U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 2 5 2013 OFFICE: ANAHEIM 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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch, Anaheim, California, on behalf of the Field Office Director, Ciudad Juarez, Mexico, 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 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 having procured a nonimmigrant visa to the United States through willful misrepresentation. The applicant is the daughter of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her son. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her mother and son in the United States.

The International Adjudications Support Branch concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision on Behalf of the Field Office Director*, dated June 13, 2012.

On appeal, the applicant's son contends the documentation submitted in support of the applicant's appeal demonstrates the applicant needs medical help, as she is under the care of a physician, she is suffering from epilepsy, and she cannot make it alone as her husband has been deceased for almost 30 years. He also contends that he and his family are suffering extreme hardship as he takes his family to Mexico to take care of the applicant because she needs him, but it is not fair to his family in the United States. *See Form I-290B, Notice of Appeal or Motion*, dated July 12, 2012.

The record includes, but is not limited to: correspondence and letters of support; identity, medical, employment, and financial documents; and a death certificate.[1] The entire record, with the exception of the Spanish-language documents, was reviewed and considered in rendering a decision on the appeal.

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

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[1] The AAO notes the record contains some documents in the Spanish language. 8 C.F.R. § 103.2(b)(3) states:

> Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As a certified translations have not been provided for all of the foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these untranslated documents in support of the appeal.

> (i) 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.
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> ...
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> (iii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The International Adjudications Support Branch found the applicant inadmissible for having failed to reveal during her consular interview her true identity upon seeking and obtaining a nonimmigrant visa in 1978, which she subsequently presented for admission to the United States.[2] The record supports the finding, and the AAO concurs the misrepresentation was material. The AAO finds the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in relevant part:

> (1) The Attorney General [now Secretary 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.

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. Hardship to the applicant, her son, daughter-in-law, and grandchildren can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parent is the only demonstrated qualifying relative in this case. 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).

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[2] The record contains evidence the applicant obtained a visitor visa as the sister-in-law of a lawful permanent resident around October 26, 1978, when in fact, she was the common law spouse of the lawful permanent resident and had been residing in the United States since around 1976. The record also contains evidence the applicant presented the nonimmigrant visa around November 3, 1978, and upon apprehension, was deported. The record contains further evidence the applicant entered the United States without inspection by immigration officials around 1994, and remained until she voluntarily returned to Mexico around 1998. Additionally, the record indicates the applicant has remained in Mexico to date.

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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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 (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 *In Re 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, 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 applicant's parent contends: she loves the applicant, who takes care of her, and she wants nothing more than for the applicant to stay with her and be with all of her family; she is elderly and not in good health as she is hypertensive and suffering from atherosclerosis and mixed cardiopathy;[3] she requires somebody to be with her at all times; and she is unable to travel because of her medical conditions. The applicant's son also indicates: he has suffered enough as he was thrown out of the United States when he was one year of age and cannot write or speak well; it is not fair that as a U.S. citizen he is being forced to go out again to help the applicant; it has been overwhelming and exhausting to his loved ones because he and the applicant have been going to since her case was opened in 2005; separation from the applicant is causing great stress and a strain on his marriage; he does not want to have to choose between the applicant and his family; he would like to have a life with the applicant and his children; his children have been deprived of an important, crucial figure in their lives, their grandmother; he is the applicant's only child, and without her, he has lost a piece of his heart; he is 90% disabled and will be undergoing reconstructive spinal surgery; the applicant would be able to assist him with his post-surgery care and the care of his family as his wife just got a job and will be unable to take off from work; it would be helpful to stop supporting two households because he is the applicant's sole support; and the applicant is her mother's youngest daughter, and they maintain a close relationship.

Although the applicant's mother and other family members may be experiencing hardship in the applicant's absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The AAO notes the record does not include any evidence of the applicant's mother's medical conditions, other than what has been self-reported. Additionally, the AAO notes the record does not include any evidence of the applicant's son's or his family members' current mental health and their inability to function in the applicant's absence and the impact this has on the applicant's mother, her qualifying relative. Absent an explanation in plain language from the treating physician or mental health professional of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical or mental health condition or the treatment needed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Additionally, the AAO notes the record includes medical letters indicating the applicant's son is scheduled for lumbar disc disease-related surgery and reconstructive spine surgery. *See Medical*

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[3] The AAO takes administrative notice that the translation may be in error as it is unaware of any such medical condition but is aware of the condition "mixed **cardiomyopathy** [emphasis added]."

Letter, dated April 13, 2012; *see also Medical Group Letter*. However, the AAO notes the medical letter does not include a clear indication of its authorship or the capacity in which the author is writing the letter, and the medical group letter contains discrepancies concerning the pre-operative appointment and the date of surgery. Based on the discrepancies, the AAO gives reduced weight to the discussion of the applicant's son's current medical hardship or the impact his medical condition would have on the applicant's qualifying relative.

Further, the record is sufficient to establish the applicant's son's employment and earnings as well as some of his financial obligations. However, the AAO notes the record does not include evidence of the impact the applicant's son's financial obligations would have on the applicant's qualifying relative. Accordingly, the AAO cannot conclude the record establishes the applicant's mother's financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's parent's hardship, but finds even when evidence of this hardship is considered in the aggregate, the record fails to establish she would suffer extreme hardship as a result of separation from the applicant.

The applicant's son contends the applicant's mother would suffer extreme hardship upon relocating to Mexico to be with the applicant as she is 92 years old, a lawful permanent resident of the United States, and very ill and unable to travel to Mexico. He also contends that he is unable to move his family to Mexico because they would lose everything for which they have worked hard, and his children would lose their home and a safe neighborhood in which to grow up as well as the "opportunity to have a great education."

The record is sufficient to establish the applicant's elderly parent would suffer hardship if she were to relocate to Mexico. The record reflects she has maintained her lawful permanent resident status since 1996, and she maintains family ties in the United States. Also, the U.S. Department of State has issued a travel warning for Mexico, recommending that travelers "defer non-essential travel to areas of the state that border the states of and [and] exercise caution when traveling at night outside of cities in the remaining portions of this state. . . . The security situation along the and borders continues to be unstable and gun battles between criminal groups and authorities occur. Concerns include roadblocks placed by individuals posing as police or military personnel and recent gun battles between rival [transnational criminal organizations] involving automatic weapons." *Travel Warning, Mexico*, issued November 20, 2012. The AAO finds, in the aggregate, the applicant's parent would suffer extreme hardship upon relocation to Mexico.

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. In re Pilch*, 21 I&N Dec. at 632-33. 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 relatives in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to her lawful permanent resident parent 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 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.