. However, the record does not contain a description from the father's treating physician of the treatment necessary, or an explanation of family assistance needed. Furthermore, the applicant does not assert that his father will be unable to access required medical care without the applicant present. Absent these explanations and supporting documentation, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The AAO recognizes that the applicant's father will endure hardship as a result of long-term separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of inadmissibility and does not rise to the level of extreme hardship based on the record. Thus, the AAO concludes that it has not been established that the applicant's father will suffer extreme hardship were he to remain in the United States while the applicant relocates abroad due to his inadmissibility.

In this case, the record does not contain sufficient evidence to show that the hardships faced by a qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to either of his U.S. Citizen parents as required under section 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 the applicant merits a waiver as a matter of discretion.

In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.