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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: NOV 0 9 2012 Office: MEXICO CITY, MEXICO FILE: [redacted]

IN RE: [redacted]

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

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 District Director, Mexico City, 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 was also found to be inadmissible under section 212(a)(6)(C)(i) of 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 willful misrepresentation.

The applicant is the beneficiary of an approved Petition for Alien Relative and seeks waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act in order to reside in the United States with her United States citizen spouse.

The District Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of District Director* dated August 12, 2010.

On appeal, applicant asserts that her spouse would suffer extreme hardship if the applicant were not granted a waiver of inadmissibility. *See Brief in Support of Appeal* dated September 7, 2010.

The record contains, but is not limited to, statements from the applicant and the applicant's spouse, as well as various immigration applications. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)of the Act provides:

> (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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> . . .
>
> (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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> (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 or is present in the United States without being admitted or paroled.
>
> . . .
>
> (v) Waiver.-The Attorney General 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 Attorney General 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 Attorney General regarding a waiver under this clause.

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

> (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.

In the present case, the record reflects that the applicant testified under oath during a consular interview for an immigrant visa that she entered the United States in 1993 using a false lawful permanent resident card or visa that she purchased from a smuggler for $1,200. She remained until her voluntary departure in or around August of 2009. Accordingly, she accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until her departure in August 2009. She now seeks admission as an immigrant. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States and seeking readmission within 10 years of her last departure. She is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. §1182(a)(6)(C)(i), for procuring admission through misrepresentation. The applicant does not contest her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. She indicates that she did not enter the United States through the use of fraudulent documents. However, she has not provided sufficient evidence or information to overcome her sworn testimony to a consular officer. The AAO finds sufficient support that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

A waiver of inadmissibility under either section 212(a)(9)(B)(v) or section 212(i) of the Act is dependent on a demonstration that barring admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully permanent resident spouse or parent of the applicant. Hardship to the applicant and her son 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 the 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 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 applicant's spouse indicates that the applicant is his source of emotional support and that he is under stress because she is not currently living with him. The applicant's spouse further indicated that the applicant is unable to receive proper healthcare in Mexico without insurance and he must pay for any expenses. The applicant's spouse also indicated that he is struggling financially to support his household in the United States while also taking care of his wife's living expenses in Mexico. The applicant's spouse further indicates that he would be unable to reside with his wife in Mexico because he needs to work to support their needs in the United States, though on appeal the applicant indicates that her husband is retired and living on a fixed income.

The applicant's spouse also indicated that living in the city of [redacted] with the applicant would be very difficult because of rising crime and violence there. While it is acknowledged that moving to [redacted] may in fact be a challenge based on various current conditions, there is no evidence in the record to support the assertion that there would be a need for the applicant or her spouse to live in that particular city if her spouse chose to reside in Mexico.
Although the applicant's spouse indicates he is under financial strain because he must support two households and pay for additional medical expenses, the applicant has submitted no specific evidence of the impact these additional financial requirements are having on the qualifying relative. In addition, although the applicant's spouse also made general statements regarding the stress he is under since the applicant is not living with him, there were no details offered regarding how this stress affects his life beyond that which would normally be expected under such circumstances.

The AAO has considered in the aggregate all of the assertions regarding extreme hardship to the qualifying relative in this case, including strain of family ties, the economic impact involved in supporting dual households, the emotional upheaval for all involved in a separation; as well as the challenges of relocation such as logistical difficulties and cultural acclimation to a place which may no longer hold comfortable familiarity. However, there has been insufficient evidence provided to support a finding that the results of inadmissibility in this case would constitute more than the hardships ordinarily associated with such events.

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. The AAO therefore finds that the applicant has failed to establish extreme hardship to her United States citizen spouse as required under sections 212(a)(9)(B)(v) and 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 proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 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.