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



U.S. Citizenship
and Immigration
Services

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DATE: **MAY 31 2012** Office: CIUDAD JUAREZ, MEXICO

FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v).

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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for procuring admission to the United States through fraud or misrepresentation; and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II) for having been unlawfully present in the United States for a period of more than one year, and seeking admission within 10 years of the date of his last departure. The applicant is a spouse and a father of U.S. citizens and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and son.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of Field Office Director*, dated January 20, 2010.

On appeal, the applicant claims that his wife is sick and she will suffer extreme hardship without him. The applicant has submitted additional evidence with the appeal application. The applicant also contests his inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act and denies presenting a false "mica" in 1997 to enter the United States. *See Form I-290B, Notice of Appeal or Motion*, dated February 18, 2010.

The evidence of record includes, but is not limited to: statements from the applicant's spouse; medical documentation for the applicant's spouse; and identification and relationship documents. The entire record was reviewed and all relevant evidence considered in reaching 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.

According to consular notes in the record, the applicant stated under oath that in 1997 he entered the United States "by presenting a false mica" at the port of entry in Tijuana. The applicant on appeal states that it is "not true." The applicant's wife states that the applicant told her that he had a legal permanent resident card that did not belong to him but he never used it or showed it to a "border officer." The AAO notes that 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 (BIA 1988). The current record fails to explain or reconcile the inconsistencies between the applicant's statements on appeal and the statements that the record indicates the applicant made to the consular officer under oath. Therefore, the AAO finds the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having obtained admission to the United States through fraud or the willful misrepresentation of a material fact.

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 AAO will now address the applicant's inadmissibility pursuant to section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), of the Act.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record reflects that the applicant entered the United States with a false document in 1997¹ and did not depart until 2007. Accordingly, the AAO finds that the applicant was unlawfully present in the United States for more than one year and therefore, is inadmissible pursuant to

¹ The record contains conflicting information regarding the exact date of the applicant's entry, which was either in 1997 or 1998. These inconsistencies are inconsequential to the unlawful presence determination, because relying on either date, the applicant has accrued more than one year of unlawful presence.

section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility under this section of the Act.

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) 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 other family members can be considered only insofar as it results in hardship to a qualifying relative. 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

In the present case, the record reflects that the applicant is married to a U.S. citizen. The applicant also claims a U.S. citizen child. The applicant's spouse meets the definition of a qualifying relative. The applicant's child is not a qualifying relative for purposes of the waiver sought and, therefore, any hardship he might experience as a result of the applicant's inadmissibility will be considered only to the extent it results in hardship to the applicant's spouse.

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, 631-32 (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, "[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., In re 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 now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

The applicant's spouse states that she has severe obesity, uncontrolled diabetes and depression. She lost their second child in a miscarriage and since then, she feels sad, weak, and has difficulty sleeping. She states that the applicant's income is not sufficient to pay for her psychological care. She is concerned about not receiving the same quality of medical care that she received in the United States and also about their son missing the opportunity to grow up in the United

States. She wants to come back to the United States for treatment but she says she needs the applicant and their son with her. She states that in Mexico, they are living with the applicant's parents in poor conditions and she shares a room with two other people. The applicant's spouse also states that when she was in the United States she was unable to work due to pain in her lower extremities and her brother was supporting her financially.

An undated letter from [REDACTED] indicates that the applicant's spouse has "severe obesity, uncontrolled diabetes [sic], and deep depression." She also has heel spurs, which prevents her from standing for long periods. According to [REDACTED] this condition makes it difficult for the applicant's spouse to hold a job and care for her son. He feels that the applicant's spouse's stress level has increased substantially and she would benefit from uniting with the applicant. Other medical evidence indicates that the applicant's wife was taking medications for her diabetes.

The AAO has considered all relevant evidence and concluded that the applicant has failed to demonstrate extreme hardship to his qualifying spouse resulting from her relocation to Mexico. We note that the applicant's spouse was treated for medical conditions in the United States, however, the record does not establish whether the applicant's spouse require continuous care and that such care is unavailable to her in Mexico. Furthermore, although the applicant's spouse's physician states that she was diagnosed with "deep depression," the record lacks evidence indicating the type of treatment she needs, whether she received such treatment for depression, or that she requires ongoing treatment. Evidence in the record also does not demonstrate whether the applicant's spouse's depression improved or worsened since she united with the applicant in Mexico. The record lacks evidence supporting the applicant's spouse's claim that the applicant's income is insufficient for her to receive care. We note that the record fails to provide documentary evidence showing the household income and expenses in Mexico. The applicant failed to submit financial evidence showing how the family's household income has changed since his departure and his spouse's relocation. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of 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 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In the absence of supporting evidence, the AAO will not speculate on the state of the applicant's or his spouse's financial, emotional or physical health status and therefore concludes that the applicant has failed to establish that his spouse is experiencing extreme hardship due to relocation.

The AAO notes that the U.S. Department of State has issued a travel warning for Mexico, updated on February 8, 2012, indicating that crime and violence are serious problems throughout the country. Although this country-conditions evidence is of concern, it does not, in and of

itself, establish extreme hardship, and the applicant makes no claims that his spouse and their son face danger where they live.

The AAO also finds that the applicant has failed to demonstrate that his spouse would experience extreme hardship upon separation. The record indicates that the applicant's spouse has medical conditions that limit her physical activity and caring for her son. However, the record does not provide details regarding her limitations and the type of assistance she needs. The record indicates that the applicant's spouse was living with her family and received emotional and financial support from them while she was in the United States. However, the record does not indicate that she would be unable to receive such support from her family if she returns. Furthermore, the record lacks evidence demonstrating that the applicant's spouse would be unable to obtain gainful employment in the United States or receive financial assistance from the applicant or from other sources. Therefore, the AAO concludes that the applicant has failed to demonstrate that the hardship which his spouse would experience upon separation would rise to the level of extreme.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, when considered in the aggregate, rise beyond the common results of removal or inadmissibility. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Because the applicant has not met this burden, the appeal will be dismissed.

ORDER: The appeal is dismissed.