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

[redacted]

H5

DATE: OCT 22 2012 OFFICE: MEXICO CITY FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 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,

Ellen C. Johnson

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, 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 inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (or Act), 8 U.S.C. § 1182(a)(6)(C)(i), due to his attempt to procure admission into the United States through fraud or willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen mother and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) based on extreme hardship to his mother.

In a decision dated August 20, 2010, the District Director concluded that the applicant did not establish extreme hardship to a qualifying relative and the application for a waiver of inadmissibility was denied accordingly.

On appeal, the applicant does not contest his inadmissibility, but states that his U.S. citizen mother would suffer from extreme hardship.

In support of the waiver application, the record includes, but is not limited to statements by the applicant's mother, medical records for the applicant's mother, biographical information for the applicant's mother and other relatives, and documentation of the applicant's immigration history of his attempts to enter the United States.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(6)(C) of the Act, which 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.
> ...

On January 23, 1996, the applicant attempted to procure admission to the United States at the San Ysidro Port of Entry using an I-551 Resident Alien Card issued to another individual. The record indicates that the applicant was apprehended, detained and ordered excluded on February 6, 1996. As a result of the applicant's use of fraud or misrepresentation to attempt to procure admission to the United States, the applicant is inadmissible under section 212(a)(6)(C) of the Act. This is a permanent ground of inadmissibility. The applicant does not contest the inadmissibility finding on appeal.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

> (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 in this case is either the applicant's U.S. citizen mother. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to the mother. 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 deportation, 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, 885 (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 mother states that she is suffering from extreme hardship as a result of her medical problems and her concerns for her son's safety in Mexico. In support of this statement, the applicant's mother submitted a letter from her physician dated October 8, 2010 stating that she has been under his care since February 15, 2005 for "diabetes, anemia, cirrhosis, and rectal bleeding." The physician stated that the applicant's mother "needs her son to take her to doctor's appointments" and that she "is having to come in about once a month or as many times as needed." The record also contains laboratory results and physician's "progress notes" for medical care for the applicant's mother from 2007-2010. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. Here, however, the record does not make clear the severity of the applicant's mother's condition or what role the applicant would play in assisting his mother. The physician notes that the applicant's mother "needs her son," but the record also indicates that the applicant's mother has another U.S. citizen son who resides with her at the present time. The applicant's mother also notes that she is concerned for her son's safety in Mexico as a result of the violence in Guerrero, Mexico, and that the stress is not good for her health. This additional information, however, was not noted by the applicant's mother's physician. The AAO also notes the documentation in the record concerning foreclosure on a property in the name of the [redacted] and [redacted]

This, however, was the only documentation submitted regarding the applicant's mother's financial situation and it is undated. The record does contain other evidence of the applicant's mother's financial situation. Although the applicant's mother's assertions have been taken into consideration, little weight can be afforded them in the absence of clarification on the exact nature of the claimed hardship and supporting evidence to document that hardship. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). The record makes clear that the applicant's mother is concerned about her son in Mexico and wishes for him to join her in the United States, however, the record, when considered cumulatively, does not illustrate that the hardship that she is suffering as a result of separation from her son is beyond what is normally experienced by individuals dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

The applicant does not state what hardship, if any, that his mother would face if she were to relocate to her native Mexico. The AAO takes note of the applicant's mother's care for numerous illnesses that she has been receiving in the United States since 2005, according to the record. The applicant, however, has not submitted any evidence to illustrate that his mother would not be able to receive care in Mexico. As stated above, 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. at 165. The AAO takes note of the U.S. Department of State Travel Warning for Mexico, dated February 8, 2012. Although the level of crime in Mexico is cause for concern, there is no indication in the record of the particular risks that the applicant's mother would face if she were to relocate there. When the evidence is considered in the aggregate, it is not possible to determine that the level of hardship that the applicant's mother would face if she were to relocate to Mexico, would be extreme.

Although the applicant's mother's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i), of the Act, be above and beyond the normal, expected hardship involved in such cases. In this case, when the evidence is considered in the aggregate, the AAO is unable to conclude that either of the applicant's parents would suffer extreme hardship.

The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative 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 he merits a waiver as a matter of discretion.

In proceedings for an 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.