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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

H5

[redacted]

DATE: NOV 17 2011 OFFICE: CHICAGO, IL 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:

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, Chicago, Illinois, 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 February 6, 1999, when she entered using an identity document which did not belong to her. She 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 procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a lawful permanent resident and is the beneficiary of an approved Form I-130 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 her lawful permanent resident spouse, father, and U.S. Citizen children.

The Field Office Director concluded that neither individually or in the aggregate did the circumstances surrounding the applicant's qualifying relatives rise to the level of extreme hardship and denied the application accordingly. *See Decision of Field Office Director* dated July 13, 2009.

On appeal, the applicant, appearing without counsel, claims her spouse would suffer extreme hardship without the applicant. *Letter from applicant,* August 8, 2009. The applicant's spouse contends his mother has cancer, and the applicant helps take care of the mother. *Id.* The applicant's spouse additionally asserts the children would not be able to get the best education in Mexico, which would cause him to suffer extreme hardship. *Letter from applicant's spouse,* August 8, 2009. The spouse also explains in Mexico, he and his family would not be able to have the medical care they need. *Id.*

The record includes, but is not limited to, statements from the applicant, the applicant's spouse, family members, employers, and friends, medical records, evidence of birth, marriage, permanent residence, and naturalization, paystubs, Federal Income Tax Returns, articles on Mexico, bank and investment statements, billing statements, documentation from schools, photographs, and drawings.[1] 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:

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[1] The record also contains several letters in Spanish without an English translation. 8 C.F.R. § 103.2(b)(3) states:

> (3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Without English translations, the AAO cannot consider these letters in adjudicating this appeal.

> (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 a sworn statement the applicant admitted on February 6, 1999 she used an identity document which did not belong to her to gain admission to the United States. *See record of sworn statement,* January 28, 2004. The applicant is therefore 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 relatives are her lawful permanent resident spouse and father.[2]

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.

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[2] It is noted that the applicant failed to submit evidence of hardship to her lawful permanent resident father, [redacted] on appeal or during the initial adjudication of this waiver application. As such, only hardship to the applicant's lawful permanent resident spouse will be considered.

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 and father are the only qualifying relatives for the waiver under section 212(i) of the Act,

and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse or father.

The applicant's spouse contends it would be a hardship for him to have his children educated in Mexico. *Statement of applicant's spouse,* March 25, 2008. He explains his son [redacted]. is in special education classes, and is receiving one hour of speech therapy per day. *Id.* His other son, [redacted] is not in special education classes, but the spouse claims: "If he were to have to go to Mexico with his mom he would not have the same learning because in Mexico the teaching is different and my children do not know how to read and write Spanish." *Id.* The applicant's spouse further claims the children's education and growth would suffer without the applicant, because the applicant "takes care of [the] children... she gets out of work on time to see the children arrive home from school. [redacted] makes sure the children are well [fed] and makes sure their clothing is clean for school." *Id.* In support, the applicant submits a letter from the children's school. Therein, [redacted], an administrative assistant, states: "According [to] the teachers of the boys, they are wonderful students who receive good grades. Parents have always demonstrated concern for the well-being of the boys and have been active in helping them succeed." *Letter from* [redacted] undated. An individualized education program report for [redacted] indicates he is eligible or continues to be eligible for speech and language impairment special education services, and at the second grade, he has kindergarten level reading and writing skills. *Individualized education program report,* March 19, 2008. The applicant's spouse explains: "If my son were to have to go live in Mexico he will not get the attention that he has here. The schools in Mexico do not have speech therapy classes. He will get very behind in school. Here his mother dedicates time to him and helps him in what she can on his homework." *Statement of applicant's spouse,* March 25, 2008. Report cards for [redacted] and [redacted] were also submitted.

On appeal, the applicant's spouse asserts he and his mother have medical difficulties. The applicant's spouse contends: "I have been seen and put in the hospital... They are giving me some studies to give me the diagnosis." *Statement of applicant's spouse,* August 8, 2009. In support the applicant submits medical records and progress notes. The applicant also submits medical records and progress notes for [redacted], the applicant's spouse's mother, to corroborate assertions regarding her medical conditions. *See medical records.*

The applicant's spouse adds he also experiences financial hardship. He lists his expenses, providing copies of billing statements in support. The household expenses total $2,703.87 per month. *Statement of applicant's spouse,* August 8, 2009, *see also billing statements.* The applicant's spouse asserts: "at this moment we are in a difficult economic situation, I was behind on my mortgage payments. I had to get a loan on my 401k to catch up on my mortgage payments. My wife works as well but at this moment she has been unable to work because she has been feeling ill because of the pregnancy." *Statement of applicant's spouse,* August 8, 2009. The applicant submits an employment letter, showing her spouse's "current hourly wage is $14.21 per hour. He works 40 hours per week, plus overtime as needed. He is a responsible and dependable employee." *Letter from* [redacted], [redacted] February 6, 2008. The applicant's spouse contends he and the applicant would be unable to find employment in Mexico because

"there are no jobs. The economy is very low. In the news in Mexico they announced the minimum wage had gone up to $60.00 dollars a week. How can you support a family of five with those earnings?" *Statement of applicant's spouse,* March 25, 2008. A Wikipedia article on minimum wage in Mexico is submitted as supporting evidence.

The AAO acknowledges the applicant's spouse is experiencing some financial difficulties. Based on the income as stated in his employment letter, dated February 6, 2008, as well as the spouse's household budget corroborated by copies of billing statements, the applicant has shown the family's household expenses exceed the spouse's income. However, as noted in the District Director's decision, it is still unclear whether the applicant could help alleviate this financial situation. In the spouse's 2008 statement, he indicates the applicant "has been unable to work because she has been feeling ill because of the pregnancy." *Statement of applicant's spouse,* March 25, 2008. No evidence was submitted on appeal to demonstrate any financial contributions currently made by the applicant, or how the applicant otherwise assists with financial difficulties. Moreover, despite the spouse's assertions there is no evidence of record demonstrating whether the applicant could contribute financially while in Mexico. Given the evidence of record, the AAO is unable to evaluate the extent of financial hardship experienced due to the applicant's inadmissibility.

The applicant claims her spouse's mother suffers from cancer, and the applicant's spouse contends he also experiences medical difficulties. *See Form I-290B, Notice of Appeal or Motion,* August 8, 2009, *see also statement of applicant's spouse,* August 8, 2009. In support, the applicant submits 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 spouse or mother-in-law suffers from such conditions. The record contains copies of medical records containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals and do not contain a clear explanation of the current medical conditions of the applicant's spouse and mother-in-law. Absent an explanation in plain language from the treating physician of the exact nature and severity of any conditions 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.

The applicant's spouse also expresses concern for their children, who, along with his parents, "depend on [the applicant's] care for all the family." *Statement of applicant's spouse,* August 8, 2009. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his 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 he would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico without her spouse.

The applicant's spouse claims his children, especially [redacted], who is enrolled in special education classes, "would not have the same learning because in Mexico the teaching is different." *Statement of applicant's spouse,* March 25, 2008. There is no evidence of record to show special education classes are unavailable in Mexico, or that the educational opportunities for the applicant's children are deficient in that country. Although the applicant's and her 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)). Moreover, the applicant's spouse's claim that his children "do not know how to read and write in Spanish" is in fact contradicted by the record, which contains a handwritten letter, in Spanish, from his son. *See letter from* [redacted], January 29, 2008, *statement of applicant's spouse,* March 25, 2008. Although the applicant submits a Wikipedia article on minimum wage in Mexico to support assertions of financial hardship in Mexico, online content from Wikipedia is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http:[redacted]_disclaimer, accessed on November 10, 2011. Even if the record contained reliable evidence on the minimum wage in Mexico, there is no evidence to support the spouse's assertion that he would either be unable to find employment or would earn the minimum wage. It is also noted that the applicant's spouse has submitted statements in Spanish, was born in Mexico, is a citizen and national of Mexico, and was approximately 17 years of age when he began living in the United States. As such, the applicant's spouse should have less difficulty adjusting to the culture, languages, and customs of that country. Given the evidence of record, when considered both individually and cumulatively, the AAO cannot find the applicant's spouse would suffer extreme hardship upon relocation to Mexico.

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 her lawful permanent resident 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 application for 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.