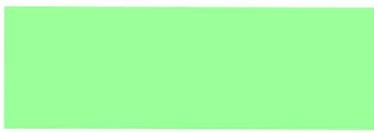




U.S. Citizenship  
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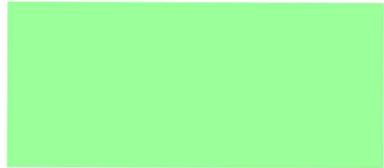


Date: **APR 09 2013** Office: SANTA ANA, CALIFORNIA FILE:

IN RE: Applicant:

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 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The record reflects that 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact in order to obtain an immigration benefit. The record indicates that the applicant is the son of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 father.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 8, 2011.

On appeal, the applicant, through counsel, claims that the applicant's father will suffer extreme hardship should the applicant's waiver application be denied. *Form I-290B, Notice of Appeal or Motion*, filed August 11, 2011. Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's statement; statements from the applicant, his father, and brother; medical and psychological documents for the applicant's father; military documents for the applicant; financial and business documents; utility bills; and photographs. The entire record was reviewed and considered in arriving at 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.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, 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 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 [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 first 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) 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 of Immigration Appeals (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 v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> 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 the present case, the record indicates that on August 1, 2005, the applicant's father, a lawful permanent resident of the United States at the time, filed a Form I-130 on behalf of the applicant. On February 17, 2006, the applicant filed a nonimmigrant visa application (Form DS-156) claiming that he had no family in the United States. On the same day, the applicant was issued a B-1/B-2 nonimmigrant visa. On April 30, 2006, the applicant entered the United States on his B-2 nonimmigrant visa, and he departed before his authorization expired. On June 2, 2009, the applicant's Form I-130 was approved. On August 24, 2010, the applicant entered the United States on his B-2 nonimmigrant visa, with authorization to remain until February 22, 2011. The applicant has remained in the United States.

In his statement dated August 7, 2011, the applicant claims that he did not intentionally answer "No" to question 37 on the DS-156 regarding if he has any family in the United States. He states that as an officer of the "special forces in the Republic of Korea Army," he would have answered "Yes" "on [his] officer's honor." Counsel claims that a high-ranking military officer referred the applicant to a travel agency to apply for the visa, and the applicant was unaware of the question regarding family members in the United States was answered incorrectly. In his statement dated April 28, 2011, the applicant states he was following the "common procedures" that high-ranking officers followed. Counsel acknowledges that the applicant signed the application; however, a travel-agency employee completed the application and he was unaware of the mistake.

In order for the applicant to be inadmissible under section 212(a)(6)(C) of the Act, the applicant's misrepresentation not only must be willful, but it must be material. A misrepresentation is generally material only if by making 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 must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys*, 495 U.S. at 771-72. The Board of Immigration Appeals (Board) 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).

"It is not necessary that an 'intent to deceive' be established by proof, or that the officer believes and acts upon the false representation," but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)).

In regards to the willfulness of the applicant's stated misrepresentation, 9 FAM 40.63 N5, in pertinent part, states that:

The term "willfully" as used in INA 212(a)(6)(C)(i) is interpreted to mean knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately made an untrue statement.

Additionally, "materiality" is defined in 9 FAM 40.63 N6.1, which states, in pertinent part, that:

Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa. The Attorney General has declared the definition of "materiality" with respect to INA 212(a)(6)(C)(i) to be as follows: "A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either: (1) The alien is inadmissible 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 a proper determination that he or she be inadmissible." (*Matter of S- and B-C*, 9 I & N 436, at 447.)

The AAO observes that in waiver proceedings, the burden of proof is on the applicant to establish admissibility. See section 291 of the Act, 8 U.S.C. § 1361. The record establishes that the applicant obtained a nonimmigrant visa after misrepresenting his family ties to the United States, thereby shutting off a relevant line of inquiry. Although he claims that he was unaware that the question regarding family members in the United States was answered incorrectly, it is his responsibility to know and understand the information in the documents he submits to an immigration officer. Additionally, even though the applicant claims his visa application was prepared by a travel agent, he signed the application certifying

that the information was correct. Therefore, the applicant's misrepresentation is willful and material, and based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Concerning the hardship the applicant's father would experience if he were to relocate, medical documentation in the record establishes that he has been diagnosed with uncontrolled high blood pressure, high cholesterol, high triglycerides, anxiety, and depression. Additionally, in his statement dated August 7, 2011, the applicant's father claims that he is financially dependent on the applicant.

The AAO acknowledges that the applicant's father is a U.S. citizen, and that relocation abroad would involve some hardship. However, no evidence has been submitted showing that the applicant's father, a native of South Korea, does not speak the language, is unfamiliar with the culture and customs in South Korea, or has no family ties there. Additionally, the AAO notes that the applicant's father is elderly; however, the record does not show that his family in the United States cannot help to support him or that the applicant cannot support him in South Korea. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Regarding the medical hardship to the applicant's father, no documentary evidence was submitted establishing that he cannot receive medical treatment for his medical conditions in South Korea or that he has to remain in the United States to receive treatment. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his father would suffer extreme hardship if he relocated to South Korea.

Regarding the potential hardship to the applicant's father caused by separation from the applicant, counsel states the applicant's father relies "tremendously on [the applicant's] financial, emotional and physical support." The applicant's father states that during the twelve years of separation from the applicant, he suffered and he cannot imagine being separated from the applicant again. He states it is a "comfort" having the applicant with him, and he does not think he will be able to "cope with the sense of loss and longing and the fear of loneliness" if the applicant returns to South Korea. In his letter dated August 3, 2011, Dr. [REDACTED] states the applicant's absence would have a "tragic effect" on his father's "spirit and health." In her psychological evaluation dated August 3, 2011, Dr. [REDACTED] diagnoses the applicant's father with panic disorder and adjustment disorder, and indicates that his mental health has "deteriorated significantly." Additionally, Dr. [REDACTED] states the applicant's father is "suffering severely from pain in his neck, lower back and left knee," and he diagnoses him with uncontrolled high blood pressure, high cholesterol, high triglycerides, anxiety, and depression. Dr. [REDACTED] indicates that treatment has been unsuccessful, and he is "severely dependent" on the applicant. In his statement dated August 7, 2011, the applicant states he takes his father to his doctor's appointments, picks up his medications, monitors his health, cooks, and does his father's laundry. The applicant's father states he cannot stand for long periods of time, he is having difficulty running his store, and he needs the applicant to help lift heavy items. In his statement dated August 7, 2011, the applicant's brother states their father is drinking alcohol daily and he worries about his health. The applicant states his father began to drink and smoke after his adjustment application was denied. The applicant's father states he is afraid of becoming sick and being alone. The applicant states he received emergency medical training in the military and can assist his father if his health deteriorates.

The applicant states his father's "finances are in shambles." The applicant's father states he needs the applicant's financial assistance because his store is not doing well and his savings is almost depleted. The applicant's brother claims that when he and his wife lived with his father, he helped their father financially but now that he has his own house and family, he can no longer provide financial assistance. He also states that he cannot help their father if his health deteriorates because he lives "far from him," he has to take care of his own family, and he cannot afford to support him.

The AAO finds that when the applicant's father's hardships are considered in the aggregate, specifically his psychological and medical issues, and financial issues, the record establishes that the applicant's father would face extreme hardship if he remained in the United States in his absence.

We can find extreme hardship warranting a waiver of inadmissibility 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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige, supra* at 886. Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., see also Matter of Pilch, supra* at 632-33. As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.