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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

DATE: JUL 17 2012 OFFICE: LOS ANGELES, CALIFORNIA File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(i) and 212(a)(9)(C) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(C)

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 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,

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 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. 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 and U.S. citizen child.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* dated July 22, 2009.

On appeal, counsel asserts that the Service erred both in finding that extreme hardship had not been established and in finding that the applicant is inadmissible under section 212(a)(9)(C) of the Act. *See Counsel's Brief,* received August 21, 2009.

The record includes, but is not limited to: Form I-290B and counsel's appeal brief; various immigration applications and petitions; a hardship declaration; country conditions documents; a psychological evaluation and medical-related records; financial, tax and employment records; marriage, birth and guardianship documents; and the applicant's exclusion and deportation record. 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, 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 reflects that the applicant attempted to enter the United States on January 24, 1996 by presenting a Mexican border crossing card not lawfully her own. She was placed into exclusion proceedings, ordered deported by an Immigration Judge on February 5, 1996, and was deported to Mexico the same day. Based on the foregoing, the Field Office Director found the applicant to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

The record shows that the applicant subsequently entered the United States without inspection in or about March 1997 and has remained ever since. The Field Office Director determined that the applicant was, therefore, additionally inadmissible under section 212(a)(9)(C) of the Act for having been ordered removed under section 235(b)(1) or section 240 and entering the United

States without being admitted. The AAO finds that the Field Office Director erred in this regard as both the applicant's deportation and her subsequent entry into the United States without inspection occurred prior to April 1, 1997, the effective date of the inadmissibility provisions under section 212(a)(9)(C) of the Act. Accordingly, the AAO finds that the applicant is not inadmissible under section 212(a)(9)(C) of the Act.

Section 212(i) of the Act provides, in pertinent part:

> (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 includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or the applicant's children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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 record reflects that the applicant's spouse is a 52-year-old native of Mexico and lawful permanent resident of the United States who has been married to the applicant since April 1999. In addition to the couple's U.S. citizen daughter, born in April 1997, it has been asserted that they are the legal guardians of two minor sons, born to the applicant's spouse's blind sister who is unable to care for them on account of her disability. No documentary medical evidence concerning the applicant's spouse's sister has been submitted. The record contains an order granting guardianship of [redacted] to the applicant and her spouse, along with a birth certificate showing that [redacted] was born in California in August 1995. The record does not contain a birth certificate for [redacted] whose name has been handwritten in a number of locations on the guardianship documents by an unknown party and without explanation.

[redacted] reports following a 2007 interview with the applicant's spouse, that the latter works from 1:00 p.m. to 1:00 a.m., does not know who would care for his daughter and nephews during those hours, speculates that he may have to leave his job for one with a lower salary and yet still support himself, three children, and his wife in Mexico, as well as be able to visit her there, all after losing her current income contribution which helps pay the bills. While the record contains joint income tax returns for 2005 and 2006, a more recent tax return reflecting guardianship and current wages has not been submitted on appeal, nor does any documentary evidence addressing or demonstrating the family's expenses appear in the record. The evidence is insufficient to establish economic hardship beyond that ordinarily associated with a spouse's removal or inadmissibility.

[redacted] relays that in the event of the applicant's removal, her spouse would have to care for his daughter and nephews alone - something he does not believe he can do because he gets easily stressed, which impairs his ability to think, and he does not believe he can be a good father to the children. [redacted] continues that the applicant's spouse worries about his daughter who suffers frequent yet undiagnosed chest pains. A number of medical lab reports and handwritten pediatric progress notes have been submitted. The medical records span a number of years and a variety of complaints including runny nose, sore throat, tonsillitis, mono, abdominal and leg pain, however, "chest pain" is rarely indicated in the documents and many are partially or completely illegible.

[redacted] reports that the applicant worries also about his wife who suffers "uncontrolled diabetes" and whose mother is indicated to have died in 2007 from diabetes-related complications to her kidneys, liver and lungs. While a predominantly Spanish-language prescription for Glucotrol supports the claim that the applicant has diabetes, no documentary medical evidence has been submitted to demonstrate the severity of her condition or show that it is uncontrolled. Counsel asserts that according to the State Department's *Country Specific Information*, dated June 30, 2009, while adequate medical care can be found in major Mexican cities, care in more remote areas like Oaxaca is limited and facilities may lack access to sufficient emergency support. The AAO notes that the report does not name Oaxaca, evidence that Oaxaca is a remote area has not been submitted, and there is no reference in the report or evidence in the record that Oaxaca lacks sufficient emergency support or that the applicant would likely require such support. [redacted] relays from the applicant's spouse that "the crime rate and guerrilla problems are severe" in Oaxaca. The AAO notes that in the Mexico country-conditions documents submitted, Oaxaca is named only to note that sporadic political demonstrations there have occasionally become violent. The AAO has additionally reviewed the State Department's current *Mexico Travel Warning*, dated February 12, 2012, which specifically details that while violent crime is a problem throughout the country, no travel warning is in effect for Oaxaca.

[redacted] interviewed the applicant in conjunction with the psychological evaluation dated April 7, 2007 and contends that she is a woman who has little schooling, thinks and functions on a very rudimentary and concrete level, speaks only Spanish, and without explanation concludes that she would not be a good candidate for finding work or adapting quickly in Mexico. [redacted] concludes that the applicant's spouse would suffer severely, knowing that his wife would be going through so much suffering. [redacted]

[redacted] diagnoses the applicant's spouse with adjustment disorder of adult life with mixed anxiety and depressed mood. [redacted] asserts that he also exhibits symptoms of "confusion, crying, worries about his future, fears, feelings of worthlessness, nervousness, feeling he can't succeed, exhaustion, obsessive worries, nervous twitches, forgetting things with ease, problems concentrating, dependency and failure to complete tasks" which suggests that he was unable to manage and cope with strong emotions or difficult situations at that time. [redacted] notes that the applicant's spouse "was referred to seek supportive psychotherapy as well as an evaluation, to determine the need for medication." No documentary evidence has been submitted on appeal demonstrating that he has done so.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The applicant's spouse does not address the possibility of relocating to Mexico to be with the applicant other than to declare that if his wife is ordered to leave the United States, he and the children will not go with her. The applicant's spouse maintains that life in Mexico is dangerous and not suitable for young children and it is not in the best interest of the children to relocate. As no assertions of relocation-related hardship to the applicant's spouse have been made, the AAO will not speculate in this regard. Accordingly, the AAO finds that the evidence is insufficient to demonstrate that the applicant's lawful permanent resident spouse would suffer extreme hardship were he to relocate to Mexico to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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(a)(9)(B)(v) 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.