



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

DATE: **MAY 08 2015** OFFICE: LAS VEGAS, NV FILE: [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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Las Vegas, Nevada, and 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 has resided in the United States since February 16, 2013, when she presented her border crossing card to procure admission. She 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and child.

The Field Office Director concluded the applicant did not demonstrate that a qualifying relative would experience extreme hardship in the event of her continued inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated October 1, 2014.

On appeal, counsel submits a brief. Therein, counsel contends that the Field Office Director's finding, that the applicant had immigrant intent when she was admitted as a visitor, was incorrect in light of *Matter of Cavazos*, 17 I&N Dec. 215 (BIA 9180) and *Matter of Ibrahim*, 18 I&N Dec. 55 (BIA 1981). Counsel then asserts that if a waiver is required, it should be granted because the applicant merits a favorable exercise of discretion, as her positive equities outweigh the negative ones. Counsel lastly claims that in the determination of extreme hardship the Field Office Director failed to appropriately consider the spouse's residence in the United States, his psychological condition, his business relationships, Mexico's social condition, what giving up his U.S. citizenship would mean, and his desire to have a family with his spouse.

The record includes, but is not limited to: statements from the applicant and her spouse; letters from family and friends; a U.S. Department of State travel warning on Mexico; mortgage statements; other financial documents; evidence of birth, marriage, and residence; photographs; and other applications and petitions. 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 [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.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. See *Kungys v. United States*, 485 U.S. 759 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

In the present case, the record reflects that the applicant was issued a multiple-entry, B-1/B-2 visa, also known as a border crossing card, on February 13, 2004. When she procured admission to the United States on February 16, 2013, the applicant indicated, as reflected in a later sworn statement, that she told immigration officials she was visiting friends and family in California. In fact, she attested that her true intention was to be with her husband, and she planned to return to Mexico after obtaining permanent residence in the United States. *Sworn statement*, August 24, 2014. As such, we find that on February 16, 2013, the applicant misrepresented her intentions to immigrate to the United States by claiming she was only visiting friends and family when, in fact, she intended to reside in the United States permanently with her then lawful permanent resident husband, in violation of her her non-immigrant visa.<sup>1</sup>

The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of inadmissibility pursuant to section 212(i) of the Act is her U.S. citizen spouse.

Counsel contends the applicant would not have been found to have immigrant intent, and consequently, she would not need a waiver of this inadmissibility, if the Field Office Director

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<sup>1</sup> The applicant's spouse became a United States citizen on May 15, 2014, over a year after the applicant's admission, and they married in Mexico in 2011.

followed Board of Immigration Appeals (BIA) decisions *Matter of Cavazos*, 17 I&N Dec. 215 (BIA 9180) and *Matter of Ibrahim*, 18 I&N Dec. 55 (BIA 1981). Counsel explains that in those decisions, the adverse factor of preconceived intent is “zeroed out” by virtue of the equity of the immediate relative relationship itself. *Brief*, p. 4-5. Counsel’s reliance on those two decisions, however, is unpersuasive. In those decisions, the BIA evaluated “the weight to be accorded the adverse factor of entry as a nonimmigrant with a preconceived intention to remain vis-a-vis the equity of family ties in the United States.” *Matter of Ibrahim*, 18 I&N at 56 (BIA 1981). They do not discuss whether, as a preliminary matter, the appellants should have been found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. Further, both cases are addressing adjustment of status prior to the Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) which added the extreme hardship element to a waiver of inadmissibility under section 212(a)(6)(C) of the Act.

Counsel contends the Field Office Director incorrectly denied the waiver application in the exercise of discretion, because an application for adjustment of status as an immediate relative should generally be granted in the exercise of discretion, notwithstanding the fact that the applicant entered the United States as a nonimmigrant with preconceived intent. *Brief*, p. 12. However, the record does not reflect that the Field Office Director denied the waiver application based on discretion. Instead, in the October 1, 2014, decision, the Field Office Director denied the application because the applicant did not establish extreme hardship to a qualifying relative. Specifically, based on the documentation submitted, the Field Office Director reviewed hardship claims related to the spouse’s personal and emotional hardship, the impact of separation in light of the fact that the applicant and her spouse were separated for the majority of their marriage, hardship due to their U.S. citizen child, country conditions, and financial difficulties. *Decision of Field Office Director*, p. 4-6. The Field Office Director concluded that the “application for waiver of grounds of inadmissibility is hereby denied because [she] failed to establish the requisite extreme hardship to [her] U.S. citizen spouse,” not because she did not merit a favorable exercise of discretion. *Id.* at 6.

In the decision, the Field Office Director did not reach a determination on an exercise of discretion, as it was determined the applicant did not demonstrate extreme hardship to a qualifying relative. Weighing of the positive and negative equities pursuant to an application for a waiver under section 212(i) of the Act occurs after a determination of inadmissibility under section 212(a)(6)(C)(i) of the Act, and, as discussed below, after the applicant has demonstrated extreme hardship to a qualifying relative.

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*, 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 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 v. I.N.S.*, 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.

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. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

The applicant's spouse contends he experiences severe emotional hardship when he thinks about possible separation from the applicant. He claims he is very depressed and stressed, and is frightened when he thinks about the increased numbers of kidnappings, murders, and other crimes, some of which the police are implicated in, in Mexico. The spouse cites to a U.S. Department of State travel warning in support.

The spouse adds that he would experience educational, medical, and financial hardship in Mexico. He states that the educational and medical system is better in the United States than in Mexico, and he wants to raise his son with the best education and health care possible. The spouse adds that the things he has in the United States, including a good job and opportunities, a nice house, and a good retirement plan, are not possible in Mexico. Financial documents, including a mortgage statement, copies of a 2013 U.S. federal income tax return, and copies of bills are present in the record. In the brief on appeal, counsel claims that the Field Office Director did not consider the spouse's business relationships in the United States, Mexico's social condition, and the consequences of the spouse having to relinquish his U.S. citizenship.

The spouse's claims that he fears for the applicant's safety in Mexico without him are supported by objective evidence of record demonstrating that she would have to return to an unsafe area. The applicant submits a U.S. Department of State travel warning which indicates that, "except for the areas of the state that border Michoacán, there is no advisory in effect for daytime travel within major population centers or major highways in the state of Jalisco." *U.S. Department of State travel warning: Mexico*, undated. The record reflects that the applicant is not living far from the border with Michoacán. Consequently, the applicant has shown that the fears her spouse has on this ground are supported by the record, and constitute one factor to be analyzed in the determination of extreme hardship.

The applicant's spouse has claimed that he experiences emotional hardship, including depression and stress, when thinking about separation from the applicant. While we acknowledge that the applicant's spouse would face such difficulties as a result of the applicant's inadmissibility, which would be exacerbated by fears related to the area where the applicant would reside, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record does not

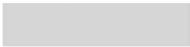
provide sufficient evidence to establish the safety-related, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, we cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico without him.

The contentions on extreme hardship upon relocation to Mexico are also not supported by sufficient evidence of record. While the applicant has submitted evidence demonstrating that her spouse earns an income in the United States, including distributions from a pension or an annuity, as reflected on a 2013 Form 1099-R, unemployment compensation, and \$41,300 in wages or income from construction and concrete employers, there is no documentation establishing that he could not collect the pension or annuity from outside the United States, or that he would not be able to obtain construction or concrete-related employment upon relocation to Mexico. Furthermore, although counsel claims the Field Office Director failed to consider the spouse's business relationships, the only evidence of a business relationship is a letter from one of the spouse's employers, which indicates the spouse is a valued employee who has been continually employed with the company as a laborer since May 2011. *Letter from employer*, May 22, 2014. Furthermore, although counsel makes references to medical issues, no documentation related to medical difficulties is present in the record. Without more, this is insufficient to demonstrate close business ties in the United States which would cause hardship upon relocation to Mexico.

Furthermore, counsel's claim that relocation to Mexico would require the spouse to relinquish his U.S. citizenship is incorrect. There is nothing in the record to suggest that the spouse, who became a naturalized U.S. citizen in 2014, would be required to give up his U.S. citizenship either upon separation from the applicant or upon relocation to Mexico. In addition, the applicant has submitted no evidence to show that the educational and medical facilities in Mexico are insufficient for her spouse's or their son's needs. Although these 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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *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).

We note that relocation to Mexico would entail separation from family members who live in the United States as well as other difficulties. However, the evidence of record does not establish that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, we cannot

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*NON-PRECEDENT DECISION*

conclude that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

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. We therefore find that the applicant has not established extreme hardship to her U.S. Citizen 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 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 appeal is dismissed.