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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 16 2014 Office: TUCSON, AZ

IN RE:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tucson, Arizona. The matter 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 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), for procuring admission to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse is a U.S. citizen. She seeks a waiver of inadmissibility in order to remain in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and the Form I-601, Applicant for Waiver of Grounds of Inadmissibility, was denied accordingly. *Decision of the Field Office Director*, dated June 20, 2013.

On appeal, the applicant provides additional evidence, including a statement from her spouse concerning the hardship he would experience if her waiver application is denied. *Form I-290B, Notice of Appeal or Motion*, dated July 18, 2013.

The record includes, but is not limited to, statements from the applicant, her spouse, and children; financial documents; and medical records for the applicant's spouse. 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, 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.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now Secretary of the Department of Homeland Security (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.

The record reflects that the applicant initially entered the United States as a non-immigrant using her own border crossing card and began residing in the United States in 2001; she occasionally returned to Mexico until her last entry into the United States on December 26, 2009; upon arriving from Mexico she would state that her purpose of entry was to shop or visit; and she did not mention that

she was residing in the United States to U.S. immigration officers, because she would not have been admitted and her border crossing card would have been cancelled. She is therefore inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through willful misrepresentation of a material fact. The applicant does not contest the finding of inadmissibility.

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 or her stepdaughter can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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.

The AAO will first address hardship to the applicant's spouse if he relocates to Mexico. The applicant states that she was abused by her former spouse and she does not want her children to suffer abuse. According to letters from her friends, the police did not assist the applicant and she and her children would not be safe in Mexico. The record does not address whether the applicant's spouse would experience hardship based on the applicant's ex-spouse's prior behavior or its effect on the applicant. The applicant makes no other claims related to her current spouse's hardship upon relocation to Mexico. The AAO finds that the applicant provided insufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that her qualifying relative would suffer extreme hardship upon relocation to Mexico.

The AAO will now address hardship to the applicant's spouse if he remains in the United States without her. The applicant's spouse states that after his ex-spouse left him with their four children, he felt lost and confused; his children felt abandoned and sad; he was a single father for many years; he struggled until the applicant filled in as a mother to his children; and she does the household work. The applicant's spouse adds that the applicant has been very helpful since he fell off the back of his work truck and hurt his back. The record reflects that the applicant's spouse was treated for a workplace injury in July 2013.

The applicant states that the impact of separation on her children would be devastating, as they are adolescents; her spouse needs her support due to his back injury; and it would be impossible for her spouse to care for the children without her. The applicant's children, in their letters, express how they need the applicant. The applicant's stepson states that she takes him to school and doctor's appointments; and she shows him how to cook, clean and wash.

A friend of the applicant states that the applicant helps her spouse pay the utilities and rent, and she has been working more hours since her spouse's accident. Another friend states that the applicant is the backbone of the family. The applicant's spouse lists their monthly expenses, amounting to approximately $2800, and states that he earns approximately $1511 per paycheck. The record lacks evidence corroborating these claims. The applicant's spouse states his overtime hours are being cut and his expenses will double, as the applicant would need a place to live in Mexico. The record includes evidence that the applicant's spouse was diagnosed with lumbosacral sprain and was referred to a chiropractor; the medical documents indicate that he could return to work immediately without restrictions.

The record reflects that the applicant is helping her spouse raise his children and she has a close relationship with them. The record does not include evidence that the applicant financially assists her spouse, evidence of the family's current expenses, or evidence of the expenses that her spouse would incur if he were to support the applicant in Mexico. In addition, the medical records reflect that the applicant's spouse is physically able to work. Although the applicant's spouse likely would experience certain difficulties without the applicant, the AAO finds that there is insufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would suffer extreme hardship upon remaining in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, the AAO finds that no purpose would be served in discussing whether she merits a waiver as a matter of overall discretion.

In application proceedings it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.