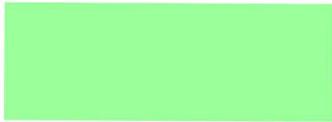


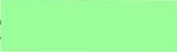


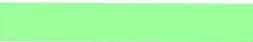
**U.S. Citizenship  
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Services**

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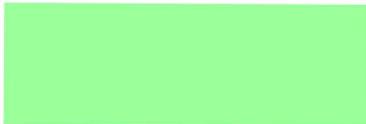
DATE: **JUL 18 2014** OFFICE: MEMPHIS, TN

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Application for Waiver of Grounds of Inadmissibility (Form I-601) and Application to Register Permanent Residence or Adjust Status (Form I-485) were denied in one decision by the Memphis, Tennessee, Field Office Director on January 16, 2013. Pursuant to a motion to reopen, the Field Office Director affirmed the previous denial on February 11, 2013. The applicant appealed the decision to the Administrative Appeals Office (AAO). As the AAO only has jurisdiction over the Form I-601 waiver application, not the Form I-485, the appeal will be treated as an appeal of the Form I-601 only. The appeal will be dismissed.

The applicant is a native and citizen of Cambodia who has resided in the United States since May 18, 2001, when he was admitted pursuant to a non-immigrant B-1/B-2 visa. 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) (2012), for having procured that visa through fraud or misrepresentation. The applicant is the spouse of a United States citizen and is 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 United States citizen spouse.

The Field Office Director concluded that the applicant's misrepresentations on his non-immigrant visa application with respect to his spouse, child, and business rendered him inadmissible under section 212(a)(6)(C)(i) of the Act, and that he did not establish that his qualifying relative would experience extreme hardship given his inadmissibility. *See Decision of Field Office Director* dated January 16, 2013. The Field Office Director affirmed the January 16, 2013, denial on February 11, 2013.

On appeal, the applicant submits a brief in support, documentation of the applicant's medical degree in Cambodia, and copies of previously submitted documents. In the brief, counsel contends that the applicant's misrepresentations were not material, and if they are found to be material, he has demonstrated his spouse would experience extreme hardship upon relocation to Cambodia and separation from him.

The record includes, but is not limited to: the documents listed above; evidence of birth, marriage, divorce, and citizenship; statements from the applicant and his spouse; medical records; financial documents; documents related to a business; and other applications and petitions. 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 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).

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

- (B) an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The FAM further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

*DOS Foreign Affairs Manual*, § 41.31 N. 3.4.

In the present case, the record reflects that pursuant to a 2001 application for a B-1/B-2 non-immigrant visa the applicant indicated he was married to a woman when in fact he was not, he was planning to travel with his son and attend his 20 year old daughter's wedding in the United

States, when he did not actually have any children. The applicant additionally represented that he was a medical doctor, he had his own clinic, and he earned an income of \$2,000 a month.

On appeal, counsel first asserts that the United States Citizenship and Immigration Services (“USCIS”) did not provide any evidence demonstrating that the applicant’s statements influenced the consular officer’s decision to grant him a visa. In addition, counsel contends the applicant’s misrepresentations were not material. Counsel explains that the applicant’s representations, that he was traveling with his family to attend his daughter’s wedding would have made the consular officer more wary of issuing the visa than if he had given the more accurate explanation, that he was a single doctor attending the wedding of a friend’s daughter. Counsel also provides documentation to demonstrate that the applicant was a doctor in Cambodia.

In claiming that USCIS did not produce evidence establishing that the applicant’s statements influenced the consular officer’s decision to grant him a visa, counsel does not take into account that regulations do not require USCIS to provide this documentation. If a decision is based on derogatory information in the record, USCIS is only required to advise the applicant of the fact and allow an opportunity for rebuttal; the evidence does not need to be produced for inspection. See 8 C.F.R. § 103.2(b)(16)(i). This advisement and opportunity for rebuttal were provided with the October 15, 2012, Notice of Intent to Deny (“NOID”). Furthermore, it is the applicant’s burden, not USCIS’s, to demonstrate that the applicant is eligible for the benefit sought. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

In this case, the applicant has not met his burden of demonstrating he is not inadmissible under section 212(a)(6)(C)(i) of the Act, as the record reflects the applicant’s representations did influence the consular officer’s decision to grant him a visa. Although counsel contends the applicant’s misrepresentations regarding having a wife and son should not have influenced the consular officer because they were themselves applying for non-immigrant visas, the existence of these family members who also resided in Cambodia indicated to the consular officer that the applicant had permanent ties in that country. In addition, the applicant claimed he had more permanent ties to that country when he stated, during the consular interview, that he was a medical doctor with his own practice in Cambodia.<sup>1</sup>

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<sup>1</sup> On appeal, the applicant submits documents indicating he received his medical diploma in 1990 to demonstrate he had not misrepresented his business ties in Cambodia. However, there is no evidence to support the applicant’s assertions that he had his own clinic in Cambodia, or that he earned an income of \$2,000 a month. Without supporting evidence, we can only give limited weight to these assertions. Although the applicant’s assertions 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

By stating he was married and had a son when in fact he was single and childless, and by claiming he had a medical practice in Cambodia, the applicant led the consular officer to believe he had meaningful business connections and close family ties in that country. These misrepresentations shut off lines of inquiry related to his true connections to Cambodia, which might have resulted in a determination that he did not have sufficient ties to that country for issuance of the non-immigrant visa.

Therefore, we affirm that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of inadmissibility is his United States citizen spouse.

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,

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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).

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. I.N.S.*, 138 F.3d 1292 (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.

Counsel contends the Field Office Director did not provide an analysis of the extreme hardship the applicant’s spouse would experience, but instead, simply concluded that the applicant had not met his burden on this matter. Counsel claims that the applicant had, in fact, submitted sufficient evidence of the spouse’s extreme hardship given the applicant’s inadmissibility.

The applicant’s spouse claims in the response to the NOID that she would experience financial, medical, and emotional hardship upon separation from the applicant. The spouse explains that in 2012, she and the applicant bought a doughnut franchise together. She states that they work very hard together, waking up at 2:30 AM to get to the shop and start baking, and that they close the store together at 4:00 PM. The spouse adds that although they have one part-time employee who works from 6:00 to 10:00 AM, they cannot afford to hire another employee. An application for a doughnut shop franchise and a retail lease agreement, both dated in 2012, as well as bank statements from 2012, were submitted in support. The applicant’s spouse also claims she has

heart and stomach problems, as well as STDs, and that the applicant helps her when she doesn't feel well. Medical records are present in the record. The spouse concludes that without the applicant, she could not run the store alone, her health problems would become overwhelming, and she would consequently be unable to afford bringing her mother and three children to the United States.

Counsel contends although the spouse's mother and three children live in Cambodia, the spouse has filed I-130 petitions to help them immigrate to the United States. Copies of I-130 petitions are submitted in support. Counsel states that when they do immigrate, the spouse will have no family ties in Cambodia. Furthermore, counsel claims that the applicant's spouse has lived in the United States since 2002, and during her time here she has made connections to the local community, such as her doughnut shop business. In addition, counsel contends the spouse would be unable to resume her employment in Cambodia at the airport because she has become, at over 40 years of age, too old. Counsel also states that her employment prospects as a whole in Cambodia are poor, given the poverty level there, and consequently she will not be able to support herself and her family.

The applicant's claims of medical hardship upon separation are not sufficiently supported by evidence of record. The spouse asserts she has heart and stomach problems, as well as two STDs. However, in support of these assertions, the applicant submits two billing statements from 2012, documents in a foreign language, apparently from 1998, and a blood test analysis from 2000. The foreign language documents cannot be considered on appeal because they are not accompanied by certified English language translations. *See* 8 C.F.R. § 103.2(b)(3). Moreover, the applicant has not submitted documentation from a medical services provider with details about the severity of the spouse's complete medical condition and how it affects her quality of life to allow an assessment of the spouse's medical needs and whether the applicant can assist with those needs. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, we are not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed, or the nature and extent of any hardship the applicant's spouse would suffer as a result of the applicant's inadmissibility.

The applicant's claims of financial hardship upon separation are also not supported by sufficient documentation. The application for a doughnut retail franchise, the bank statements, and the retail lease agreement do not contain indications that the applicant's spouse could not operate the business, which apparently began in 2012, without the applicant, or that she would be unable to continue sending money to her mother and children in Cambodia. In addition, there is no clear indication of the amount of income from the business to support assertions of financial difficulties upon separation. Without evidence to support these assertions, they can only be given limited weight. *See Matter of Kwan, supra, see also Matter of Soffici, supra.*

While we acknowledge that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, such as emotional hardship, 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 spouse 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 Cambodia without her spouse.

The applicant has also provided scant evidence to support assertions of his spouse's hardship upon relocation to Cambodia. The applicant's spouse admits she is from Cambodia, and that her mother and three children reside in that country. In addition to these family ties, the record contains no assertion that the spouse would have difficulties in Cambodia due to a lack of familiarity with Cambodian language and culture. Moreover, the applicant has provided no evidence to support assertions that his spouse would be unable to resume her previous employment at the airport, or that she would be unable to find adequate employment given her skills and background. Further, there is no evidence that the applicant could not resume his work as a doctor.

The applicant's spouse may experience difficulties related to her franchise business and the visa petitions filed on her family members' behalf. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Cambodia.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the 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 his U.S. Citizen spouse 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 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.