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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: FEB 0 2 2012 OFFICE: SAN FRANCISCO, CA 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, San Francisco, 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 admitted between 1998 and 2001 he used his non-immigrant visa to travel to the United States when he was in fact living in the United States. 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 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. 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 lawful permanent resident spouse and U.S. Citizen children.

The Field Office Director concluded that the applicant failed to show his qualifying relative would experience extreme hardship given the applicant's inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated September 25, 2009.

On appeal, counsel for the applicant submits a declaration from the applicant's spouse and a death certificate. In the declaration, the applicant's spouse contends there was sufficient evidence of financial hardship in the record. *Declaration of applicant's spouse,* December 18, 2009. The applicant's spouse discusses her ability to obtain health insurance in Mexico and in the United States. *Id.* She adds that she fears separation from the applicant because his brother was killed in the United States in 2006, and she fears returning to Mexico because the applicant's father was killed there in 1999. *Id.* The applicant's spouse states that contrary to the Field Office Director's decision, the family needs all three cars. *Id.*

The record includes, but is not limited to, the documents listed above, statements from the applicant and his spouse, evidence of birth, marriage, permanent residence, and entry, other applications and petitions filed on behalf of the applicant, and U.S. Federal Income tax returns. 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 applicant admitted in an immigration interview that he was an intending immigrant when, during multiple visits from 1998 to 2001, he applied for admission using a visitor's visa. 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 relative is his lawful permanent resident 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 child will not be separately considered, except as it may affect the applicant's spouse.

The applicant's spouse contends the record contains sufficient evidence of financial hardship, in that the tax returns showed the applicant was the only one who was working, and that the Form I-864, Affidavit of Support, reflected $18,539.29 in assets which belonged to the applicant. *Declaration of applicant's spouse,* December 18, 2009. She further states that if she lived in Mexico, her two brothers in Mexico would be unable to help given their financial obligations. *Id.* In another declaration, the spouse explains she was laid off from her own job in the fields where she made $5,000 per year. *Declaration of applicant's spouse,* July 22, 2009. The spouse adds she would not be able to obtain health insurance in Mexico unless she had a job and was able to pay for it. *Declaration of applicant's spouse,* December 18, 2009. In the United States, the spouse explains, she would also have difficulties obtaining health insurance. *Id.*

The applicant's spouse discusses safety issues given the applicant's inadmissibility. She states that the applicant's brother, [redacted] was killed in [redacted] in 2006 by the applicant's brother in law, [redacted] *Declaration of applicant's spouse,* December 18, 2009. A copy of a death certificate is submitted, showing a [redacted] died of a gunshot wound to the chest on May 31, 2006. *Certificate of death,* [redacted] *Department of Public Health,* June 7, 2006. As a result, the applicant's spouse indicates she and her family relocated from the area and she is afraid to be in the United States without the applicant. *Declaration of applicant's spouse,* December 18, 2009. The spouse adds that she would feel unsafe in Mexico as well because the applicant's father was killed in Mexico on October 9, 1999. *Id.*

The applicant's spouse concedes that hardship to their three U.S. Citizen children does not count for purposes of this waiver, but asserts that those hardships affect her in that she would be unable to care for the children without the applicant. *Declaration of applicant's spouse,* December 18, 2009. She also addresses an issue raised in the Field Office Director's decision, claiming that the household needs all three cars, given her obligations to her two minor children, her elder daughter's transportation needs due to her job and school activities. *Id.* The spouse indicates the applicant would need a car in Mexico as well, because having a car would increase his chances of finding a job. *Id.*

Despite submission of income statements, the record does not contain sufficient evidence of the spouse's or the applicant's household expenses to support assertions of financial hardship. The applicant's spouse indicates rent costs $1,000 per month, and the family needs three cars. *Declaration of applicant's spouse,* July 22, 2009. However, there is no evidence in the record to show what expenses are incurred due to the three cars, or the amount of expenses due to other financial obligations. The applicant further fails to provide evidence regarding whether he would be able to contribute financially if he relocated to Mexico. In fact, the applicant's spouse does not assert that her husband, who was a competitive athlete in Mexico and now works as a landscaper making $20 an hour, would be unable to find adequate employment in Mexico, only that his chances at finding a job would be increased given his access to a car. *Declaration of applicant's spouse,* December 18, 2009, *see also declaration of applicant,* July 22, 2009. Moreover, the spouse does not indicate whether she would be able to find employment in the United States or in Mexico. *Declaration of applicant's spouse,* July 22, 2009. Without sufficient details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The record contains sufficient evidence to show that [redacted] died due to gunshot wounds in [redacted] California in 2006. *Certificate of death,* [redacted] *Department of Public Health,* June 7, 2006. However, there is no connection in the record between this death and hardship due to separation from the applicant, and there is no indication that, years afterwards, the applicant's spouse fears for her own safety, especially given her admission that she has since relocated. Similarly, there is insufficient evidence to support an assertion that the applicant's spouse would be unable to obtain health insurance in the United States without the applicant. 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)).

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 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, 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 is separated from his spouse.

The record also contains insufficient evidence of extreme hardship to the applicant's spouse upon relocation to Mexico. The applicant's spouse is a citizen and native of Mexico. Moreover, the spouse indicates she has visited Mexico for short vacations, and still has family living in Mexico. *Declaration of applicant's spouse,* July 22, 2009, *Declaration of applicant's spouse,* December 18, 2009. Although the spouse contends she would feel unsafe in Mexico given that the applicant's father was killed there in 1999, more than twenty years ago, there is no evidence to support a contention that the applicant's spouse has an objective fear for her safety related to this death. The record also does not contain sufficient evidence to show where the applicant's father died in Mexico, and whether the applicant's spouse can relocate to another location given her fears. Furthermore, the record does not show that the applicant or his spouse would be unable to find adequate employment in Mexico in order to meet financial obligations.

The AAO acknowledges the applicant's spouse would face difficulties upon relocation to Mexico, including hardship due to possible adjustment issues for her children. However, given that the evidence of record fails to show the financial, emotional or other impacts of relocation 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's spouse relocates to Mexico with the applicant.

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 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 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.