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: JUN 1 8 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 Field Office Director, Fresno, denied the application. 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)(6)(C)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i)(I), for misrepresenting a material fact, and 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 year or more. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her family.

The Field Office Director concluded that the applicant failed to establish that her qualifying relatives would suffer extreme hardship if the waiver was denied and denied the application accordingly. *See Decision of Field Office Director,* dated June 11, 2014.

On appeal, the applicant, through counsel, asserts that the Field Office Director erred in finding that her qualifying relatives would not face extreme hardship if her waiver is denied, because she has established that her qualifying relatives would suffer medical, emotional and economic hardship. In addition, she asserts that had the Field Office Director given the medical directives of the applicant's parents full weight, he would have found that she met the extreme hardship requirement. She submits a brief and additional evidence on appeal. *See Form I-290B, Notice of Appeal or Motion,* dated July 8, 2014.

The record includes but is not limited to two briefs, identity and relationship documents, declarations from the applicant's son and qualifying relatives, medical records of her parents, financial documents, and school records. 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:

> (1)The Attorney General [now the Secretary of the Department 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.

In the present case, the record reflects that the applicant arrived at the airport on August 1, 2001, and was admitted into the United States after presenting her B-2 non-immigrant visa for admission as a tourist. On February 11, 2014, however, according to her sworn statement to a U.S. Citizenship and Immigration Services officer, the applicant admitted that she lied to the U.S. immigration officer at the airport about the purpose of her visit; she told him she came to the United States for vacation only, whereas she intended to resume residing in the United States with her spouse and two U.S. citizen children. The applicant is therefore inadmissible under section 212(a)(6)(C) of the Act for making a material misrepresentation to gain entry into the United States. The applicant does not contest this finding of inadmissibility.

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

> (B) Aliens Unlawfully Present.-
>
> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> . . . .
>
> (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.
>
> . . . .
>
> (v) Waiver. – The [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 also reflects that the applicant initially entered the United States on January 1, 1992, as a B-2 non-immigrant visitor for pleasure. She remained in the United States beyond her authorized period of stay, which ended on July 1, 1992. In March 2001 she returned to Mexico. The applicant was unlawfully present in the United States from April 1, 1997, until she returned to Mexico in March 2001. By departing she triggered the unlawful-presence bar, which rendered her inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for one year or more. The applicant does not challenge this finding of inadmissibility.

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. 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). The applicant's qualifying relatives are her U.S. lawful permanent resident parents.

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. *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.

The record contains references to hardship the applicant's son, who filed the Form I-130, Petition for Alien Relative, on her behalf, would experience if her 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. In the present case, the applicant's lawful permanent resident parents are her only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant's son will not be separately considered, except as it may affect the applicant's qualifying relatives. Here, the applicant did not assert that any hardship her son may experience would affect her qualifying relatives.

We will first address the applicant's assertions that her parents would suffer extreme hardship should they relocate to Mexico with her. The evidence shows that the applicant's qualifying parents are 73 and 74 years old, respectively, and they became U.S. lawful permanent residents approximately eight years ago. The applicant asserts that if they relocate, her parents would suffer emotional hardship as a result of being separated from the rest of their family. The record includes evidence showing that the applicant's extended family resides in the United States, specifically copies of her sister's U.S. lawful permanent resident card and her two children's birth certificates.

The applicant also asserts her parents would become destitute in Mexico, because they need their family's financial assistance. Though the applicant asserts her parents depend on their children financially, she provides no evidence to corroborate claims of the financial hardship her parents would experience upon relocation to Mexico.

The applicant, moreover, asserts that her parents would lose their lawful permanent resident status if they relocate to Mexico. While we acknowledge that this may pose a hardship, the applicant has not shown that her parents could not maintain their residency in the United States while also living with the applicant in Mexico. The record includes evidence showing that the applicant's father travels to Mexico.

The applicant also claims that if her qualifying father relocates, the warranty on his hearing aid would become void and he would be unable to obtain another. The record lacks evidence showing that her father's hearing aid warranty becomes null in Mexico, or alternatively, that he cannot find suitable care sufficient to maintain his hearing in Mexico. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of

supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

Though it is reasonable to conclude that the applicant's parents would experience emotional hardship caused by separation from their extended family members if they were to relocate, the applicant has not shown that they would suffer more than the typical results of removal, such as separation from family members, severing community ties, and cultural readjustment after living in the United States. Moreover, the applicant has not shown their family would be unable to continue financially assisting their parents in Mexico or that no suitable medical care is available for her parents there. Therefore, considering the evidence in the aggregate, the record is insufficient to establish that the applicant's qualifying parents would suffer extreme hardship should the present waiver application be denied and they relocate to Mexico with the applicant.

We will next address whether the applicant established hardship to her qualifying relatives in the event they remain in the United States without her. The applicant, through counsel, asserts that her qualifying relatives would be unable to visit the hospital, attend doctor's appointments or understand how and when to medicate themselves. She further asserts that her parents have assigned responsibility to her in their advance medical directives. To support her claim, the applicant submits written statements from her qualifying relatives and their medical records. She also submits copies of their advance medical directives.

According to the medical records and her parents' statements, they both suffer from hypertension and diabetes, necessitating frequent appointments. The applicant's father claims he is deaf, illiterate, and needs the applicant to take him to his medical appointments. The applicant's mother states that in addition to diabetes, she suffers from anxiety and that the applicant cares for her and transports her to her doctor's appointments. The record also reflects the applicant's mother has anemia. The medical records show that the applicant's parents rely on their family for transportation to, and translation during, their medical appointments. As noted in the Field Office Director's decision, the medical records indicate that various family members have accompanied and assisted the applicant's parents at their appointments.

The medical records show that an adult daughter or son-in-law often accompanied the applicant's qualifying parents to medical appointments and translated on their behalf. Some records indicate that a daughter or son-in-law accompanied the applicant's parents; others, however, note the name of a relative accompanying the qualifying parents, other than the applicant. The medical records therefore establish that her qualifying parents rely on their family for transportation and translation, but not necessarily on the applicant.

The record also contains a Form I-864, Affidavit of Support, filed on behalf of the applicant and signed by the applicant's U.S. lawful permanent resident sister. This form is accompanied by her sister's federal tax returns. The tax returns show that the applicant's sister, who resides in California, claims their parents as dependents. The record includes other evidence showing that the applicant's parents reside in , California, at the same address as the applicant's sister. The applicant provides no documentary evidence to demonstrate that her qualifying parents depend on her financially. Based on the evidence of residency and tax records, we conclude that the record supports finding the applicant's parents financially depend on her sister and brother-in-law.

Although the applicant has established that her qualifying relatives assigned responsibility to her to make medical decisions on their behalf in the event they are incapacitated, she has not shown that only she is capable of accepting that responsibility or that her parents would not be willing to accept assistance, if necessary, from their other family members in the United States. Moreover, the record reflects that her parents have relied on her sister and brother-in-law for assistance with their medical care. In addition, the record establishes that the applicant's parents reside with her sister who, with her husband, provides financial support. We therefore find that, considering the evidence in the aggregate, the record is insufficient to establish that the applicant's qualifying parents would suffer extreme hardship related to their separation from the applicant, should her waiver application be denied.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has not established extreme hardship to her qualifying parents 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 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.