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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUL 22 2015

FILE #:
APPLICATION RECEIPT #:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

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 Director of the Detroit, Michigan Field Office (the director) denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, and 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 pursuant to section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days and seeking readmission within three years of her last departure. She was also found to be inadmissible pursuant to section 212(A)(9)(B)(I)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(I)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. In addition, the applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 212(a)(6)(C)(i), for procuring admission into the United States by willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 212(i), in order to reside in the United States with her spouse and family.

The director determined that the applicant did not establish that extreme hardship would be imposed on her spouse if he remained in the United States or if he relocated with the applicant to Mexico. The director determined further that the applicant's case did not merit a favorable exercise of discretion. The application was denied accordingly. *See Decision of the Director,* dated May 13, 2014.

On appeal the applicant asserts, through counsel, that the director erred in not considering the effect their children's hardship would have on her spouse, given that family unity is a stated goal of the waiver process. In addition, she asserts that evidence in the record demonstrates that her husband would experience extreme hardship if she were denied admission into the United States and that she merits a favorable exercise of discretion. *See Counsel's Brief in Support of Form I-290B, Notice of Appeal or Motion*, filed June 11, 2014.

The record includes, but is not limited to, affidavits from the applicant's husband and oldest daughter; letters from cousins, friends, a pastor, and administrators at the applicant's children's schools; employment and financial documents; articles and reports about conditions in Mexico; and information pertaining to identity, relationship status and immigration status. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and

again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General [Secretary, Department of Homeland Security (Secretary)] or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act states:

Waiver.-The Attorney General [now Secretary of the Department 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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

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.

. . . .

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

Section 212(i) of the Act provides, in pertinent part, 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 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 [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.

In the present matter, the record reflects that the applicant was admitted into the United States as a B-2 visitor on December 15, 2000, with authorization to remain in the country until November 15, 2000; however, she remained until April 2001. The record also reflects that the applicant was admitted into the United States as a B-2 visitor on June 23, 2001, with authorization to remain in the country until December 22, 2001, and that she remained until February 14, 2005. In addition, the record reflects that on February 23, 2005, the applicant gained admission into the United States by presenting her sister's passport and non-immigrant visa at the port of entry, under the name

The applicant is inadmissible under sections 212(a)(9)(B)(i)(I) and (II) of the Act, in that she remained in the United State for a period of more than 180 days but less than 1 year between November 2000 and April 2001, and she sought admission into the country December 15, 2000, before three years had passed; and she remained in the United States for a period of more than one year between December 22, 2001 and February 14, 2005, and sought admission into the country on February 23, 2005, prior to the passage of 10 years. The applicant does not contest her inadmissibility under sections 212(a)(9)(B)(i)(I) and (II) of the Act, and she seeks a waiver under section 212(a)(9)(B)(v) of the Act.

The applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, because she misrepresented her identity after her visa had been cancelled, by presenting her sister's passport and visa for admission into the United States on February 23, 2005. The applicant does not contest her inadmissibility under section 212(a)(6)(C)(i) of the Act, and she seeks a waiver of this inadmissibility pursuant to section 212(i) of the Act.

The applicant's U.S. citizen spouse is her qualifying relative for waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act.

The record contains references to hardship the applicant's U.S. citizen children would experience if the waiver application were denied; however, Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under sections 212(a)(9)(B)(v) and 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for waivers under sections 212(a)(9)(B)(v) and 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it is established that it may affect the applicant's spouse.

Sections 212(a)(9)(B)(v) and 212(i) of the Act provide 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. 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-Moralez,* 21 I&N Dec. 296 (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 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 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 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 (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 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.

The applicant asserts, through counsel, that evidence in the record demonstrates that her spouse would experience extreme financial and emotional hardship if she is denied admission and he remains in the United States without her. In support of her assertions, the applicant submits affidavits and statements; income tax and employment evidence; country-conditions information for Mexico; and marriage and birth certificates reflecting that she and her husband have been married for 15 years, and that they have four U.S. citizen children, ages 19, 16, 10 and 2.

The applicant's husband states that he is "always working," that the applicant is "a big part" of his life, and his "biggest support" in his life. He states that the applicant takes care of their children and brings them to school and to their activities; and he indicates that, in addition to the emotional effect separation would have on him, the applicant's departure would also have a terrible effect on their children, because they would lose their mother's love and support. The applicant's husband states that if he remained in the United States he "would have to quit his job" in order to take care of their children and he would thus be unable to pay the family's expenses. He states alternatively that if he continued to work, their "oldest daughter would probably have to drop out of school and her dreams of going to college would be denied and she would have to quit sports also." The applicant's husband states further that he would worry about the applicant's safety in Mexico because of the violence there now. In addition he indicates that, although they have distant relatives in Mexico, he does not know where the applicant would live. He also asserts that he would need to financially support the applicant in Mexico, which would reduce the amount that he and their children would have to live on in the United States.

The applicant's oldest daughter states in an affidavit that she is unable to concentrate in school because she worries that she and her siblings will be "alone without a mom." She states that if the applicant returns to Mexico, her father would have to continue working in order to pay their bills. She states further that she would become responsible for taking care of her siblings and family and that she would be unable to continue her education as a student and an athlete. She describes the impact of the children's separation from the applicant as "horrible," changing their lives "completely."

The applicant submits letters from school administrators, reflecting that she is involved in her children's education, attributing much of the children's success at school to their parent's involvement and guidance in their lives, and concluding that the applicant's return to Mexico could negatively affect her children's educational success. Similarly, one of the applicant's friends, in her affidavit, states that she "cannot imagine how devastating it would be for [the applicant's] husband and children if they were deprive[d] of their wife and mother."

The record also contains 2012 federal income tax return and employment-earnings documentation reflecting that the applicant does not work, that her husband works full-time, and that her husband's annual income in 2012 was $55,478.

In addition, the applicant submits reports on country conditions in Mexico, including a copy of the U.S. Department of State's travel warning for Mexico dated July 12, 2013, and news articles about drug-related violence there.

The evidence in the record is insufficient to corroborate claims that the applicant's husband would experience financial hardship if he remained in the United States. Although evidence of employment and the family's income tax returns establish the applicant's husband's salary, the applicant provides no evidence of her spouse's financial assets and liabilities. She also does not provide evidence to attempt to demonstrate the potential financial burden of separation. Moreover, the record also lacks evidence to corroborate general assertions that the applicant's spouse would have to stop working in order to care for their children in the United States.

In addition, other than the family's statements, the record lacks psychological or other supporting evidence concerning the emotional hardship that the applicant's spouse would experience in the absence of the applicant. Although the applicant submits country-conditions evidence to show that her spouse would experience emotional hardship due to fears for her safety in Mexico, the applicant does not specify where she would live or demonstrate how she would be at risk in Mexico. Although the applicant's spouse and daughter refer to hardship her children would face if they were separated, children are not deemed to be qualifying relatives under sections 212(a)(9)(B)(v) and 212(i) of the Act. While it is reasonable to conclude that they would experience emotional hardship that also would affect the applicant's spouse, the record lacks supporting evidence showing how the emotional hardship to their children would cause him hardship.

We recognize that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the evidence in the record is insufficient to establish that his situation, if he remains in the United States, is atypical to individuals separated as a result of removal or inadmissibility such that it rises to the level of extreme hardship. Considering the evidence in the aggregate, the evidence does not establish that the applicant's spouse would suffer financial, emotional or other hardship if the applicant were denied admission and he remained in the United States that cumulatively amounts to extreme hardship.

The applicant also does not establish that her spouse would experience extreme hardship if he moved with the applicant to Mexico. Through counsel, the applicant asserts that their family's standard of living would be affected if they relocated to Mexico and that it is not likely the applicant's husband could find employment and a place to live in Mexico given his age. The applicant also asserts, though counsel, that conditions in Mexico would be dangerous and that their children's education and possibilities would be impacted by moving there. The unsupported assertions of counsel, however, do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503,506 (BIA 1980). The record contains insufficient evidence to support counsel's assertions on appeal. The record reflects that the applicant's spouse is a native of Mexico and that he is familiar with the language, customs, and culture in that country. Moreover, the applicant's husband does not refer to or discuss in his affidavit hardship he would suffer if he relocated with their family to Mexico, and the record lacks other evidence concerning

hardship the applicant's spouse would experience if he relocated to Mexico. In addition, the country-conditions information in the record does not corroborate claims that the applicant's husband would be unable to find work in Mexico due to his age or that the applicant's family would experience a decline in their standard of living. The country-conditions evidence is also insufficient to establish that the applicant's husband and family would experience hardship due to violence in Mexico, as the information describes general conditions in a few areas of the country, and the applicant does not address how her spouse and family would be at risk upon relocation.

Based on the evidence in the record, considered in the aggregate, the applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Mexico to reside with the applicant.

Although the applicant's husband's concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in sections 212(a)(9)(B)(v) and 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. *See e.g., Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996). The record in this case contains insufficient evidence to show that the hardships faced by the applicant's husband, considered in the aggregate, rise beyond the common results of inadmissibility to the level of extreme hardship. The applicant has therefore failed to establish extreme hardship to her U.S. citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) of the Act.

The record includes affidavits from the applicant's pastor, cousins and friends, who attest to the applicant's good character. Having found the applicant ineligible for relief, however, we find no purpose would be served in discussing whether the applicant 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 appeal is dismissed.