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

U.S. Citizenship and Immigration Services

[redacted]

H5

Date: JUN 3 0 2011 Office: CIUDAD JUAREZ FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, Ciudad Juarez. The matter 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 Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated December 8, 2008.

On appeal, the applicant has submitted additional evidence to show the hardship her husband will experience if her waiver application were denied.

The record contains, *inter alia*: letters from the applicant; letters from the applicant's husband, [redacted] a psychological evaluation of [redacted]; letters of support from [redacted] relatives; copies of bills and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

> In general.—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) provides, in pertinent part:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant concedes, that on January 11, 2005, she attempted to enter the United States by presenting fraudulent employment documents indicating she worked in

Mexico. *Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act*, dated January 11, 2005. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit.

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.

In this case, the applicant's husband, [redacted], states that being separated from his wife has affected him physically, mentally, and financially. [redacted] states that there are some nights he does not sleep and he feels very nervous without his family. He states he wants to see his children grow up, that it hurts that his seven month old daughter does not know him, and that his oldest daughter cries for him. In addition, [redacted] states he has suffered financially because he cannot afford to pay his bills in the United States while also supporting his family in Mexico. He contends the bank has repossessed his home. *Letters from* [redacted], undated.

A psychological evaluation of [redacted] states that he was born in Mexico and lived there until he was nineteen years old. According to the psychologist, [redacted] parents are lawful permanent residents and [redacted] is emotionally and economically responsible for them. The psychologist states that [redacted] works at a construction company. [redacted] was reportedly diagnosed with low thyroid function and high triglycerides, and experiences feelings of nervousness, dizziness, difficulty breathing, and shakiness. The psychologist diagnosed [redacted] with major depressive disorder. *Psychological Evaluation*, dated January 2, 2009.

The applicant states that her husband was very sad when he could not be in Mexico for their daughter's birth. The applicant states that the couple's older daughter has been having problems and cries for her father. According to the applicant, her daughter does not pay any attention to her, only to her father. In addition, the applicant states that she and her daughters are suffering because the house that they live in is in poor condition. Furthermore, she states that when her younger daughter was one month old, she almost got dehydrated and had a skin rash. She states that in the cold, her daughter gets sick often. The applicant contends they are afraid someone will hurt their children because people in Mexico know that her husband works in the United States. *Letter from* [redacted], undated.

Letters from [redacted] family members state that [redacted] has been suffering because he is separated from his wife and daughters. *See, e.g., Letter from* [redacted], dated January 2, 2009; *Letter from* [redacted] *and* [redacted], dated January 2, 2009; *Letter from* [redacted], dated December 31, 2008; *Letter from* [redacted], undated.

The AAO recognizes that [redacted] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, if [redacted] decides to stay in the

United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record appears to be based on a single interview the psychologist conducted with [redacted]. As such, the conclusions reached in the submitted evaluation do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby diminishing the evaluation's value to a determination of extreme hardship. In addition, the evaluation attributes [redacted] depression and anxiety related symptoms to his wife's immigration case, but fails to address whether his mental health might improve if he relocated to Mexico to be with his wife.

With respect to the financial hardship claim, there is insufficient evidence showing that [redacted] hardship would be extreme. Although the record contains copies of bills as well as evidence [redacted] house is in foreclosure proceedings, there is no evidence addressing [redacted] income, such as tax records or copies of pay stubs. Although the AAO does not doubt that [redacted] has experienced some financial hardship, without more detailed information addressing the couple's total monthly income and expenses, there is insufficient evidence in the record to determine the extent of his financial hardship.

To the extent the couple's daughters may be having a difficult time in Mexico and miss their father, hardship to the applicant's children can be considered only insofar as it results in hardship to [redacted] the only qualifying relative in this case. There is insufficient evidence in the record to show that any difficulty the applicant's children may be experiencing has caused, or will cause, extreme hardship to [redacted] Although the AAO is sympathetic to the family's circumstances, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Furthermore, the record does not show that [redacted] would suffer extreme hardship if he were to move back to Mexico to be with his wife and children. The record shows that [redacted] is currently thirty-three years old, was born in Mexico, and lived in Mexico until he was nineteen years old. Although the psychologist contends [redacted] has some health issues, [redacted] himself does not claim that he has any physical or mental health problems that would make his transition to moving back to Mexico any more difficult than would normally be expected under the circumstances.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.[1]

ORDER: The appeal is dismissed.

[1] With respect to the applicant's Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), the AAO notes that five years have passed since the applicant's removal on January 11, 2005. Therefore, the applicant no longer needs to file a Form I-212. Nonetheless, the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit, and as stated above, has not qualified for a waiver of inadmissibility.