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: OCT 11 2012 Office: VERMONT SERVICE CENTER 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:

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 in accordance with the instructions on 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 Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who used false documents in an attempt to enter the United States. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 1, 2010.

On appeal, the applicant's spouse asserts that he will suffer extreme hardship if the applicant is not admitted to the United States. *Form I-290B*, received October 22, 2010.

The record contains, but is not limited to, the following documentation: statements from the applicant; a psychological evaluation of the applicant's spouse; a letter from [redacted], dated July 24, 2010; tax returns and pay stubs for the applicant's spouse; and photographs of the applicant and his spouse. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) of the Act states, in pertinent part:

> (i) In general. 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 chapter is inadmissible.

The record indicates that the applicant presented a falsified I-551 visa stamp in her passport when attempting to enter the United States on June 13, 1998. Therefore, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal.

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

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 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 a VAWA self-petitioner, 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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.

On appeal, the applicant's spouse asserts that he has strong family and community ties in the United States and has spent the majority of his life in the United States. *Statement of the Applicant's Spouse*, undated. He explains that he has children and financial commitments from prior relationships and that he has worked at the same company for 20 years. He also asserts that he would experience physical hardship upon relocation due to the conditions in Mexico.

The record contains documentation corroborating that the applicant's spouse has been stably employed for a significant period of time at the same company in the United States. However, there is no documentaiton to verify the applicant's spouse's other assertions, regarding children or financial commitments from prior relationships or his other current monthly financial obligations. The AAO does note that the applicant's spouse claimed one of his parents as a dependent on his tax returns, indicating that he has financial responsibilities to at least one other family member. When these observations are considered as a whole, it appears the applicant's spouse would experience some financial hardship upon relocation, based on his stable employment history and familial obligations and the impact to those ties upon relocating.

Although the applicant's spouse has asserted that the economic, social and security conditions in Mexico will present a hardships to him, and that he would be unable to find equivelant pay in Mexico, there is no documentation to support his assertions such as country conditions materials or evidence that the applicant's spouse would have to reside in an area plagued by violence. 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 record indicates the applicant's spouse will experience some hardship upon relocation, there is insufficient evidence to demonstrate that these impacts, even when considered in the aggregate, will rise to the level of extreme hardship.

With regard to hardship upon separation, the applicant's spouse has asserted that he will experience extreme emotional hardship and has had to be hospitalized for psychiatric problems for rehabilitation. *Statement of the Applicant's Spouse*, dated October 18, 2010.

The record contains a statement from [redacted] asserting that the applicant's spouse was committed to a psychiatric hospital for 28 days for "rehabilitation" at a hospital in Mexico. The statement notes that the applicant was admitted for General Anxiety Disorder, Depression and Ethanol (alcohol) abuse. The record also contains a psychological report of the applicant's spouse by [redacted] concluding that the applicant's spouse is suffering from Major Depression and Panic Disorder. Based on this evidence the AAO determines that the applicant will experience some emotional hardship due to separation from the applicant, and this factor will be considered when examining the impacts on the applicant's spouse due to separation. In addition, it appears the applicant's spouse may be addicted to alcohol based on his visit to psychiatric visit to a hospital in Mexico. Despite the fact that there is no evidence otherwise documenting his physical condition, the AAO will give some consideration to the fact that the applicant's spouse has a medical condition.

The applicant's spouse previously asserted that his emotional hardship will impact his ability to function at his place of employment, and that the cost of travelling to Mexico to see his spouse will add additional financial burden and lead to health problems for him. While the AAO recognizes that there will be some emotional impact to the applicant's spouse, there is no evidence that this condition will or has affected his ability to work. As stated above, there is insufficient evidence to establish the degree of financial impact on the applicant's spouse. Assertions must be supported with relevant, probative evidence in order to meet 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)).

When the hardships upon separation are examined in the aggregate, the AAO does finds them sufficient evidence to establish that the applicant will experience uncommon hardships rising to the degree of extreme hardship due to separation.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* 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.