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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 3 1 2015

FILE #:
APPLICATION RECEIPT #:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. Please do not mail any motions directly to the AAO.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Seattle, Washington. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted and our prior decision is affirmed.

The record reflects that 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 procuring admission to the United States by fraud or willful misrepresentation of a material fact, and pursuant to 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 for one year or more and seeking readmission within 10 years of her last departure. The applicant's spouse and two children are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act in order to reside in the United States with her family.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Applicant for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated March 24, 2014.[1] We found that the applicant did not establish that she was inspected and admitted to the United States; she entered the United States without inspection; she is not inadmissible under section 212(a)(6)(C)(i) of the Act; she is inadmissible under sections 212(a)(9)(B) and 212(a)(9)(C) of the Act; and is statutorily ineligible to apply for permission to reapply for admission under section 212(a)(9)(C) of the Act. *Decision of the AAO*, dated December 1, 2014. We dismissed the appeal as a matter of discretion, as its approval would not result in the applicant's admissibility to the United States. *Id.*

On motion, the applicant provides documentation to support her claim that she was admitted to the United States and to establish hardship to her family and her good moral character. The applicant, through counsel, cites to case law supporting her assertions that the preponderance of evidence reflects that the applicant was admitted to the United States. *Brief in Support of Motion*, dated December 31, 2014.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Based on the updated documentation and assertions provided, the requirements of a motion to reopen and reconsider have been met.

The record includes, but is not limited to, counsel's brief, a physician's letter for the applicant's daughter, results of the applicant's polygraph examination, results of the applicant's spouse's polygraph examination, the applicant's sworn statement taken during her adjustment of status

[1] The record reflects that counsel received the decision on April 28, 2014.

interview, financial records, multiple statements from the applicant and her spouse, articles in Spanish without English translations, letters of support, and country-conditions information about Mexico. The entire record, other than the untranslated documents, was reviewed and considered in arriving at a decision on the motion.[2]

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

> (B) Aliens Unlawfully Present.-
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> (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
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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.
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> . . . .
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> (v) Waiver.-The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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.

The record reflects that the applicant entered the United States without inspection in or around April 1993, and she returned to Mexico in or around August 2000. She accrued unlawful presence from April 1, 1997, the effective date of unlawful presence provisions under the Act, until August 2000, the date she returned to Mexico. She reentered the United States in September 2000. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of her August 2000 departure from the United States. The applicant does not contest this ground of inadmissibility.

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[2] As the applicant does not submit certified translations of the documents in Spanish, we cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

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

> (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:

> (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.

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

> 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,
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> and who enters or attempts to reenter the United States without being admitted is inadmissible.
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> (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.

In our initial decision, the main issue was whether the applicant entered the United States after having been inspected or unlawfully in September 2000. If the applicant entered without inspection, then she would not be inadmissible for a willful misrepresentation under section 212(a)(6)(C)(i) of the Act, but she would be inadmissible under section 212(a)(9)(C)(i)(I) of the Act for having been unlawfully present in the United States for an aggregate period of more than one year and subsequently entering the United States without being admitted. If the applicant was inspected, then she would not be inadmissible under section 212(a)(9)(C)(i)(I) of the Act and would only be

inadmissible under section 212(a)(6)(C)(i) of the Act, provided she presented another person's documents to an immigration officer. The applicant, through counsel, asserts that the Field Office Director found that the applicant was admitted with the passport of another individual. We note that our finding related to the nature of the applicant's manner of entry to the United States was a *de novo* finding. We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As such, we will review the new evidence presented in conjunction with the previously submitted evidence to determine the nature and method of the applicant's entry into the United States.

According to the applicant's sworn statement before a USCIS officer, dated March 15, 2012, the applicant paid an individual for a passport to illegally enter the United States; the car she was traveling in from Mexico was stopped at the Port-of-Entry in September 2000; the U.S. border official never asked her questions; the U.S. border official only asked questions of the driver of the vehicle; she had the passport in her hand; and the officer said "come on by." In her sworn statement dated March 15, 2012, the applicant was asked if she "...knowingly used someone else's passport to enter the United States..." and she answered "Yes." In her September 19, 2011, declaration, the applicant stated that the passport belonged to another individual, it had a visitor's visa in it, and she "started to get out the passport" when the officer said "Go right ahead."

The applicant previously submitted a polygraph examination in which she answered "yes" to four questions: whether she entered the United States in September 2000 at the inspection point; whether she was in the front seat of the vehicle in plain view; whether the border agent spoke to the driver; and whether the border agent allowed her to enter the United States. According to the examiner the applicant answered those questions truthfully.

On motion, the applicant states that she entered through a border inspection point; the border agent saw her as the front-seat passenger; and she was allowed to enter after the agent spoke to the driver of the car. She states that at the USCIS interview in Seattle, the officer believed her testimony describing how she entered the United States; the denial decision recognized that she was inspected; she answered her questions honestly; she submitted a lie detector test; and her spouse took a lie detector test. The applicant's spouse states that he met the applicant after she entered the United States and she told him that: she arrived in a passenger car, they told the inspector they were going shopping in she was sitting in front seat, and she had no problems entering the United States. The record includes a polygraph examination in which the applicant's spouse answered "yes" to three questions: whether he participated in a plan to smuggle the applicant into the United States at a border point; whether she told him that she entered using someone else's passport; and whether she told him that the immigration officer did not ask her questions. According to the examiner the applicant's spouse answered those questions truthfully.

After reviewing all of the evidence in the record, and applying the preponderance of the evidence standard, we find that the applicant procured admission to the United States in September 2000 by presenting another individual's passport and visitor's visa to the inspecting officer. As such, we find that she procured admission to the United States through willful misrepresentation and is therefore inadmissible under section 212(a)(6)(C)(i) of the Act. As she did not reenter the United States

without inspection after her accrual of more than one year of unlawful presence, she is not inadmissible to the United States under section 212(a)(9)(C)(i)(I) of the Act.

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are 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 his children, ages 21 and 17, can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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 U.S. 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. *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.

We will first address hardship to the applicant's qualifying relative upon relocation to Mexico. The applicant states that they would be poor in Mexico. The applicant's spouse states that his and the applicant's families are poor in Mexico; his mother relies on him financially for her diabetes medication; and he could not relocate to Mexico as his mother relies on him for her medicine. The applicant, through counsel, states that her spouse cannot move to Mexico because he needs to have a well-paying job to support the family and provide them with insurance; they would not move to Mexico due to the lack of employment opportunities; and health care is more limited than in the United States.

The applicant states that both of their children were born and raised in the United States; they became very sick with the flu the last time they went to Mexico; their daughters are doing well in school; and they would not receive the same education in Mexico. The applicant's spouse states that their children would have problems in school, as they were not educated in Spanish-speaking schools. The applicant's older daughter details her academic success in the United States and plans to become a police officer. The applicant's younger daughter also details her academic success and musical activities. The record includes evidence of their daughters' academic achievements.

The applicant, through counsel, states that they would not move to Mexico due to the level of crime and violence, and political instability. The applicant states that her mother witnessed soldiers fighting with a drug cartel; and she and her spouse both are from areas experiencing a surge in violence. The record includes a U.S. Department of State travel warning for Mexico, dated May 5, 2015, which details the risks of traveling to certain places in Mexico due to threats to safety and security posed by organized criminal groups in the country. It states, in relation to [redacted] where the applicant and her spouse are originally from, "Defer non-essential travel to areas of the state of [redacted] that border the states of [redacted] or [redacted] as well as all rural areas and secondary highways." The record also includes a January 2014 Human Rights Watch report on Mexico and other information on general country conditions in Mexico.

The record reflects that the applicant's spouse may experience some financial hardship, but it does not contain supporting documentary evidence to establish the extent of this hardship. Moreover, the record is not clear concerning where the applicant's spouse would reside in Mexico and if that area has healthcare and safety issues. The birthplaces of the applicant and her spouse, and do not appear to border the states of or and it is not clear if they are rural areas or near secondary highways. The record reflects that the applicant's spouse would experience emotional hardship related to the hardship his children would experience in Mexico. However, the record lacks sufficient documentary evidence of emotional, financial, and medical hardship that, in their totality, establish that the applicant's spouse would experience extreme hardship if he relocated to Mexico.

Addressing the hardships the applicant's spouse would experience if he remained in the United States without the applicant, the applicant, through counsel, states that her spouse would raise the children as a single parent and he would experience emotional stress due to the loss of the applicant. The applicant states that she and her spouse have been married for over 19 years. The applicant's spouse states that he works long hours and would not be able to care for their daughters. The applicant states that it would be an unbearable hardship for her spouse due to his love for her and their children.

The applicant states that their younger daughter tried to commit suicide in May 2014 and December 2014; her attempts were due to the possibility of being left in the United States without her; and she is attending counseling. The applicant's younger daughter's physician states that she is under his care for anxiety and depression; she has a history of suicidal ideation; the applicant plays a very crucial role in preventing completion of suicide; and it is imperative for her general health that the applicant is permitted to stay with her. The applicant's younger daughter's guidance counselor details her discussion with her about a suicide attempt the previous night.

The applicant's older daughter details her closeness to the applicant. The applicant's younger daughter also states that the applicant is a source of support.

The applicant, through counsel, also states that living apart from the applicant would financially affect her spouse due to the cost of having to support two households.

The record reflects that the applicant and her spouse are very close. We note the unique situation concerning their younger daughter and the hardship it would cause the applicant's spouse if the applicant was not present to help him support the family emotionally in the United States. Based on the totality of the hardship factors presented, we find that the applicant's spouse would experience extreme hardship upon remaining in the United States.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the

applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The documentation in the record does not establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, we find that no purpose would be served in discussing whether she 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 motion is granted and our prior decision is affirmed.