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)

Date: MAR 0 5 2013 Office: SAN SALVADOR FILE:

IN RE: Applicant:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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

REISSUED FOR ADDRESS ONLY

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

The applicant is a native and citizen of El Salvador who was found 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 attempting to procure admission to the United States through fraud or willful 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 more than one year. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(i) and 1182(a)(9)(B)(v) in order to reside in the United States with her lawful permanent resident mother.

The field office director found the applicant inadmissible under section 212(a)(9)(C)(i) of the Act and not eligible for consent to reapply under section 212(a)(9)(C)(ii) of the Act, and denied the waiver application accordingly as no purpose would be served in granting the application. *See Decision of the Field Office Director,* dated September 23, 2011.

On appeal the applicant submits an affidavit. The entire record was reviewed and considered in rendering this decision.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 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 immigrant 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…

Section 212(a)(9)(B) states in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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.

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

> ....
>
> (C) Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.-Any alien who-
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> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
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> (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,
>
> and who enters or attempts to reenter the United States without being admitted is inadmissible.
>
> (ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006).

In the instant case the Field Office Director erred in finding the applicant subject to 212(a)(9)(C) of the Act as the applicant did not enter or attempt to re-enter without admission, but rather sought admission using her B-2 visitor visa. The applicant had entered the United States with a non-immigrant visa in 2006, remaining beyond her authorized stay until departing the United States in

2010. The applicant then attempted to re-enter the United States with her nonimmigrant visa and a fraudulent Salvadoran immigration entry stamp to misrepresent her previous time in the United States. The applicant was removed under section 235(b)(1) of the Act, returning to El Salvador in December 2010.

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 wife 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 (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 the applicant states that she left El Salvador because her alcoholic father was physically, verbally and psychologically abusive to her mother and sisters, and the family reported him to police, after which he threatened them with death. The applicant stated she then came to the United States for the stability she lacked in El Salvador. She states she had a child born in the United States in 2009, that her two sisters are lawful permanent residents living in the United States, and that her mother has decided to remain with the applicant in El Salvador although she is a lawful permanent resident. The applicant states she wants to give her son a better life and future of security, education and health in the United States and give her mother the opportunity to be with her daughters and grandchild

In a previously-submitted declaration the applicant stated that she has bad memories of El Salvador, but returned there from the United States to obtain an immigrant visa so she could live legally with her son in the United States. She stated that her son is living in the United States with the applicant's sister and that her mother returned to El Salvador so the applicant would not be alone. The applicant stated she wishes for her mother to be in the United States with the applicant's sisters and son, and she fears her father may harm them if they remain in El Salvador.

In a previous declaration the applicant's mother stated that her husband had become violent against the family, so they reported him to police and he was taken to jail. She stated that the applicant went to the United States and feared returning to El Salvador because of threats from her father. The applicant's mother stated that she struggled financially after divorcing and that she and two of her daughters then immigrated to the United States, but she returned to El Salvador while the applicant was applying to immigrate to the United States. She stated that the applicant then also returned to El Salvador, leaving her son with a sister in the United States. The mother stated the applicant misses

her son, but cannot bring him to El Salvador because they have little living space. The applicant's mother stated it is difficult to be separated from her other daughters and grandson and that they have struggled financially so she can travel between El Salvador and the United States. She further stated that because of high prices she and her daughters plan to buy a home together in the United States. She also stated that her daughters in the United States are concerned for the applicant and her because of insecurity in El Salvador.

The AAO finds that the applicant has failed to establish that her qualifying parent will suffer extreme hardship as a consequence of being separated from the applicant. The applicant stated that she misses her son in the United States and that she wants her mother to have the family together, but failed to provide any detail or supporting evidence explaining the exact nature of the qualifying parent's emotional hardships and how such emotional hardships are outside the ordinary consequences of removal. Assertions cannot be given great weight absent supporting evidence. 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)). Further, it is noted that the applicant's mother is currently staying with the applicant in El Salvador, and stated that she has made multiple trips between the United States and El Salvador.

The applicant's mother stated that she struggled economically following her divorce from the applicant's father and that the family needs her to contribute financially so she can travel between the United States and El Salvador and so they can collectively purchase a home, but no documentation has been submitted establishing the mother's current income, expenses, assets, and liabilities or her overall financial situation. 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) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

The applicant has also failed to establish her mother would experience extreme hardship if she were to relocate to El Salvador to reside with the applicant. The applicant and her mother stated that they fear the applicant's father in El Salvador, that they are living in a small space there, and that the applicant's sisters fear for them because of insecurity in El Salvador. However, the applicant's mother has continued to reside with the applicant, making trips between the United States and El Salvador with no apparent incidences with the applicant's father. Further, the record contains no evidence supporting the applicant's assertions of her father's past violent behavior. The record also does not contain any country condition evidence and fails to address where the applicant lives, and therefore fails to establish that safety and economic concerns would rise to the level of extreme hardship.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under sections (212(i) and 212(a)(9)(B)(v) of

the Act. In the present case, the applicant's parent is the only qualifying relative for the waiver and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's parents.

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 her qualifying 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. The waiver application is denied.