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

H5

[redacted]

Date: OCT 2 6 2012 Office: HARLINGEN, TX FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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.

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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Harlingen, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant is not inadmissible because her misrepresentation was not material. In addition, counsel contends the applicant established extreme hardship, particularly considering the U.S. Department of State has issued a travel warning for Mexico.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted], indicating they were married on July 24, 1984; an affidavit from the applicant; letters from [redacted] letters from the couple's children; a letter from the applicant's grandchild's physician; a letter from the applicant's employer; copies of pay stubs and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

> 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 Act is inadmissible.

Section 212(i) provides, in pertinent part:

> (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . . .

In this case, the record shows that the applicant attempted to enter the United States on July 11, 1967, by making a false claim to U.S. citizenship. The applicant was returned to Mexico. In addition, the record shows that the applicant was arrested and charged with possession of marijuana with intent to distribute on March 8, 1974, and was subsequently deported as an illegal alien.

Counsel concedes that the applicant's "initial I-485, filed September 12, 1997, contained misstatements as to her immigration history and her arrest history and she did not acknowledge those events in her sworn statement on July 13, 2001." However, according to counsel, the applicant's more recent application, filed on September 8, 2009, does not contain these misstatements or omissions, and therefore, "it cannot be said of [the applicant's] most recent application that she willfully misrepresented any material fact." In addition, counsel contends that any misrepresentation is not material as the false claim to citizenship was made over forty years ago and her arrest was over thirty years ago and did not result in any formal charge, but rather, deportation.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

After a careful review of the record, the AAO finds that the applicant has not met her burden of proving she is admissible to the United States. The AAO acknowledges that the applicant's false claim to citizenship and arrest occurred decades ago. Nonetheless, as counsel concedes, the applicant made misrepresentations on her Form I-485. The fact that she later told the truth does not negate her inadmissibility. Regarding counsel's contention that the misrepresentations are not material, a misrepresentation made in connection with a visa application is material if either the alien is excludable on the true facts, or the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Matter of S- and B-C*, 9 I&N Dec. 436, 447 (BIA 1960; AG 1961). Failing to disclose a false claim to citizenship and an arrest, even when it does not lead to a criminal charge or conviction, tends to shut off a line of inquiry relevant to determining whether or not the applicant is eligible for a visa, including how or when the applicant reentered the United States after having been deported twice. In addition, there is no time limitation on misrepresentation, so though the applicant's false claim to U.S. citizenship was years ago, it still constitutes misrepresentation under section 212(a)(6)(C)(i) of the Act. Considering all of these factors, the AAO finds that the applicant has not shown through independent, competent, and objective evidence that she is admissible to the United States. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant's husband, [redacted] states that he loves his wife very much and that they have four children as well as grandchildren together. He contends that he works out of state in Louisiana and, therefore, does not live with his wife who lives with their children. [redacted] contends that if his wife is unable to remain in the United States, he and his children will suffer severe emotional and economic hardship. According to [redacted] they do not have any relatives in Mexico and there is a lot of risk to live in or visit Mexico.

After a careful review of the record, there is insufficient evidence to show that the applicant's husband will suffer extreme hardship if the applicant's waiver application were denied. If [redacted] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Although the AAO is sympathetic to the family's circumstances, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). According to the applicant's most recent Biographic Information form (Form G-325), she has been living in [redacted], since January 1991, while [redacted] lives and works in Louisiana.[1] According to the couple's daughter, because [redacted] works in Louisiana, he sees his wife only every three months. Therefore, considering the couple does not currently live together, the record does not show that [redacted] separation from his wife causes him extreme hardship. The AAO acknowledges that the applicant is very close to her children and grandchildren and that one of her grandchildren has diabetes. Nonetheless, the only qualifying relative in this case is [redacted] and the record does not show that any hardship any other family members may experience causes extreme hardship to [redacted]. To the extent [redacted] contends he will suffer from financial hardship, although the record contains financial documentation for other family members, there is no documentation addressing [redacted] employment, wages, or income. According to the couple's daughter, [redacted] sends money to the applicant to pay the rent and utility bills, and according to the applicant's most recent Form G-325, she has been unemployed since 2005. Without more details information addressing the couple's total income and expenses, there is insufficient evidence to address the extent of [redacted] financial hardship. Even considering all

[1] The AAO notes that the applicant's most recent Form G-325, signed on August 26, 2009, conflicts with her two prior Form G-325's. *Compare Form G-325*, dated August 26, 2009 (indicating she lived at two different addresses in [redacted], from January 1991 until December 1999) *with Form G-325*, dated September 9, 2003 (indicating she lived in [redacted] Mexico, from January 1990 until January 1997) *and Form G-325*, dated September 12, 1997 (same).

of the factors in the case cumulatively, there is insufficient evidence showing that the hardship the applicant's husband will experience amounts to extreme hardship.

Furthermore, the record does not show that [redacted] would suffer extreme hardship if he returned to Mexico to avoid the hardship of separation. The record shows that [redacted] was born in Mexico and married the applicant in Mexico. There is no evidence that his readjustment to living in Mexico would be any more difficult than would normally be expected. Although the AAO recognizes the U.S. Department of State has issued a Travel Warning urging U.S. citizens to defer travel to parts of Mexico, including Tamaulipas, where the applicant was born, *U.S. Department of State, Travel Warning, Mexico*, dated February 8, 2012, the Travel Warning alone is insufficient to show extreme hardship. Even considering all of the evidence cumulatively, the record does not show that [redacted] hardship has been or will be extreme, or that their situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *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.