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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services

DATE: **NOV 04 2014** Office: ATLANTA, GA

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:

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 Field Office Director, Atlanta, Georgia, 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 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 procured admission to the United States through fraud or a material misrepresentation. The applicant is the spouse of a U.S. citizen and the parent of five U.S. citizen children. 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 family.

In a decision, dated July 2, 2013, the field office director found that the applicant had failed to establish that the applicant's U.S. citizen spouse, child, and lawful permanent resident parents would suffer extreme hardship as a result of her inadmissibility. The application was denied accordingly.¹

On appeal, counsel states that the field office director erred in not finding that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility. She states that the applicant warrants a favorable exercise of discretion.

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.

The record reflects that the applicant attempted to enter the United States in 1992 using a fraudulent document. The applicant then entered the United States soon after, using a different fraudulent document. In 2000 she again entered the United States using this fraudulent document. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or a material misrepresentation. The applicant's qualifying relative is her U.S. citizen spouse.

¹ Section 212(i) waivers require an applicant to establish extreme hardship to their U.S. citizen or lawful permanent resident spouse and/or parent. Hardship to an applicant's U.S. citizen child is not considered unless hardship to the child causes hardship to a spouse and/or parent. An applicant need only show extreme hardship to one qualifying relative to qualify for a waiver.

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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant'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 children will not be separately considered, except as it may affect the applicant's spouse.

The record of hardship includes: a statement from the applicant, a statement from the applicant's spouse, birth certificates for the applicant's children, family photographs, school records for the applicant's children, a letter indicating that the applicant's children receive low cost health insurance through a program in Georgia, financial documents, a letter from the family pastor, medical records for the applicant's spouse, and country conditions information for Mexico.

The record establishes that the applicant's spouse would suffer extreme hardship as a result of relocation to Mexico, but does not show that he would suffer extreme hardship as a result of separation from the applicant. The record establishes that the applicant's spouse has strong ties to the United States. He first came to live in the United States when he was 13 years old and his parents, seven siblings, and four children live in the United States. The record also indicates that the applicant's spouse has been with the same employer for seven years and has retirement and partial health care benefits through this employer. The record shows that two of his children, ages 9 and 10, are enrolled in school in the United States and benefit from a low cost health insurance program run by the state of Georgia. The record establishes that the applicant and her spouse are active and long term members of their church, attending services five times per week. In addition to the applicant's spouse's strong ties to the United States, he indicates that he has concerns about the conditions in Mexico. The applicant's spouse states that it would be difficult to watch his children struggle in school in Mexico. He states that although he has traveled to Mexico with his church, he does not feel safe in the country. The record also indicates that the applicant is from Guerrero, Mexico and that this area of Mexico has seen an increase of violence due to fighting between rival criminal organizations. The current U.S. State Department Travel Warning, dated October 10, 2014, states that the state of Guerrero was the most violent state in Mexico in 2013, with 2,087 homicides and 207 reported cases of kidnapping. This warning indicates that the applicant's spouse's concerns about safety are reasonable. Thus, given the applicant's spouse's significant ties to the United States and the conditions in the area of Mexico where the applicant is from, the record establishes that he would suffer extreme hardship as a result of relocating.

However, the current record fails to provide the detail and documentation necessary to show that the applicant would suffer extreme hardship as a result of separation. The record establishes that the

applicant and his spouse have been married for 10 years and have two children together. Counsel states that the applicant contributes approximately \$200 per week to the household income by cleaning houses and that the family finances would severely suffer without this income, but does not provide any documentation to show the family budget and/or that the applicant has an income. The record is also inconsistent in establishing the applicant's spouse's income as a produce clerk at a grocery store. Counsel states that the applicant's spouse earns about \$27,500 per year in this position, but a 2010 W2 Wage and Tax Statement indicates that the applicant's spouse earned \$40,397 that year. This inconsistency and the lack of documentation in regards to the applicant's spouse's income are relevant to establishing whether the applicant's spouse would suffer extreme financial hardship upon separation. Moreover, the record lacks any detail as to the emotional suffering of the applicant's spouse in the event that the applicant was removed to Mexico. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained 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 evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(i) of the Act.

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. 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.