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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

PUBLIC COPY

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[redacted]

DATE: DEC 30 2011 OFFICE: LOS ANGELES, 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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, 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 Mexico who has resided in the United States since September 1996, when he entered the United States without inspection. The applicant had attempted to enter the United States earlier that month by presenting a Form I-586 border crossing card which did not belong to him to immigration officials. The applicant was placed in exclusion proceedings and was ordered excluded on September 24, 1996. 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 admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 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 spouse, Ana Perales, and children Alonso and Abelangel.

The Field Office Director concluded that the applicant failed to establish his spouse would experience extreme hardship given his inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated March 11, 2009.

On appeal, counsel for the applicant submits a brief in support of appeal, an updated affidavit from the applicant's spouse, medical records and school records. In the brief, counsel contends the Field Office Director erred in not finding extreme hardship. *Brief in support of appeal,* May 6, 2009. Counsel emphasizes the spouse's family ties in the United States versus her lack of family ties in Mexico, as well as the difficulties involved in relocating to Mexico. *Id.* Counsel also asserts the children's medical issues and the relative quality and cost of medical care in Mexico would create significant hardship for the spouse. *Id.* Moreover, counsel states if the applicant's spouse and the children remain in the United States while the applicant relocates to Mexico, the situation would result in difficulties for the spouse because she and the children would need their father. *Id.*

The record includes, but is not limited to, the documents listed above, another declaration from the applicant's spouse, evidence of birth, marriage, naturalization, and permanent residence, more medical and school records, letters from employers, copies of U.S. federal income tax returns, 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 result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

In the present case, the record reflects that on September 20, 1996 the applicant presented a Form I-586 border crossing card bearing the name of [redacted] to immigration officials in an attempt to gain admission into the United States. *See record of deportable alien,* September 20, 1996. After some questioning, the applicant admitted the card did not belong to him, and that his real name was [redacted] *Id.* The applicant was placed in exclusion proceedings, and was ordered excluded on September 24, 1996. *Order of Immigration Judge,* September 24, 1996. At an immigration interview the applicant admitted he entered the United States without inspection later that month. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is his U.S. 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, 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 record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Counsel for the applicant asserts because of the spouse's "existing familial relationship, [redacted] has strong family ties to the United States." *Brief in support of appeal,* May 6, 2009. The applicant's spouse affirms: "My immediate family, Father and Mother, and two sisters are also

United States Citizens. My immediate family members live near me and are active participants in the life of my husband and I and our children. They have developed deeply rooted loving relationships with my husband and our children." *Declaration of applicant's spouse,* May 6, 2009. In support, the record contains certificates of naturalization for the spouse's father, mother, and three sisters, as well as evidence of permanent residence for one other sister. In contrast, the applicant's spouse claims: "[a]lthough I do have... distant family in Mexico on my father's side, I have only met a few of them when I was a child and they were visiting my family here in Los Angeles... They are essentially strangers." *Id.*

With respect to her background, the spouse explains: "Although I was born in the country of Mexico, I came to the United States when I was six (6) years old and obtained my legal permanent residence via my father. Subsequently, I became a U.S. Citizen when I was twenty... For all intents and purposes the United States is what I know. The U.S. is my home and it is my country... Essentially, despite the fact [that] I understand and speak Spanish, I am an American and do not believe I would survive on many different levels should I have to live in Mexico." *Declaration of applicant's spouse,* May 6, 2009. Moreover, the spouse contends she would suffer from "emotional distress" should her two U.S. Citizen sons relocate with her because their "primary language is English" and the "education system in the United States is different from schools in Mexico... their opportunities would be less in Mexico than if they were to remain in the educational system in the United States." *Id.* In support, the applicant submits school records for the two children. Furthermore, the applicant's spouse explains her children have medical issues: "Both of my sons have medical problems, asthma. My oldest son, [redacted] asthma condition has gotten better but the condition can worsen at any time. When he was younger, he also suffered from frequent ear infections. As a result, he was operated on for this problem. On the other hand, my youngest son, [redacted] developed lung problems when he was a year old. He suffers from asthma but on a serious level. As a result, my medical health care provider prescribed a nebulizer for regular treatment of albuterol and pulmicort." *Id.* Medical records for both sons are submitted as evidence of these conditions. The spouse additionally reports that although she pays for health insurance in the United States, she would not have insurance in Mexico and financial problems would prevent her from purchasing insurance there. *Id.*

Moreover, the applicant's spouse contends she would experience financial hardship in Mexico. She explains she is a high school graduate, and that the applicant did not finish high school in Mexico. As such, she explains: "I would be at a serious disadvantage if I chose to go to Mexico. I believe unemployment is also very high in Mexico. I would be competing for potential jobs against... native citizens of Mexico. I have serious concerns about the financial welfare of my family should I relocate to Mexico with my husband and sons." *Declaration of applicant's spouse,* May 6, 2009. The spouse adds because of her cultural differences, she would "seriously be at a severe disadvantage in Mexico" and, "[w]ith the economic and unemployment situation in Mexico, I believe I would suffer discrimination due to my American citizenship and therefore would have a great difficulty in obtaining work to help support my family." *Id.* The record contains a Form I-864, Affidavit of Support, from the applicant's spouse, as well as a paystub which shows her 2006 individual annual income is $24,129.00. *See Form W-2, Wage and tax statement 2006,* [redacted] *see also Form I-864, Affidavit of Support,* July 13, 2007.

On separation from the applicant, the spouse explains: "I believe as a single mother this would have devastating consequences for me as well as my two sons. I know that my husband has a wonderful relationship with our sons. He is an active father and they are dependent upon him as they naturally should be. He provides for their emotional support by helping them learn and teaching them life's lessons. I know my sons would suffer greatly without their father and that in turn would cause me severe and extreme heartache knowing that my sons would not have the continued presence of their father in their formative learning years, in their youth, and as young adults. This would be very sad and traumatic for me. In addition, as a single mother, I would have to endure the great responsibility of raising my two sons entirely on my own." *Declaration of applicant's spouse,* May 6, 2009.

The AAO acknowledges the applicant's spouse would experience some difficulties upon relocation to Mexico. Despite the spouse's assertion that she would be at a "severe disadvantage" because she "has a working knowledge of the cultural issues in Mexico but not of the social issues I would find," the record reflects she is a native of Mexico and knows Spanish. *Declaration of applicant's spouse,* May 6, 2009. Moreover, the spouse's contention that her sons may have difficulties adjusting to life in Mexico because their "primary language is English" is somewhat contradicted by the record. *Id.* The individualized learning plan and child progress report for Alonso Hernandez reveals his "primary language [is] Spanish." *See child progress report,* November 13, 2008, *see individualized learning plan #2,* undated. [redacted] school records also indicate his "primary language [is] Spanish." *Individualized learning plan #1 and #2,* undated, *child progress report,* June 12, 2007. Additionally, there is no evidence to support the spouse's contention that the children would be unable to access suitable educational opportunities in Mexico. Given that the spouse knows Spanish, and the two sons' primary language is Spanish as well, the household will not face a language barrier upon relocation to Mexico.

Furthermore, counsel and the applicant's spouse's assertions that she and the applicant would face difficulties finding employment and other related financial difficulties in Mexico are unsupported by evidence of record. Although the applicant's spouse'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 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). Given the lack of supporting evidence, the AAO cannot determine whether and to what degree such financial difficulties will be present upon relocation to Mexico.

The spouse asserts: "both of my sons have medical problems, asthma" and given these medical problems, the spouse would have significant "strain and stress" over finding and paying for good medical care in Mexico. *Declaration of applicant's spouse,* May 6, 2009. In support of these assertions counsel submitted copies of medical records for the two children. The records consist of laboratory results and physician's "progress notes" for medical care. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's children suffer from such conditions. The record contains copies of medical records, including hand-written progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's children. 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, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. Furthermore, even if the applicant submitted such an explanation, there is no evidence of record to show that suitable medical care is either unavailable or prohibitively expensive in Mexico.

While the AAO finds the applicant would experience some hardship as upon relocation to Mexico, we do not find there is sufficient evidence to show her emotional and psychological, financial, or other hardship, when considered individually or in the aggregate, would be above and beyond that which is normally experienced by relatives of inadmissible aliens. Therefore, the AAO finds there is insufficient evidence of extreme hardship to the applicant's spouse upon relocation to Mexico.

Moreover, the AAO acknowledges the applicant's spouse would face difficulties raising her two sons while separated from the applicant. Again, though, 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 relocates to Mexico without his spouse.

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 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.