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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: FEB 2 1 2012

Office: SAN JOSE, CA

FILE: [redacted]

IN RE: [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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Jose, California. The matter 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 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 attempting to enter the United States using a certified copy of a California birth certificate belonging to another on May 7, 1976. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with his spouse.

The record shows that the applicant was convicted for domestic violence in 1977 and for misrepresentation with respect to unemployment insurance in 1981. The Field Office Director did not address whether or not these convictions are crimes involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated September 4, 2009.

The applicant's attorney provided a brief in support of the applicant's waiver application. The applicant's attorney asserts that that the qualifying spouse will encounter emotional, medical and financial hardships as a result of her separation from the applicant. In addition, the applicant's attorney contends that the qualifying spouse has lived in the United States for over thirty years and her entire immediate family lives and has status in the United States.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), an appeal brief, affidavits and letters from the qualifying relative and her family members, the qualifying relative's naturalization certificate, documentation regarding the applicant and qualifying spouse's property, naturalization certificates for the qualifying relative's three sisters and a copy of one of her sister's legal permanent resident card, medical documentation regarding the qualifying spouse, a marriage certificate, photographs and an Application to Adjust Status (Form I-485), as well as the documentation submitted with that application. 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:

> 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's wife is the only qualifying relative in this case. 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).

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 AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him. The applicant's attorney asserts that the qualifying spouse would suffer emotional hardships due to her separation from the applicant. The record contains an affidavit from the qualifying spouse and letters from her family members that relate to her emotional hardships. In her affidavit, the qualifying spouse provides details regarding her family history, her past relationships and a car accident in which she was injured. She explains that with one failed relationship she was "submerged [into] a terrible abyss of sadness and depression." She also indicates that her auto accident left her unable to work, leaving her depressed, until her sister suggested she help raise her nieces and she felt better. The qualifying spouse additionally states that the applicant is her sole financial support, and that he also takes care of her emotionally and physically. Her family members confirm the qualifying spouse's statements regarding her family history and her depression following her auto accident. However, the statements by the qualifying spouse and family members do not sufficiently explain the effect that the applicant's absence will have on her life, and do not demonstrate how what she will experience goes beyond the experiences of other separated families. Further, the evidence provides very little detail regarding the types of emotional and psychological issues that the qualifying spouse has faced

and will face in the event the applicant's waiver application is denied. The applicant's attorney also references medical hardships that the applicant will encounter upon separation. In her affidavit, the qualifying spouse indicates that she relies on the applicant to drive, to remind her to take her medications for asthma and eczema and for "special attention due to [her] various injuries from the accident." The record also contains medical records confirming her asthma and eczema, however, no current documentation was submitted to demonstrate any continuing medical issues the qualifying spouse suffers as a result of her car accident and how such medical problems pose a hardship to her. The applicant's attorney and qualifying spouse's assertions that the applicant provides medical support to her are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Furthermore, it is unclear whether the qualifying spouse's family members could assist her with her medical issues and driving. With regard to the financial hardship, the record contains documentation regarding the applicant's income, and the applicant indicates in the Affidavit of Support (Form I-864) filed with the Form I-485 that she has not been employed in 21 years and has therefore not filed any tax returns. The record also includes information pertaining to the applicant and qualifying spouse's home and its cost. There was no information regarding the qualifying spouse's expenses, other than her home payment, and the record fails to address the possibility of moving in with her sister, where she had lived for many years. As such, the applicant failed to provide sufficient evidence to establish that the qualifying spouse would suffer emotional, medical and financial hardships as a result of her separation from the applicant.

The applicant must also establish that his qualifying relative would suffer extreme hardship were she to relocate to Mexico to be with the applicant. With respect to this criterion, the applicant's attorney contends that the qualifying spouse has lived in the United States for over thirty years, that all her siblings and nieces live in the United States, and that she has very close relationships with her family members. The record demonstrates her length of stay in the United States, her family ties to the United States and her close relationships with her family members. The qualifying spouse, in her affidavit, indicates that she visited her relatives in Mexico in 2001 for a short trip, yet it is unclear which of the qualifying spouse's family members live in Mexico. Additionally, she states that she would "suffer greatly" in Mexico, without specifying how she would suffer. Although no corroborative evidence of information is submitted to clarify where the applicant would live in Mexico, it is noted that the Petition for Alien Relative (Form I-130) contained in the record reflects that the applicant is from [redacted] and the qualifying spouse is from [redacted]. It is further noted that the U.S. Department of State, Travel Warnings indicate that numerous incidents of narcotics-related violence throughout Mexico, including [redacted] which has seen increases in narcotics-related homicides and [redacted] which has become increasingly volatile. Country conditions evidence does not, in and of itself, establish extreme hardship, however, and the record contains no other evidence to demonstrate that the applicant and qualifying spouse would face danger where they choose to live within Mexico. While the applicant has shown that she has been in the United States for a long time, she has not provided sufficient evidence to show that her cumulative hardships would result in extreme hardship upon relocation.

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 United States citizen 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.