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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Avenue, N.W. MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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DATE: MAY 29 2012 OFFICE: LOS ANGELES, CA [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 PETITIONER:

[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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) 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 admission into the United States by willfully misrepresenting a material fact. The applicant's mother is a U.S. lawful permanent resident, and the applicant is married to a U.S. citizen. She is the beneficiary of an approved Form I-130, Petition for Alien Relative, and she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that she may live in the United States with her spouse and family.

In a decision dated June 15, 2009, the director determined the applicant had failed to establish that a qualifying relative would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.[1]

Through counsel, the applicant asserts on appeal that evidence establishes her spouse and mother would experience extreme hardship if she were denied admission into the United States. To support these assertions, counsel submits letters from the applicant's husband; financial, medical and psychological evaluation information; birth certificate and school records; and family-member immigration and citizenship information. The record also contains documents written in Spanish.

8 C.F.R. § 103.2(b)(3) provides that:

> Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Because the Spanish-language documents are not accompanied by certified English translations, they cannot be considered in the applicant's case. The entire remaining 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.

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[1] The director erroneously stated that the applicant requires a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), rather than under section 212(i) of the Act. The error is harmless, as it did not affect or change the analysis or outcome of the director's decision.

The record reflects that on August 18, 1996, the applicant attempted to gain admission into the United States by using a passport and border-crossing stamp that belonged to another individual. The applicant was denied admission, and she was removed on August 22, 1996. The applicant entered the United States illegally in September 1996, and she has remained in the country since that time. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to procure admission into the United States by willfully misrepresenting a material fact. Counsel does not contest the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

> (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.

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,* 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 applicant's U.S. citizen husband and lawful permanent resident mother are her qualifying relatives under section 212(i) of the Act. The applicant refers to hardship her U.S. citizen children would experience if the waiver application is denied. Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. Hardship to the applicant's children will therefore not be considered, except as it may affect the applicant's qualifying family members.

The applicant's husband states in a letter that he and the applicant have two children together and three children from her previous marriage to their deceased father. The applicant's husband has three sisters, an aunt and a cousin in the United States, and the applicant's mother and siblings also live in the United States. The applicant's husband states that he needs eye surgery; that he has gout, vitiligo, high cholesterol, arthritis, a damaged vertebrae, and weight problems; that he is under a physician's care for his health problems; and that he is under a psychologist's care for depression. He indicates the applicant is "a nurse and a coach" to him, and that she helps him

maintain a healthy diet, massages his back, applies ice packs, and motivates him to exercise. He indicates he has worked as an auto body painter and repairman for over twenty years, but that his work performance has been negatively affected by worries about the applicant's immigration situation, and that his employer threatened to fire him due to mistakes and the amount of time he has taken off for physician and psychologist appointments. He would like to open his own auto body-shop, but states he would be unable to do so if the applicant did not care for their children and help him financially. He is concerned about financial hardship if the applicant moves to Mexico, fearing the bank would foreclose on their home. He also would be unable to afford medical care if he had to support two households, or pay for childcare for his children. The applicant's husband believes he would be unable to find work in Mexico and that his children would receive an inferior education there. He also states his mother-in-law was assaulted in Guadalajara, where the applicant would return, and he worries that conditions there are dangerous for his family.

The record contains a 2009 psychological assessment indicating the applicant's husband has a dependent personality and major tendencies towards depression, and that he needs the applicant's care, attention, and assistance to focus on taking his medications and engage in good eating and lifestyle habits.

A letter from the applicant's husband's doctor reflects he suffers from uncontrolled diabetes, hypothyroidism, gout, anxiety, vitiligo, and obesity, and that he experiences dizziness, fatigue, blurry vision, lower extremity edema, difficulty sleeping, leg pain, and nervousness. The letter indicates the applicant's husband's health has suffered due to the applicant's possible deportation, that he has become non-compliant in taking his medication, and that he would benefit from the applicant's continued emotional and physical support.

A letter from the applicant's mother's physician's assistant indicates the applicant's mother suffers from controlled diabetes, depression, glaucoma, heartburn and hypertension, and that she would benefit from the applicant's continued emotional and physical support.

Upon review, the AAO finds the evidence in the record fails to establish that the hardships faced by the applicant's husband, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship if the applicant's husband remains in the United States. The financial evidence contained in the record fails to establish the applicant's husband's current employment status, that he owns the family's home, or the family's living expenses. It is additionally noted that the applicant's husband stated on his Form G-325, Biographic Form that he became self-employed in 2005, and the record lacks evidence to corroborate assertions of his long-time employment, or that his employer threated to fire him due to problems related to the applicant's immigration situation. The medical evidence fails to establish the applicant's husband's medical costs. The evidence also fails to establish the severity of the applicant's husband's medical conditions, and that he requires the applicant's assistance with his medical needs. In addition, the psychological assessment evidence fails to demonstrate that the applicant's husband would experience emotional hardship beyond that normally experienced upon the removal or inadmissibility of a family member, if the applicant is denied admission and he remains in the United States.

The cumulative evidence also fails to establish that the applicant's husband would experience hardship that rises above that normally experienced upon removal or inadmissibility if he moved with the applicant to Mexico. The record contains no evidence to corroborate the applicant's husband's statements about his financial hardship if he left the United States, and the applicant submitted no evidence to establish he would be unable to find work in Mexico, or that he would experience financial hardship if he relocated to Mexico. In addition, the record reflects the applicant's husband is originally from Mexico and is thus familiar with the language and culture of the country. The U.S. Department of State reports that adequate medical care is available in major cities in Mexico. *See http://travel.state.gov/travel/cis_pa_tw/cis/cis_970.html.* A recent Department of State travel warning reports an unstable security situation exists along the Zacatecas and Michoacan borders, but it does not indicate a state-wide risk in Guadalajara. *See* http://travel.state.gov/travel/cis_pa_tw/tw/tw_5665.html. The applicant also provided no documentary evidence to corroborate statements that his mother-in-law was assaulted in Guadalajara, or to demonstrate he or his family would face a specific danger if they relocate to Guadalajara.

The combined evidence in the record also fails to establish that the applicant's mother would experience emotional, physical or financial hardship that rises above that normally experienced upon removal or inadmissibility if she remains in the United States. Although a physician's assistant's letter indicates the applicant's mother would benefit from the applicant's continued support, the evidence fails to establish that the applicant's mother is dependent upon the applicant and does not establish that her health conditions would be affected if the applicant moved to Mexico and she remained in the United States. No other evidence was submitted to demonstrate hardship to the applicant's mother in the event she is separated from the applicant.

The evidence also fails to establish the applicant's mother would experience hardship that rises above that normally experienced upon removal or inadmissibility if she moved with the applicant to Mexico. The applicant's mother is originally from Mexico, and the applicant presented no evidence to demonstrate her mother would be unable to obtain medical care in Mexico. The applicant submitted no evidence to corroborate the assertion that her mother was assaulted in Guadalajara, and country-conditions evidence fails to establish a security risk throughout the state.

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.