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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: AUG 17 2011 OFFICE: [redacted] FILE: [redacted]

IN RE: Applicant: [redacted]

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

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,

Ellen C. Johnson

Perry Rhew, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of [redacted] 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 his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen father.

The Field Office Director concluded that there was no evidence of extreme hardship to a qualifying family member and denied the application accordingly. *See Decision of Field Office Director* dated January 12, 2009.

On appeal, the applicant states his father suffers extreme hardship. The applicant's father explains that he has type I diabetes, he is unable to work, he cannot support his wife and four children, and the applicant's father needs the applicant for economic and moral reasons. The applicant also states he has a young U.S. Citizen child named [redacted] *I-290B statement,* February 6, 2009.

The record contains, but is not limited to, documentation of a doctor's visit, a birth certificate for [redacted] letters of support from the qualifying relative, photocopies of the applicant's student identification cards, the qualifying relative's certificate of naturalization, the applicant's mother's permanent resident card and state-issued identification card, a letter in Spanish from the applicant's mother, letters from the applicant's siblings, and a physician's note and billing statement. The record further contains evidence of a July 27, 2005 conviction for evading arrest or detention. As the requirements for a waiver for unlawful presence are more restrictive than those for a crime involving moral turpitude, the issue of whether this conviction is for a crime involving moral turpitude will not be reached. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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.

> (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.
>
> (iii) Exceptions.-
>
> > (I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (I).
> >
> > . . . .
> >
> > (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.

The record reflects that the applicant entered without inspection in July 1994, and left the United States in November, 2007. The applicant accrued unlawful presence starting on January 2, 2005, the date he attained 18 years of age, through the date of his departure in November 2007. This accrual of more than one year of unlawful presence subjects him to the 10 year bar in Section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The applicant's qualifying relative for the waiver in this case is his U.S. Citizen father.

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 is the beneficiary of an approved I-130 Petition for Alien Relative, filed by the applicant's U.S. Citizen father. The I-130 Petition and the I-601 waiver show that the applicant entered the United States without inspection in July 1994, and stayed until November 2007 when he returned to [redacted] Consequently, the applicant was found inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act 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.

In support of the waiver, the applicant submits that his father suffers extreme hardship as a result of the applicant's absence. The applicant's father states that he has type I diabetes, he is "not able to work and support [his] wife and ... 4 children." *I-290B statement,* February 6, 2009. The father also claims that he needs the applicant to help him "economically and morally" and to help raise the applicant's own son. *Id.* In support, the applicant submits documentation of a January 25, 2009 visit with a physician's office, which includes a "DM II" diagnosis, a worksheet titled "control diabetes," and a urinalysis for the applicant's father. *Documents from doctor's visit,* January 25, 2009. The applicant also submits a note from another physician's office which states, "[redacted]... has been under my care for Type 2 diabetes. It is not yet under control. He has a follow up visit December 29, 2007 at 11:30..." *Physician's note,* undated. That physician's note is accompanied by a billing statement with the diagnosis or nature of illness and injury listed as "Type II NIDDM Uncontrolled." *Billing statement,* December 15, 2007.

The applicant submits letters from the applicant's mother, [redacted] and the applicant's siblings, as well as a U.S. birth certificate for [redacted] born on January 5, 2008. It is noted that the handwritten letter from the applicant's mother, as well as an undated, typed letter from [redacted] are not translated into English and certified, as required by 8 C.F.R. § 103.2(b)(3); as such, they cannot be considered in adjudicating this appeal. The letters from the applicant's siblings contain references to hardship they would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's siblings as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Lastly, the birth certificate does not name the applicant as the father; however, even assuming parentage, Congress also did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant's father is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's siblings and child will not be separately considered, except as it may affect the applicant's father.[1]

There is ample evidence that the applicant's father suffers from diabetes, and that he is under the care of a medical services provider. However, the record lacks any evidence from a licensed practitioner describing the specific effects the medical condition has on the applicant's father, whether the applicant can assist with his father's needs as related to the medical condition. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment

[1] It is also noted that the applicant's lawful permanent resident mother may be a qualifying relative under section 212(i) of the Act. No claim was made that she would experience any hardship due to the applicant's inadmissibility. *See I-601 Application for Waiver of Grounds of Inadmissibility,* December 4, 2007. This analysis will therefore be limited to hardship to the applicant's father.

needed, or the nature and extent of any hardship the applicant's father would suffer as a result of the applicant's inadmissibility.

The applicant's father further states that he is "not able to work and support [his] wife and 4 children," and that he needs the applicant to help him "financially and morally." *I-290B statement,* February 6, 2009. However, the record does not contain any evidence of the parent's employment or lack thereof, income, or household expenses to support those assertions. The applicant further fails to provide any evidence regarding his own employment and earnings, and whether he would be able to contribute financially if he could join his father in the United States. Without details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's father will face.

Lastly, the applicant's father states that it would "be completely impossible to live with him in [redacted] because he "has 4 other kids in school" in the United States. *Letter from* [redacted] December 18, 2007. This assertion without more evidence of hardship fails rise to the level of extreme hardship suffered upon the qualifying relative's relocation to [redacted] The record also lacks argument and evidence regarding country conditions in [redacted] as related to a finding of extreme hardship. Accordingly, the AAO finds that there is insufficient evidence to find extreme hardship to the applicant's U.S. Citizen parent upon relocation.

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 his U.S. Citizen parent as required under section 212(a)(9)(B)(v) 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 section 212(a)(9)(B)(v) 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.