identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

H6

[redacted]

DATE: MAR 3 0 2012 OFFICE: CIUDAD JUAREZ, MEXICO [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico 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 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation, 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 than one year and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director,* dated August 13, 2009.

On appeal, the applicant's spouse asserts extreme hardship of a familial, physical and economic nature if the waiver is not granted. *Form I-290B*, Notice of Appeal or Motion, received August 23, 2009.

The record contains but is not limited to: Form I-601 and denial letter; hardship letters; letters to and from the U.S. Congress; medical records; employment verification letter; health insurance bills; marriage and birth records; school teacher's letter; and school certificates. The record also contains several Spanish language documents including a letter from the applicant's spouse to the American Consulate in Ciudad Juarez; and a hospital letter, prescriptions and/or other medical records related to the applicant's daughter, Yazmin. None of the Spanish language documents were accompanied by full English translations with proper certifications as required under 8 C.F.R. § 103.2(b)(3).[1] Because the applicant failed to submit the required translations for these documents, the AAO will not consider them in this proceeding. The entire record, with the exception of the Spanish language documents described, was reviewed and considered in rendering this decision on the appeal.

The record reflects that the applicant entered the United States in August 2002 with the assistance of a smuggler who presented a false "MICA," or resident alien card, on her behalf which went undetected. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, the

[1] 8 C.F.R. § 103.2(b)(3). Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

applicant does not dispute this finding, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act. [2]

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 Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an 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 Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a

---

[2] As noted above, the Field Office Director also found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The Field Office Director found that the applicant had accrued unlawful presence from her August 2002 entry to her January 2008 departure from the United States. Pursuant to section 212(a)(9)(B)(ii) of the Act, "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 or is present in the United States without being admitted or paroled." The term "admitted" is defined at section 101(a)(13)(A) of the Act as "the lawful entry of an alien into the United States after inspection and authorization by an immigration officer." The Board of Immigration Appeals has explained that the term "admitted" as defined by section 101(a)(13)(A) of the Act denotes "procedural regularity" rather than "compliance with substantive legal requirements." *Matter of Quilantan*, 25 I&N Dec. 285, 290 (BIA 2010). *See also Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980). Based on the foregoing, the AAO finds that the applicant did not accrue unlawful presence from her August 2002 entry and is not inadmissible under section 212(a)(9)(B) of the Act. However, the AAO further finds that the director's error was harmless in that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

For example, though family separation has been found to be a common result of inadmissibility or removal separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *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 reflects that the applicant's spouse is a 48-year-old native of Mexico and citizen of the United States. He states that he is in extreme hardship over not having his family together, it is an economic hardship supporting one household in the U.S. and another in Mexico, and his U.S. citizen daughter has lived in Mexico since January 2008 because she needs her mother to take care of her while he is at work supporting the family. The applicant's spouse states that because his health insurance in the U.S. does not extend to Mexico, he has had to pay cash for his daughter's medical expenses in Mexico. The record contains no documentary evidence demonstrating the applicant's spouse's income and/or overall expenses either before or after the applicant departed to Mexico. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The evidence is insufficient to establish that the applicant's spouse has been unable to meet his financial obligations and support himself and the applicant in the applicant's absence, or that his economic difficulties go beyond those normally associated with the inadmissibility of a family member.

The applicant's spouse states that news of violence in Mexico is always on his mind and that his wife and daughter are living in a big city where it is unsafe for a woman and child to live alone without him to protect them. No country conditions evidence has been submitted concerning Mexico. The AAO has, however, reviewed the U.S. State Department's *Mexico Travel Warning*, dated February 8, 2012. The AAO notes that while violent crimes are a serious problem throughout the country "no advisory is in effect" for Leon, Guanajuato where the applicant and her daughter reside. *Id.* While the AAO recognizes that crime is a problem in Mexico, the evidence does not show that the applicant or her daughter have or would be particularly susceptible to criminal acts such that it would cause extreme hardship to the applicant's spouse.

Assertions have been made concerning hardship to the applicant's child. As discussed above, hardship to the applicant's children can be considered only insofar as it results in hardship to the applicant's qualifying relative – here the applicant's spouse. The applicant's spouse states that his daughter is suffering extreme hardship not being raised by a dad who loves and misses her very much. He states that his daughter is not in good health and he has great insurance in the U.S. where she can get much better health care. A letter from [redacted] asserts that the applicant and her daughter have been patients of [redacted] since June 2008 and have been seen for minor symptoms, "many related to mental stress derivate to long family

separation." [redacted] asserts: "They have not any bad sickness, only normal medical problems but the little girl needs a psycho therapy as well as the mother." *Id.* The record contains no psychological assessment or diagnosis, and no explanation concerning a need by Yazmin for psychotherapy. Given that [redacted]s describes her symptoms as minor and states that there are no bad sicknesses but only normal medical problems, the evidence is insufficient to establish significant or uncommon psychological difficulties to the applicant's daughter. Pediatrician, [redacted]asserts that the applicant's daughter has had repeated major respiratory infections over a year's time, and also gastro-intestinal infections likely caused by environmental factors or allergies. Four Spanish-language prescriptions in Yazmin's name were submitted addressing a period between February 14 and March 10, 2008. The evidence does not establish that the applicant's daughter has or would be unable to access medical or psychological care as needed in Mexico such that it would cause extreme hardship to the applicant's spouse.

The AAO recognizes that the applicant's spouse has faced difficulties as a result of separation from the applicant and her daughter. However, the applicant has failed to establish that such difficulties are uncommon or extreme such that they will cause extreme hardship to the applicant's spouse.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation to Mexico, the applicant's spouse states that his daughter would receive a much lower quality education which would lower her chances of a prosperous future, and would not have access to the high quality health care services offered in the U.S. The record contains no documentary evidence addressing either education or health care in Mexico, and the evidence is insufficient to establish that the applicant's daughter would be unable to succeed educationally or in her future, or that she would be unable to access health care as needed such that it would cause extreme hardship to the applicant's spouse.

The applicant's spouse states that even without a degree, he has become a manager at work in the United States and earns a salary with which he can provide a decent living for his wife and daughter. He states that this would not be the case in Mexico where not possessing a higher education degree combined with the poor economy would result in his being unable to support his family. The evidence in the record is insufficient to establish that the applicant's spouse would be unable to secure employment or support his family should he decide to relocate to be with the applicant.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including economic factors such as loss of current employment, private health insurance, and access to public education. The AAO has additionally considered his adjustment to a country he has not resided in for a number of years; health and safety concerns; and concerns

about his young daughter's education and future. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if he were to relocate to Mexico to be with the applicant.

The applicant has, therefore, failed to demonstrate the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.