U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

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DATE: APR 0 2 2012 OFFICE: LOS ANGELES FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 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,

Michael Shumway

for 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, [redacted] is a native and citizen of Mexico. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having willfully misrepresented a material fact to obtain admission to the United States. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

On July 24, 2009, the Field Office Director concluded that the applicant failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative. The Field Office Director also concluded that the applicant did not merit a favorable exercise of discretion and denied the application accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the applicant has shown that his United States citizen spouse and children would suffer extreme hardship.

In support of the application, the record contains, but is not limited to legal arguments submitted by applicant's counsel, letters from the applicant's spouse, biographical information for the applicant, his spouse, and their children, a psychological report for the applicant's spouse and children, a medical record for the applicant's child, health insurance documentation for the applicant, his spouse, and their children, a letter from the babysitter for the applicant's children, documentation of the applicant's employment, documentation of the applicant's property ownership, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal. The AAO will first address the question of whether the applicant is admissible to the United States.

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.

The record makes clear that the applicant attempted to enter the United States on August 31, 1995 using an I-586 border crossing card that belonged to another individual. As a result, the applicant was apprehended at the San Ysidro port-of-entry and was ordered excluded under the former INA

§ 236.[1] The applicant reentered the United States without inspection in October 1995. He remains inadmissible under INA § 212(a)(6)(C)(i) and INA §212(a)(9)(A). The applicant does not contest his inadmissibility under INA § 212(a)(6)(C)(i) and his inadmissibility under INA § 212(a)(9)(A) is not under consideration on appeal.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [*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 Attorney General [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 on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which in this case is the applicant's U.S. citizen spouse. Hardships to the applicant or his children are not directly relevant under the statute and will be considered only insofar as hardship to them results in hardship to the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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 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,

[1] The applicant's Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212) was denied on July 22, 2009, but was not appealed. As such, he remains inadmissible under INA § 212(a)(9)(A).

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).

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 qualifying relative is the applicant's U.S. citizen spouse. In a letter dated August 10, 2009, the applicant's spouse, a U.S. citizen and native of California, states that she will suffer financial and emotional hardship if the applicant is not admitted as a U.S. lawful permanent resident. In regards to financial hardship, the applicant's spouse states that the applicant is the breadwinner for the family and she relies on him to support her and their children financially while she pursues her education. The applicant's spouse lists two primary reasons why she is unable to work to support her family. First, she states that she has been pursuing her college degree, which she says is very important to her. Second, she states that she does not wish to leave her children in daycare. The record contains a letter from the applicant's babysitter who states that she cares for the applicant and his spouse's children from 8am to 2pm Monday through

Friday, earning $100 per week. Based on this information, it does not appear that it would be an extreme financial hardship for the applicant's spouse to obtain childcare for her children and to obtain an income sufficient to cover the costs of that care. Moreover, the most recent evidence in the record of the applicant's employment is a pay stub from January 7, 2005 and there is no evidence in the record to document the applicant's spouse's educational pursuits.

The applicant's spouse states that if she had to obtain employment, she would not likely be able to find a position making over $8.00/hour, but she does not provide any documentation to support that claim. There is no evidence submitted to indicate what type of position the applicant's spouse could obtain and what her income would be based on her education and skill level, taking into account considerations of the current job market.

The applicant's spouse states that she would not be able to pay the mortgage on the home where the family lives if she could not rely on the applicant's income and she goes on to conclude that the family would lose the house to foreclosure. The AAO notes that the deed submitted illustrates that the property is owned solely by the applicant. Moreover, the applicant and his spouse have not submitted any documentation of the mortgage on the home nor have they given any explanation for why they are unable to sell the home and obtain a place to live with lower rent. Additionally, the applicant's spouse has not provided any information regarding other family members that she has in the United States or whether there is anyone else on whom she could rely for financial support. 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). From the information submitted, it is not possible to conclude the degree of financial hardship that the applicant's spouse would suffer in the absence of the applicant.

In regards to emotional hardship, the applicant's spouse states that she would be extremely sad and depressed if her husband is not able to remain in the United States. A psychological report dated February 24, 2005 prepared by [redacted] states that "it would be psychologically damaging" to the applicant's spouse if the applicant were not permitted to remain in the United States. The report concludes that the applicant's spouse would have to "adapt to a much simpler, much more traditional, less comfortable, less diverse lifestyle" if she and her children were no longer able to rely on the applicant's income. The type of hardship described by the psychologist, however, cannot be distinguished from the type of hardship that is expected when a family is separated due to immigration inadmissibility. Although the AAO recognizes the significance of family separation as a hardship factor, and recognizes that the applicant's spouse would suffer some degree of emotional and financial hardship due to the applicant's inadmissibility, the applicant has not met her burden of proof to document that the hardship her spouse faces is extreme in nature.

Additionally, the record does not contain any documentary evidence, e.g., country conditions reports, on Mexico that demonstrate that the applicant's spouse would suffer hardship if she were to relocate there with the applicant. The AAO will take note that, on February 8, 2012, the Department of State updated their travel warning concerning Mexico. *See* U.S. Department of

State, Bureau of Consular Affairs, *Travel Warning, Mexico* (February 8, 2012). The warning states that travel should be deferred to the state of Michoacán – the applicant's birthplace – except the cities of Morelia and Lázaro Cardenas where caution should be exercised. Although it could be possible to determine that relocating to Mexico could prove to be an extreme hardship for the applicant's spouse due to the country conditions there, the applicant has not met his burden of proof to illustrate what hardships his spouse would suffer in Mexico that would be beyond the type of hardship normally anticipated. The AAO notes that the applicant's spouse's claim that she would be unable to complete her university degree in Mexico is not supported by documentary evidence, nor would we find this to be hardship that rises to the level of extreme hardship. Additionally, the applicant has submitted medical records for his son dated February 21, 2005 that indicate that he suffers from asthma and respiratory problems, however, there is no indication that is condition is ongoing or that it is not treatable in Mexico. As previously noted, hardship to the applicant's children is not directly relevant to a determination of extreme hardship in section 212(i) proceedings, therefore the applicant would not only have to illustrate that medical care was unavailable to his son in Mexico, but that as a result, his spouse would suffer extreme hardship.

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 qualifying relative 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 he 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.