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: OCT 12 2012 OFFICE: LOS ANGELES, 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.

Thank you,

Ellen C. Johnson

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 sustained.

The applicant is a native and citizen of Mexico who has resided in the United States since December 1995, when she entered the United States without inspection. The applicant had previously presented an I-551 card which did not belong to her to immigration officials to procure admission into the United States. She 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 attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved 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 her U.S. Citizen spouse and daughter.

The Field Office Director concluded that the applicant failed to establish the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated July 23, 2010.

On appeal, counsel for the applicant contends the applicant's spouse will experience psychological, medical, and financial hardship upon separation from the applicant. Counsel additionally asserts that the applicant will not be able to find comparable employment in Mexico, that he will not be able to acquire sufficient medical care for him or the applicant, and that the applicant is concerned about the safety situation in Mexico. Counsel also indicates that the applicant merits a favorable exercise of discretion.

The record includes, but is not limited to, statements from the applicant and her spouse, letters from family, friends, and community members, medical and financial documents, educational records, evidence of birth, marriage, divorce, residence, and citizenship, articles on country conditions, psychological evaluations, other applications and petitions filed on behalf of the applicant, and photographs. 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 record reflects that on December 8, 1995 the applicant presented a border crossing card in the name of [redacted] to immigration officials to procure admission into the United States. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

The AAO notes that after she presented the border crossing card to procure admission, she was placed in exclusion proceedings and was ordered excluded on December 13, 1995. She left the United States that day, and admitted that she entered the country without inspection later in December 1995. The applicant is therefore also inadmissible pursuant to section 212(a)(9)(A) of the Act, and requires permission to reapply for admission after deportation or removal under section 212(a)(9)(A)(iii) of the Act.

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 child 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 he would endure severe emotional difficulties upon separation from the applicant. He explains that he was married once before, and that after he met and married the applicant, he felt hopeful and happy again. The spouse states that he had problems with alcohol dependence, and that he takes medication for his depression. A licensed psychologist

opines that the anxiety due to potential separation has already impacted his psychological health as well as his work performance. The psychologist diagnoses him with adjustment disorder with mixed anxiety and depressed mood. The applicant's spouse claims that his young daughter has been noticeably concerned about the applicant's possible absence from their lives, which has also affected him emotionally. He explains that he has been taking medication for his depression, and his treating physician reports that he suffers from hypertension, stress, and anxiety attacks. The applicant's spouse also asserts that his daughter Susana has difficulty with speech and language, and consequently she has needed the applicant to be present all the time in order to help her with her education, medical appointments, and other necessities. He further adds that if the applicant moved back to Mexico, he would be unable to provide for them financially.

The applicant's spouse asserts he would experience extreme hardship upon relocation to Mexico. He explains that although he was born in Mexico, he came to the United States when he was six months old, and has lived here ever since. The spouse contends he would not be able to find comparable employment in Mexico due to his age and the labor market. Articles on employment in Mexico are submitted in support. A letter from his employer indicates that the spouse has worked for the same company since 2001, and that he earns $28.92 an hour. The spouse claims that without adequate employment, he will not be able to afford health care for him or the applicant, and that their daughter's education will suffer. He additionally states that he is worried about his and his family's safety in Mexico. Articles on country conditions are submitted in support.

The applicant has provided evidence, such as the individualized education program and reports from a psychologist, showing that her child Susana has some difficulties with speech, and consequently her education has required more attention. There is evidence of record indicating that the applicant's spouse works full-time, and that he suffers from medical and psychological conditions such as hypertension, stress, and anxiety. Documentation of Susana's speech and language issues, the consequent need for additional parental assistance, as well as the spouse's limited free time and his medical and psychological problems indicate that the applicant's spouse would experience emotional, psychological, and other hardships without the applicant present.

The AAO therefore finds there is sufficient evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the medical, psychological, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico without her spouse.

The record also reflects that the applicant's spouse has been employed since 2001 by the same employer, and that he earns $28.92 an hour. Documentation submitted on employment in Mexico, although not specific to the applicant's skills and experience, suggests that the spouse may have difficulty finding comparable employment in that country. Moreover, although the applicant's spouse was born in Mexico, the AAO notes that he has lived in the United States for all but the first six months of his life, and that he became a U.S. Citizen in 1988. Evidence submitted,

including an article on education in Mexico, further indicates that his child has benefited from educational programs available at her school, which may be difficult to continue in Mexico. Documentation of the child's specific educational needs, along with the financial impact of relocating and leaving employment held since 2001, as well as the spouse's lack of time spent in Mexico, all contribute to the hardship the applicant's spouse would experience upon relocation to Mexico.

In light of the evidence of record, the AAO finds the applicant has established that her spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

Considered in the aggregate, the applicant has established that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The unfavorable factors include the applicant's misrepresentation on December 8, 1995, her exclusion order, and her subsequent entry without inspection. The record also contains indications that the applicant was employed in the United States without authorization. The favorable factors include the extreme hardship to the applicant's spouse, the applicant's lack of criminal history in the United States, as well as evidence of family ties in the United States.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.[1]

ORDER: The appeal is sustained.

[1] The AAO again notes that the applicant remains inadmissible under section 212(a)(9)(A) of the Act, and requires permission to reapply for admission after deportation or removal under section 212(a)(9)(A)(iii) of the Act. The applicant's Form I-212 application was denied by the Field Office Director, and is not before the AAO on appeal.