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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: JUN 2 9 2013 Office: TUCSON, ARIZONA [redacted]

IN RE : Applicant: [redacted]

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:

[redacted]

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 in accordance with the instructions on 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 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 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 record reflects that the applicant presented a Border Crossing Card (BCC) on May 13, 2012, to enter the United States and told a U.S. Customs and Border Protection officer he intended to visit when in fact he had been residing in the United States with his spouse since November 2011. The applicant does not contest the finding, but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to remain in the United States with his 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 December 3, 2012.

On appeal counsel for the applicant contends that the Service erred by not finding the qualifying spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. With the appeal counsel submits a brief. The record contains a statement from the applicant's spouse; an evaluation of the applicant's spouse from a licensed clinical social worker; a court summary showing a 1998 filing of a protection order by the applicant's spouse against the father of her first child; letters from a domestic violence services center in 2000; medical information; financial documentation; and letters of support from friends. 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.

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.

On appeal counsel states that the applicant's spouse had been the victim of domestic violence for which she had filed for a restraining order and lived in a shelter. Counsel states that a counselor describes her as depressed. Counsel states that the applicant's spouse takes medication to control a thyroid problem and asserts that given her mental state and past experiences, losing someone she loves would cause extreme hardship.

The applicant's spouse states she was a victim of domestic violence at the hands of the father of her first child, causing her to spend two months with her son in a shelter where she received counseling. She states that she and the father of her second child separated before the child's birth, leaving her alone again. She describes meeting the applicant through friends and how he has brought happiness to her and her children. She states she had lost her house when her salary was not enough to support her children but that since marrying the applicant her financial problems have improved. She further states that if the applicant left them it would be a disaster, as she would be overwhelmed by stress that would affect her children. She states that the applicant helps with the home and the children while she studies. She also states that due to violence Mexico it would not be safe for her family there and the economic situation would make it difficult to find a job.

A licensed social worker states that her evaluation of the applicant's spouse found her depressed, anxious, and afraid of what would happen to the applicant if he returns to Mexico. The evaluation states his departure would be traumatic to the spouse as she has lost her home and needs the applicant's support. It also states that she has thyroid problems for which she is under a physician's care.

The AAO finds that the record fails to establish that the applicant's qualifying spouse would suffer extreme hardship as a consequence of being separated from the applicant. Counsel and the applicant's spouse state that the spouse was a victim of domestic violence and the applicant now provides emotional support, and being separated from him would cause hardship, but the record fails to show how such emotional hardships are outside the ordinary consequences of removal. The social worker's evaluation stems from a single visit rather than an established relationship and the record does not indicate that the spouse had received additional services since her experience with domestic violence more than 10 years ago until immediately prior to the filing of the waiver application.

Counsel and the applicant's spouse state she has a thyroid problem, but submitted only general information about medication with no statement from a physician about the spouse's condition, or how any treatment plan would require the applicant's physical presence in the United States.

The applicant's spouse asserts that with the applicant her financial problems have improved. Documentation on record shows the spouse's employment, but no documentation has been submitted establishing her current expenses, assets, and liabilities or her overall financial situation, or to show the applicant's financial contribution, to establish that without the applicant's physical presence in the United States the applicant's spouse would experience financial hardship. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse will endure hardship as a result of 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. The difficulties that the applicant's spouse would face as a result of separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The AAO also finds 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. The applicant's spouse asserts Mexico is violent and the economy bad, however the record does not contain any country condition evidence and fails to address where the applicant would live if he returned to Mexico, and therefore fails to establish that safety and economic concerns regarding returning to Mexico would rise to the level of extreme hardship for the spouse. Further, the record reflects that the applicant had made regular returns to Mexico, entering the United States with a border crossing card, and that the applicant, though born in the United States, was raised in Mexico, where she attended high school and still makes visits.

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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying spouse 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.