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]

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Date: DEC 0 7 2012 Office: MEXICO CITY File: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act (INA) section 212(i); 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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

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(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

A Memorandum from Paul W. Virtue, Acting Executive Associate Commissioner, entitled, "Additional Guidance for Implementing Sections 212(a)(6) and 212(a)(9) of the Immigration and Nationality Act (Act)," dated June 17, 1997, HQIRT 50/5.12, clarifies that:

> Section 212(a)(9)(C)(i)(II) of the Act renders inadmissible those aliens who have been ordered removed under sections 235(b)(1) or 240 of the Act, or any other provision of law, and who enter or attempt to reenter the United States without being admitted. These aliens are also permanently inadmissible but may seek consent to reapply for admission from the Attorney General after they have been outside of the United States for 10 years.
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> Section 212(a)(9)(C)(i)(II) of the Act applies to those aliens ordered removed before or after April 1, 1997, and who enter or attempt to reenter the United States unlawfully any time on or after April 1, 1997. The alien may have been placed in removal proceedings before or after April 1, 1997, but the unlawful reentry or attempted unlawful reentry must have occurred on or after April 1, 1997.

The record reflects that the applicant was ordered removed from the United States on August 16, 1997 as result of her attempted admission to the United States using a counterfeit I-90. The record indicates that the applicant subsequently attempted to enter the United States without being admitted on May 15, 1998 and was allowed to voluntarily return to Mexico. As a result, the applicant is inadmissible under 212(a)(9)(C)(i)(II) of the Act. As 10 years have transpired since the applicant's last attempted entry into the United States without admission, she is eligible to apply for Permission to Reapply for Admission after Deportation or Removal (Form I-212). No purpose is served, however, in addressing that application unless the applicant establishes that she is otherwise eligible for admission to the United States. As such, we will first address whether the applicant has established that she is eligible for a waiver of her inadmissibility under section 212(a)(6)(C)(i) of the Act.

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

> 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.

As a result of the applicant's attempted entry into the United States on August 16, 1997 using a counterfeit I-90, she is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not challenge her inadmissibility.

Section 212(i) of the Act provides, in pertinent part, 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. In this case, the applicant's qualifying relative is her U.S. lawful permanent resident spouse. The AAO notes that Congress did not include hardship to the applicant's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. Hardship to the applicant or the applicant's children will not be separately considered, except as it is shown to affect 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, 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.

On appeal, the applicant states that her spouse is suffering from and will continue to suffer from emotional and financial hardship as result of her inadmissibility. The applicant's spouse states that as a result of separation from the applicant, he is suffering emotionally and financially. In support of that statement, the applicant's spouse submitted a psychological report prepared by [redacted] on September 20, 2011. [redacted] states that he has been treating the applicant's spouse since April 2011 with therapy on a monthly basis. He diagnosed the applicant's spouse with "Major Depressive Disorder, severe, recurrent, with poor prognosis" and "Dysthymic Disorder, severe, with recurrent episodes." [redacted] recommended that that applicant's spouse see a psychiatrist in order to obtain medication to treat his condition, which he states is "severely impaired" at this time. The symptoms noted by [redacted] are: social isolation, hopelessness, crying spells, loss of emotional control, and feelings of despondence. He also notes that the applicant's spouse states that he has been diagnosed with high blood pressure and high cholesterol. The AAO notes that no additional evidence or details were provided in regards to how the applicant's spouse's life has been severely impaired. The applicant's spouse reports that he is presently gainfully employed, although he previously lost a job, and that he travels to spend time with the applicant and their two sons in Tijuana five days per week. The AAO also notes that no documentation was submitted to evidence any problems with the applicant's spouse's medical condition. 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 suffers from such a condition. 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. Additionally, although the applicant's spouse's assertions regarding his emotional health and concern for the applicant and his children in Mexico 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)).

In regards to financial hardship, the applicant has submitted evidence of her employment in Tijuana, Mexico as a nurse and her husband's employment in California in construction. The record also contains documentation of expenses that the applicant and her spouse incur in both Tijuana and California. There is no indication in the record, however, that the applicant's spouse is unable to meet those expenses or that the applicant's spouse is suffering from financial hardship. Although the AAO notes the applicant's spouse's difficult situation and recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant, the record does not establish that the hardships he would face, considered in the aggregate, rise to the level of "extreme" beyond those hardships normally experienced by individuals faced with separation from their spouse due to immigration inadmissibility.

As to whether the applicant's spouse would suffer extreme hardship if he were to relocate to Mexico to reside with the applicant, the applicant's spouse states that he would face financial hardship were he to relocate. The applicant's spouse reported to [redacted] that he believes that his family would prosper more in the United States, however, the AAO notes that the inability to enjoy a higher standard of living or pursue one's chosen profession has been found to be one of the common or typical results of inadmissibility and not the type of hardship that is considered extreme. *See generally Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 568; *Matter of Pilch, 21 I&N Dec. at 632-33*; *Matter of Ige, 20 I&N Dec. at 885*; *Matter of Ngai,* 19 I&N Dec. at 246-47; *Matter of Kim,* 15 I&N Dec. at 89-90; *Matter of Shaughnessy,* 12 I&N Dec. at 813. The AAO also notes that the applicant's spouse states that he worries about his spouse and son's safety in Tijuana, Mexico, and that he has safety concerns in relocating there. The AAO takes note of the U.S. Department of State Travel Warning for Mexico, dated February 8, 2012. And, although the level of crime in Mexico is cause for concern, there is no indication in the record of the particular risks that the applicant would face there or that his wife or sons have faced any risks during their long-term residence there. Although the record illustrates that the applicant's spouse would not likely be able to earn the same income in Mexico as he does in the United States, the record does not illustrate that the applicant's spouse would be unable to support his family in Mexico or rely on the applicant's income. Although the AAO notes the applicant's spouse's difficult situation, the record, considered in the aggregate, does not establish that the hardship that he would face upon relocation abroad to reside with applicant would rise to the level of "extreme" as contemplated by statute and case law.

The applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, but the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i), of the Act, be above and beyond the normal, expected hardship involved in such cases.

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 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 she merits a waiver as a matter of discretion.

Because the applicant failed to establish extreme hardship to a qualifying relative as required under section 212(i) of the Act, no purpose would be served at this time in adjudicating the Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212), which was administratively closed by the District Director.

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.