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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 0 5 2013 Office: ST. PAUL, MINNESOTA FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h)

ON BEHALF OF APPLICANT:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Paul Field Office, Bloomington, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a thirty-two-year-old native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the spouse and parent of U.S. citizens. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in conjunction with an application for adjustment of status, to obtain admission to the United States as a lawful permanent resident.

The Field Office Director concluded that the applicant had not demonstrated that the bar to his admission would result in extreme hardship to his qualifying relatives, as required under section 212(h) of the Act, and denied his Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated June 23, 2011.

Counsel contends that the record, including the additional evidence submitted on appeal, demonstrates the extreme hardship to the applicant's qualifying relatives should the applicant's waiver application be denied. *See Counsel's letter on appeal,* dated August 25, 2011.

The record of evidence includes, but is not limited to, the applicant's statement; the applicant's Record of Sworn Statement before an immigration officer; the applicant's U.S. citizen wife's statement; a psychological evaluation for the applicant's wife and sons; the applicant's wife's dental bills; letters from two of the applicant's brothers; employer letter and character reference letters for the applicant; the applicant's and his wife's joint tax returns; the applicant's immigration court records; and the applicant's criminal records. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
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> . . .
>
> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-
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> . . .
>
> (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of

imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The record indicates that the applicant entered the United States without inspection in approximately April 2000. He thereafter remained in the United States unlawfully. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by his U.S. citizen wife on or about March 6, 2006. On November 1, 2008, the applicant was arrested for domestic assault and for driving without a Minnesota license. The charges were dismissed due to the unwillingness of the victim to testify. *See State's Dismissal of Charges* dated January 27, 2009. On November 20, 2009, the applicant was again arrested and charged on four counts relating to forgery and identity theft. On March 1, 2010, the applicant pled guilty to Felony Forgery-Use False Writing-Identification-Social Security Number (Count One) in violation of sections and Gross Misdemeanor Identity Theft (Count four) under sections . On April 6, 2010, the applicant was sentenced to one year of probation on the forgery conviction (Count One) and 90 days imprisonment on the identity theft conviction (Count Four), of which 75 days were stayed.

Based on the applicant's conviction for forgery and identity theft, the director determined the applicant to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act of the Act, for having been convicted of a crime involving moral turpitude. As counsel does not dispute the finding of inadmissibility, and the record does not show the finding to be in error, the AAO will not disturb the determination.

Section 212(h)(1)(B) 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 of Immigration Appeals (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. INS,* 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.

Counsel contends that the denial of the applicant's waiver application will result in extreme hardship to the applicant's U.S. citizen wife and children upon separation. He contends that the applicant's wife, , depends on her spouse to take care of her, help her lower her anxiety, and provide her with moral support. He asserts that she will not be able to manage her family without the applicant's assistance. The applicant's wife, in her February 11, 2011 statement, states that she and her husband grew up together in Mexico. She and the applicant came to the United States in April 2000 and have two sons together, age twelve, and , age eight. She asserts that the applicant is a supportive and loving father and is important to their sons as a mentor and role model. She also states that the applicant is her best friend and that she cannot manage her two sons without him.

The applicant has proffered a psychological evaluation of his wife and sons, dated August 11, 2011, by Ph.D., L.P., which was prepared following a two hour consultation with the applicant, his wife, and their two minor sons present, and primarily sets forth in a narrative form what they reported during the consultation. Counsel urges the AAO to adopt Dr. 's conclusion

that it is reasonable to conclude that either the applicant's wife and/or his sons would face extreme and unusual emotional/psychological hardship upon separation or relocation. *See Psychological Evaluation*, at 6. However, while we recognize Dr. s expertise in the field of psychology, we can give little weight to his legal conclusion of "extreme hardship."

As noted previously, separation has been held to be a common result of inadmissibility, although it may be the most important single factor in a hardship determination. *See Salcido-Salcido v. INS,* 138 F.3d at 1293. However, there is no such indication in this case that emotional hardship resulting from separation is more than what others similarly situated would suffer. Dr. indicates that the applicant's wife reported experiencing symptoms of emotional disturbance consisting primarily of anxiety, but also of depression, since the applicant's arrest for using a false name to gain employment on November 20, 2008,[1] after which immigration officials detained him. *See Psychological Evaluation*, at 3. However, we observe that the evaluation does not indicate that the applicant's wife or children have actually been diagnosed with, or are currently suffering, from any psychological conditions that go beyond the common hardships of separation. It also does not identify any other factors such that separation or relocation would result in hardship that rises to the level of extreme hardship. Moreover, we note that Dr. states that "despite the presence of moderate symptoms of emotional disturbance, [the applicant's wife] has been able to continue to function at an adaptive level," such as maintaining full-time employment and serving as a responsible parent for her sons. *See id.* at 6. He points out that the applicant's wife is doing this "despite being forced to confront the constant, potential threat of separation from her spouse." *See id.* Although Dr. indicates that the applicant's wife believes herself incapable of dealing with outcome of a potential separation from the applicant, he does not address, however, her ability to continue functioning should separation become a reality. We also note that Dr. 's evaluation of the applicant's and his spouse's relationship is based solely on what they reported to him in a relatively brief interview, rather than on observations over a more extended evaluation period. However, despite the considerable details they furnished during their consultation, including touching upon the applicant's criminal conviction, they appear to not have discussed the applicant's 2008 arrest involving a domestic dispute involving his wife. Although the applicant's wife ultimately refused to testify in support of a criminal prosecution, the arrest report indicates that she called 911 and then went to the police station in person to report that the applicant had hit her head on a door two or three times, hit her arm, pulled her hair, and then eventually had driven off with the couple's two sons following a verbal argument. We find it significant that this incident is not discussed in the applicant's or his wife's statements or in the psychological evaluation to assure or affirm, at a minimum, that the incident was an isolated occurrence in the relationship.

Dr. 's evaluation also indicates that the applicant and his wife reported that their sons have been affected emotionally by the former's immigration-related problems. However, it does not detail how this disturbance has been manifested, except to note that the applicant's wife reported that following the applicant's arrest and detention, their sons were openly tearful after returning from school and finding their father absent. In her written statement, she stated that her sons cried so often that their teachers called to find out what had happened. Dr. notes that the applicant's sons were not fully able to comprehend the significance of their father leaving the United States for Mexico, and that they, as is age appropriate, presented as unprepared in terms of confronting the reality of their potential, indefinite separation from their father. *See Psychological Evaluation*, at 4,

[1] As noted, this arrest was actually his second one in 2009.

6. However, significantly, the evaluation does not comment on the applicant's sons' ability to handle the separation from their father with family and community support, or address whether such support is available to them or needed. We also note that Dr. 's evaluation indicates that all of the applicant's and his wife's immediate family are in the United States, though all, but for one of the applicant's brothers, reside outside Minnesota. The applicant, who bears the burden of proof, however, does not address whether their respective families are willing and able to assist his spouse and children emotionally and financially as needed, should he have to depart the United States.

Dr. 's evaluation also indicates that the applicant's wife reported that she fears for her spouse's physical safety should he return to Mexico, due to the extremely high rate of crime and violence there, particularly in , the Mexican state from where they come. *See id.* at 4. The applicant and his spouse do not indicate that they, their family or neighbors, or anyone else they know have personally fallen victim to, or been targets of, such violence, particularly in Likewise, the letters of the applicant's two brothers, and in the record provide nothing to corroborate this claim. The applicant also has not provided any background evidence on country conditions in Mexico to demonstrate that he would likely be targeted by criminal elements in Mexico. However, we take administrative notice of the U.S. Department of State's most recent travel warnings for Mexico, which indicate that crime and violence are serious problems throughout the country and can occur anywhere, though particularly at the borders. *See* Bureau of Consular Affairs, U.S. Dep't of State, *Travel Warnings: Mexico* (Nov. 12, 2012). It notes that though over 47,000 people were killed in 2011, but the majority of the people killed were part of the Transcontinental Criminal Organizations that are involved in narcotics trafficking and other criminal activity. The report indicates that all non-essential travel to the state of should be deferred, except for two cities where precautions should still be taken. We note, however, that there is no indication in the report or elsewhere in the record to corroborate the applicant's claim that individuals like him would be targeted. Moreover, the applicant also reported to Dr. that two of his brothers periodically go to Mexico and have to take precautions for their safety. As noted, there are no statements from these brothers about when they last went to Mexico, the violence, if any, they encountered there, and why they would return to Mexico in the face of such apparent danger.

The AAO acknowledges the emotional distress that the applicant's wife and sons may well face upon separation from their spouse and father. However, the applicant has not demonstrated that it is more than the usual or common result of inadmissibility faced by others in similar circumstances.

Counsel and the applicant's wife also assert that separation would result in financial hardship to their family. The applicant's wife contends that the applicant has worked hard to support their family and that they both work hard to keep out of debt. She asserts that she will not be able to support the family without her husband's support and includes a list of monthly expenses totaling $2769 and her dental bills for extensive dental treatment she required. The applicant's wife also asserts that if her husband leaves the United States, she will no longer be able to continue with the twice weekly English language course she currently takes in hopes of finding better employment one day. She states that her current job is sometimes labor intensive and causes her right hand a lot of pain, due to a prior injury. The record does not include any medical corroboration of this injury or that it has limited her in any capacity.

While the AAO recognizes that separation will undoubtedly result in some financial detriment to the applicant's wife and sons, we cannot conclude that the applicant has demonstrated actual financial hardship. The record contains joint tax returns for the applicant and his spouse for the years 2007 through 2009, all of which appear to only report the applicant's wife income and indicate the applicant to have been unemployed all three years. Although the applicant's wife attached a list of monthly expenses, there is no corresponding evidence of the couple's monthly income, particularly the applicant's. The record contains no evidence of the applicant's financial contribution to the support of his family, including proof of his income, to enable the AAO to meaningfully assess the financial impact of separation. 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)).

Having considered the evidence of record, the AAO finds that it does not demonstrate that the applicant's citizen spouse and sons would experience extreme hardship as a result of separation from the applicant. The applicant has not shown the hardship they would suffer, considered in the aggregate, constitutes "significant hardship over and above the normal disruption of social and community ties" normally associated with deportation or refusal of admission. *Matter of O-J-O-*, 21 I&N Dec. at 385.

The AAO also considers whether the applicant's spouse and sons would suffer extreme hardship upon relocation to Mexico. Dr. [redacted]'s evaluation indicates that the applicant's spouse stated that it is likely she and her sons would relocate to Mexico if the applicant is barred from remaining in the United States. *See Psychological Evaluation,* at 6. The record indicates that though the applicant's wife has resided in the United States since 2000, she is a native of Mexico, and thus, relocation would not entail having to adapt to a new culture and language. In her statement, she asserts that in moving to Mexico, she would have to give up her family, her job and her education. Dr. [redacted]'s evaluation indicates that the applicant's wife has parents and numerous siblings, all residing outside of Minnesota. *Psychological Evaluation*, at 2. However, aside from the evaluation, the record contains no evidence establishing these family ties in the United States, such as corroborating letters from them. We note that even the applicant's wife's statement does not specify whether her parents and siblings are all in the United States or indicate the role, if any, they play in her sons' and her lives.

The applicant's wife further contends that relocation would result in financial hardship as she would have difficulty finding any job in Mexico, particularly based on her education and the limitations of her injured hand. During her evaluation with Dr. [redacted] the applicant's wife reported the same concerns, noting that she has physical restrictions on lifting anything more than 20 pounds. She also reported her fear that they would lose their home in the United States and any equity they accumulated over the years by paying their mortgage. The record, however, does not contain any doctor's letter or medical letters to corroborate her asserted disability or that her injury physically hinders her in performing certain types of physical labor. Likewise, it does not include a copy of the applicant's mortgage or the balance remaining on it, should they decide to sell the home to finance their relocation. The record further lacks any background materials to substantiate the applicant's claim regarding employment opportunities and financial hardships in Mexico.

The applicant's wife also states that she is concerned about healthcare and about education for her children in Mexico. She reported to Dr. her concerns that she would not be able to obtain medical services to treat her ongoing hand injury or her dental problems, or any future medical ailments he or her family may have. We observe, however that the applicant's wife indicated in her 2011 statement indicated that the dental treatment she required was an extensive cleaning process that would take approximately one year. There is no indication that the applicant's wife dental problems are an ongoing one that still requires treatment. Similarly, as noted previously, there is no evidence to corroborate her claim that she suffers from an ongoing hand injury that limits her in any way. Moreover, even if the record demonstrated any medical ailments for the applicant's wife or children that require ongoing treatment and care, it still contains no supporting evidence to establish that adequate healthcare would be unavailable to her or her sons in Mexico.

The record also discloses that applicant's wife fears the crime and violence in Mexico. She states that a financially successful person is likely to have his family or he become targets for ransom or kidnapping. As discussed, the applicant has not demonstrated that he or his family would be targeted for violence in Mexico. Additionally, we find it significant that the applicant's wife reported to Dr. that she likely will relocate to Mexico with her sons, despite her asserted fears of the violence and crime there, particularly given our determination that the record did not establish that she and her sons would face extreme hardship upon separation by remaining in the United States.

Lastly, the applicant's wife expressed concerns to Dr. regarding the impact of uprooting her sons from their lives in the United States where they have resided their whole lives. However, the record contains very little support of their strong ties in the United States. As observed previously, there is no indication that any of the applicant's or his wife's family reside near the family or are part of their children's daily lives. The AAO also notes the children's young ages (ages twelve and eight); the relative adaptability that comes with their youth; their proficiency in both the English and Spanish languages as reported to Dr. their apparent overall good physical and mental functioning; and the close ties they have with their parents, all of which are strong indications of successful transition should they relocate to Mexico.

The AAO acknowledges that relocation to Mexico may very well result in some hardship to the applicant's spouse and children. However, after carefully reviewing the record, we are unable to conclude that the hardships to the applicant's wife and children upon relocation, even when considered in the aggregate, rise to the level of extreme hardship.

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 AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying relatives as required under section 212(h) of the Act. He, therefore, remains inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. Since the applicant failed to establish statutory eligibility for the waiver, the AAO finds that no purpose would be served in considering whether she merits a waiver in the exercise of discretion.

In proceedings for a waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of*

Ducret, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.