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: SEP 29 2014 Office: TUCSON FIELD OFFICE FILE:

IN RE: Applicant:

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:

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 Field Office Director, Tucson, Arizona, denied the waiver application and 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 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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with U.S. citizen spouse.

The field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated January 2, 2014.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the field office director erred by not finding the qualifying spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. Counsel contends the applicant's spouse has a major medical condition, cares for her chronically ill mother, has no family ties outside the United States, and will encounter extreme financial hardship. With the appeal counsel submits a mental health assessment and a letter from a social worker concerning the applicant's spouse. The record contains a brief from counsel, a brief from the applicant's previous counsel, statements from the applicant and his spouse, letters of support from family members, medical information for the applicant's spouse, financial documentation, country information for Mexico, and other evidence submitted with the Application to Adjust Status (Form I-485). 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 that:

> 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.

The decision of the director indicates that at his interview for adjustment of status the applicant testified that he had entered the United States in July 2011 using his Border Crossing Card and then resided with his sister in the United States. The applicant further testified that he then occasionally traveled to Mexico and returned to the United States, most recently in December 2012, by telling U.S. Customs and Border Protection officers that his purpose for coming to the United States was to visit. The record reflects that the applicant testified that he did not inform CBP officers that he was in fact residing in the United States as he feared not being permitted to enter. Based on this information the field office director found the applicant inadmissible for willful misrepresentation in order to gain admission to the United States. On appeal counsel contends that the applicant's misrepresentation was not willful and not material because when he stated to CBP officers that he was coming to visit he had no immigrant intent.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C* , 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

> A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) 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. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

The Immigration and Nationality Act makes clear that a foreign national must establish admissibility "clearly and beyond doubt." *See* section 235(b)(2)(A) of the Act. *See* also 240(c)(2)(A) of the Act. The same is true for admissibility in the context of an application for adjustment of status. *See Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008). *See Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008). *See Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). In the present case we find that by stating to CBP officers he was visiting rather than residing in the Unites States the applicant intentionally cut off a line of questioning relevant to his eligibility, therefore willfully misrepresented his immigration intention and is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

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. The applicant's spouse is the only qualifying relative in this case. 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 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (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.

In her brief counsel asserts that the applicant's spouse is in fragile emotional health due to a miscarriage and is under care by a mental health professional, diagnosed with chronic depression. A brief from previous counsel asserts that the applicant's spouse will be unable to pay bills without the applicant's assistance and support, and that the applicant's spouse had recently been treated for a significant health condition and remains under follow up instructions from a gynecologist.

The applicant's spouse states that she needs the applicant to help her pay bills and wants to start a family, but had a miscarriage and is emotionally fragile. The applicant states that his spouse has debt from starting a business and cannot keep up with her bills if he is in Mexico.

A clinical assessment of the applicant's spouse from a licensed counselor indicates that she reports feeling sad over the applicant's denial of residency and reports that she has a tendency to worry about everything. The assessment indicates that the spouse shows symptoms of anxiety and depressed mood, and it recommends counseling. A letter from a social worker states that the applicant's spouse has problems with sleeping and loss of appetite and that she cries often. Medical documentation for the spouse shows discharge information with follow up instructions to see her gynecologist.

The evidence in the record, including the clinical assessment provided, does not establish that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible. The assessment fails to provide any detail explaining the exact nature of the spouse's emotional hardships and how such emotional hardships are outside the ordinary consequences of removal. Nor has it been established that the applicant's spouse would be unable to travel to Mexico to visit her husband. The medical documentation submitted for the spouse does not support that she has a significant health condition, as referenced by the applicant's previous counsel, such that it would require the applicant's presence in the United States.

Counsel, the applicant, and the spouse also indicate that the spouse would experience financial hardship without the applicant as she would be unable to meet her debt and expenses. The record includes bank and utility statements and information about the spouse leasing a transport truck, including a letter from the trucking company indicating that the applicant's spouse asked them to operate her truck while she resolved issues including the applicant's residency. However, no documentation has been submitted establishing the spouse's current income, assets, and liabilities or her overall financial situation, or establishing the applicant's employment or financial contribution, to support that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship.

We recognize that the applicant's spouse will endure some hardship as a result of long-term separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. There is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer hardship beyond the common results of removal upon separation from the applicant.

We also find that the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Mexico to reside with the applicant. Counsel states that the applicant's spouse is caring for her elderly mother who has cancer and that the mother also depends on the applicant's spouse financially. The applicant's spouse states that she emotionally and physically cares for her mother and a letter from the mother states that she is recovering from breast cancer and it is important to be surrounded by people who love her. No documentation has been submitted to the record, however, to establish the mother's health condition, or to show that any prognosis or treatment plan requires the presence of the applicant's spouse or that the mother would be unable to otherwise find assistance. Nor has any documentation been submitted to establish that the spouse financially supports her mother. The joint income tax returns of the spouse's parents submitted with an Affidavit of Support (Form I-864) in support of the applicant's Form I-485 indicate an adjusted gross income of more than $300,000. Thus it has not been established that the applicant's spouse must financially support her mother. The spouse also states that she has been in the United States her entire life with no ties outside, but it has not been established that she would be unable to visit her mother and other family members in the United States from Mexico, particularly given the proximity.

Counsel states that the applicant's spouse wants to start a family, but needs strict medical monitoring so it would be difficult to move outside of the United States. The applicant's spouse states that she wants any pregnancy to be monitored in her own country with the applicant by her side and the applicant states that in Mexico his spouse would not get the care she deserves. 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. The evidence in the record, however, does not establish that the applicant's spouse suffers from such a condition or that she would be unable to obtain adequate health care in Mexico.

Counsel asserts that by relocating to Mexico the applicant's spouse will encounter extreme financial hardship because of losing her business investment and her current income, and because her job skills are specific to the United States, thus making it impossible to find work in Mexico. Counsel states that the applicant's spouse would also lose the investment in her education and the opportunity to finish school. The spouse states that she would lose her current income. She also states that she has been attending school for graphic design and has invested in a transport company that she was hoping to have the applicant run. The spouse states that it would also be an extreme hardship financially to move to Mexico as she has no assets there and would need a place to live, a new car, and new furniture. However, no documentation has been submitted to the record establishing the

spouse's current income, and the record does not establish that she will be unable to obtain loans or employment in Mexico, or that she would be unable to find employment there.

The applicant's spouse states she is also afraid of the crime and violence in Mexico as described by the U.S. Department of State and in the media. Counsel contends that Mexico, particularly the applicant's home area of northern Mexico, is in a state of war due to violence between the drug traffickers, the government, and private citizens, so the applicant's life would be in imminent danger.

The record indicates that the applicant resided in the state of Sonora. The U.S. Department of State indicates that Sonora is a key region in the international drug and human trafficking trades and can be extremely dangerous for travelers. See Travel Warning-U.S. Department of State, dated August 15, 2014. However, the travel warning is issued for some areas of Sonora, not the area where the applicant would likely reside, and thus the information fails to establish that the applicant's spouse would be at risk as a result of relocating to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, would 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 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 the applicant merits a waiver as a matter of 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.

ORDER: The appeal is dismissed.