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

U.S. Citizenship and Immigration Services

H1

[redacted]

Date: OCT 2 4 2012 Office: SAN SALVADOR, EL SALVADOR FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(g) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(g); and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 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 in accordance with the instructions on 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 any motion to 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, San Salvador, El Salvador, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of El Salvador 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 ten years of his last departure from the United States; and section 212(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(1)(A)(iii), as an alien who was determined to have a physical or mental disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others. The record indicates that the applicant is married to a U.S. citizen and the father of a U.S. citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(g) of the Act, 8 U.S.C. § 1182(g), in order to reside in the United States with his spouse and child.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 20, 2010. The AAO notes that the Field Office Director also denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) in the same decision, though no Notice of Appeal or Motion (Form I-290B) was filed for that application.

In regards to the applicant's health related ground of inadmissibility, the Field Office Director claims that a panel physician recommended that the applicant be treated in a rehabilitation group. *Decision of the Field Office Director, supra.* The Field Office Director then states that the U.S. Embassy in San Salvador received information from the Department of Health and Human Services, Public Health Services, indicating that the applicant "made arrangement[s] to attend rehabilitation treatment related to alcohol addiction" when he returns to the United States. *Id.* Therefore, it appears that the Field Office Director found that the applicant was no longer inadmissible under section 212(a)(1)(A)(iii) of the Act. However, the Field Office Director determined that the applicant was still inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act.

On appeal, the applicant's daughter claims that her mother is suffering extreme financial hardship without the applicant's presence in the United States. *See letter from the applicant's daughter*, dated January 28, 2011. Additionally, she states she is also suffering hardship because of her separation from the applicant. The applicant also submits new evidence of hardship on appeal.

The record includes, but is not limited to, statements from the applicant's wife and daughter, letters of support, medical documents for the applicant's wife, household and utility bills, financial documents, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at 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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> . . . .
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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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> . . . .
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> (v) Waiver.-The [Secretary] 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 [Secretary] 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.*

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 or his daughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 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*, 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.

In the present application, the record indicates that on June 1, 1978, the applicant entered the United States without inspection. On November 27, 1989, the applicant filed a Request for Asylum in the United States (Form I-589). On July 22, 1998, an immigration judge ordered the applicant removed from the United States. On August 28, 2006, the applicant was removed from the United States. The applicant accrued over one year of unlawful presence between July 23, 1998, and August 28, 2006. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for

being unlawfully present in the United States for a period of more than one year, and he seeks admission within ten years of his departure from the United States. The applicant does not contest his inadmissibility.

The AAO notes that the applicant may also be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude.[1] However, because the applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) of the Act also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not review the determination of the applicant's inadmissibility under section 212(a)(2)(A)(i)(I).

The record contains references to hardship the applicant's daughter would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child 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(a)(9)(B)(v) of the Act, and hardship to the applicant's daughter will not be separately considered, except as it may affect the applicant's spouse.

In her statement dated July 9, 2010, the applicant's wife's claims that the applicant does not want her to visit him in El Salvador because of the security situation; he feels that they would be targeted for kidnapping. The applicant makes no other claim that his wife will endure hardship should she relocate to El Salvador. The AAO acknowledges that the applicant's wife is a U.S. citizen, and relocation would involve some hardship. However, the applicant's wife is a native of El Salvador, and no objective documentary evidence was submitted that demonstrates that she will experience hardship in El Salvador. 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)). Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to El Salvador.

In addition, the record fails to establish extreme hardship to the applicant's wife if she remains in the United States. In her letter dated October 18, 2007, the applicant's wife states she needs the applicant's financial help, because she cannot "do it alone." The applicant's daughter states that since the applicant returned to El Salvador, her mother is suffering financial hardship. She claims that if the applicant cannot assist her mother financially, she will be unable to continue attending school. She works part-time to help her mother. The applicant's daughter states the applicant is working in El Salvador but does not earn enough to help his family in the United States. The applicant's wife states she is currently working, after she was laid off, but she earns less than before and has "a minimal health plan." She states that when the

[1] The Field Office Director did not determine if the applicant's crimes would render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act; however, if his crimes are determined to be crimes involving moral turpitude, they would also be considered violent and dangerous crimes, and the applicant would be subject to 8 C.F.R. § 212.7(d). Because the AAO is dismissing the applicant's appeal, it will not address the applicant's crimes at this time, though they should be thoroughly addressed in future proceedings.

applicant was employed in the United States, he had a very good medical and dental plan. She claims that she now relies on government health services for her medical treatments.

The applicant's wife states their daughter is having a difficult time. The applicant's daughter states it has been difficult growing up without the applicant in the United States. In her letter dated August 20, 2006, the applicant's daughter stated the applicant helped her with her school work and he was a "good support system." The applicant's wife states their daughter became rebellious after the applicant returned to El Salvador; however, she overcame this and is now attending college.

The applicant's wife states she misses the applicant. In a letter dated February 14, 2011, Dr. diagnoses the applicant's wife with depression and insomnia, which began after the applicant was removed from the United States. Dr. states the applicant's wife is taking medication and is under medical care; however, her condition would improve if she and the applicant were reunited. Additionally, the applicant's wife states she was previously diagnosed with breast cancer, which is in remission. She claims that she is currently experiencing some health issues that require examinations.

The AAO acknowledges that the applicant's wife is suffering emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. With respect to the applicant's spouse's medical hardship, although the record establishes that she suffers from depression and insomnia, no medical documents have been submitted establishing that she suffers from any other medical issues. Moreover, though statements in the record refer to financial difficulties, the record does not contain evidence establishing that the applicant's wife is suffering financial hardship. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States. The AAO also notes that the applicant's daughter may be suffering some hardship in being separated from the applicant; however, the applicant has not shown that their daughter's hardship has elevated his wife's challenges to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

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 spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

The AAO notes that the Field Office Director denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212), in the same decision. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose

would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in granting the applicant's Form I-212.

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. *See* 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.