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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



U.S. Citizenship
and Immigration
Services

DATE: **APR 02 2013** Office: SAN SALVADOR, EL SALVADOR

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to sections 212(a)(9)(B)(v) and (h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and (h), and for Permission to Reapply for Admission under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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,

for Michael Shumway
for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver applications were denied by the Field Office Director, San Salvador, El Salvador and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 45-year-old native and citizen of El Salvador 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 committed a crime involving moral turpitude; section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien with an aggravated felony conviction, who seeks admission at any time after departure or removal following a removal order; and section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien seeking admission within 10 years of departure or removal after having been unlawfully present in the United States for one year or more. The applicant seeks waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(h) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(h), as well as permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in conjunction with an immigrant visa application, in order to obtain admission to the United States as a lawful permanent resident.

The Field Office Director concluded that the applicant had failed to demonstrate that the bar to his admission would result in extreme hardship to his qualifying relatives, as required under section 212(h) and 212(a)(9)(B)(v) of the Act, and denied his Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated August 2, 2011. He therefore further found that no purpose would be served in considering the applicant's application for permission under section 212(a)(9)(A)(iii) of the Act to reapply for admission into the United States after deportation or removal, and denied the applicant's Form I-212 as well.

On appeal, counsel asserts that the applicant demonstrated extreme hardship to his qualifying relatives for purposes of a section 212(a)(9)(B)(v) waiver. *See Appeal Brief*, dated September 29, 2011.

The record of evidence includes, but is not limited to, counsel's brief; statements of the applicant's U.S. citizen fiancée; statements of the applicant's and his fiancée's children; applicant's fiancée's bank statements; a doctor's note, medical records and psychological evaluation for the applicant's fiancée; supporting character reference letters; the applicant's immigration and deportation 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—
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

(A) CERTAIN ALIENS PREVIOUSLY REMOVED

(i) Arriving Aliens

Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other Aliens

Any Alien not described in clause (i) who -

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such aliens' departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception

Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

...

(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 indicates that the applicant initially entered the United States without inspection in approximately May 1979, and thereafter, was granted adjustment of status on or about February 22, 1990. *See* Order to Show Cause, dated October 26, 1994. On October 3, 1994, the applicant was convicted of Aggravated Assault with a Deadly Weapon, to wit: a firearm, in violation of section 22.02 of the Texas Penal Code (T.P.C.). He was sentenced to ten years imprisonment (probated ten years). An Order to Show Cause was issued on October 26, 1994, charging him with deportability under former section 241(a)(2)(C) (firearms offense). The former Immigration and Naturalization Service lodged an additional charge of deportability under form section 241(a)(2)(A)(iii) (aggravated felony relating to a crime of violence) on November 17, 1994. *See* Immigration Judge (I.J.) Dec. at 2. The Immigration Judge found the applicant removable as charged and ordered him deported on March 1, 1995. *See id.* On September 14, 1995, the Board of Immigration Appeals (BIA) dismissed the applicant's appeal. The applicant failed to depart on the final deportation order. On August 11, 2006, the applicant was removed from the United States pursuant to a Warrant of Deportation. He is presently residing outside the United States in El Salvador.

The applicant has not disputed inadmissibility under sections 212(a)(9)(A)(ii),¹ as an alien, with an aggravated felony conviction, who seeks admission at any time after his departure or removal following a removal order; 212(a)(9)(B)(i)(II), as an alien seeking admission within 10 years of departure or removal after having been unlawfully present in the United States for one year² or more; and 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. As the record does not show those determinations of inadmissibility to be in error, the AAO will not disturb the findings.

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --
 - (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
 - (ii) the admission to the United States of such alien would not be contrary to

¹ On brief, counsel specifically addresses only the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act and the applicable waiver under section 212(a)(9)(B)(v) of the Act.

² The applicant was unlawfully present in the United States for a period of one year or more beginning April 1, 1997 until his physical deportation in August 2006.

the national welfare, safety, or security of the United States, and
(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

...

...; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status. Alternatively, section 212(h)(1)(B) of the Act provides for a waiver of the bar to admission upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, however, 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, 299 (BIA 1996).

Thus, even if the applicant were able to satisfy the requirements of section 212(h) of the Act, the waiver may still be denied in the adverse exercise of discretion. *Matter of Mendez-Morales*, 21 I&N Dec. at 299 (BIA 1996) (For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion). The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

However, the AAO cannot find, based on the facts of this particular case, that the applicant merits a favorable exercise of discretion solely on the balancing of favorable and adverse factors. The applicant's conviction indicates that he may be subject to the heightened discretion standard of 8 C.F.R. § 212.7(d), which provides that the Secretary of Homeland Security will not favorably exercise discretion if the applicant's conviction involves a "violent or dangerous" crime, except in an extraordinary circumstance.

The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or

dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The AAO notes that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and the AAO is aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). As provided under that section of the Act, a crime of violence, as defined by 18 U.S.C. § 16, is an aggravated felony if the term of imprisonment is at least one year. Under 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. By its definition, a "crime of violence" is, therefore, limited to those crimes specifically falling within 18 U.S.C. § 16. It is not a generic term with application to any crime involving violence, as that term may be commonly defined. Moreover, we note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in promulgating 8 C.F.R. § 212.7(d). Accordingly, we find that the statutory terms "violent or dangerous crimes" and "crime of violence" are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependent on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. See 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms "violent" and "dangerous". The term "dangerous" is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms "violent" and "dangerous" in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). *Black's Law Dictionary* (Ninth ed. 2009) defines violent as "of, relating to, or characterized by strong physical force" and dangerous as "likely to cause serious bodily harm." Finally, decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual "case-by-case basis." 67 Fed. Reg. at 78677-78.

In the instant case, the applicant was convicted of aggravated assault with a deadly weapon, to wit: a firearm, in violation of T.P.C. § 22.02(a)(4). At the time of the applicant's arrest and conviction, T.P.C. § 22.02(a)(4) provided, in pertinent parts:

§22.02. Aggravated Assault

(a) A person commits an offense if the person commits assault as defined in Section 22.01 of this code and the person:

- ...
- (4) uses a deadly weapon.
- ...

(c) An offense under this section is a felony of the third degree, unless the offense is committed under Subdivision (2) of Subsection (a) of this section and the person uses a deadly weapon, in which event the offense is a felony of the first degree.

The definition of assault under the Texas Penal Code is found at section 22.01, which provided in pertinent part:

§ 22.01. Assault

(a) A person commits an offense if the person:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse; or
- (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or
- (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

The record of conviction, including the indictment, demonstrates that the applicant was convicted under T.P.C. § 22.02(a)(4), of using a deadly weapon, to wit: a firearm, to intentionally or knowingly threatens another with imminent bodily injury, as described in T.P.C. § 22.01(2). The AAO finds that the applicant's conviction for aggravated assault with a deadly weapon constitutes a violent and dangerous crime for purposes of 8 C.F.R. 212.7(d). The applicant must therefore demonstrate that he merits the section 212(h) waiver under the heightened standard of 8 C.F.R. § 212.7(d). Accordingly, the applicant must show that "extraordinary circumstances" warrant approval of the waiver under either section 212(h) of the Act. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant's admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities, the AAO considers whether the applicant has "clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship" to a qualifying relative. *Id.*

However, we need not make a determination on the issue of whether the applicant needs or qualifies for a waiver under 8 C.F.R. § 212.7(d) at this this time, until we first determine whether the applicant has met his burden of proof under 212(h)(1)(B) of the Act³ to demonstrate that a denial of his hardship would result in extreme hardship to his qualifying relatives. If the applicant does not

³ The AAO finds no purpose would be served in considering the applicant's application under section 212(h)(1)(A) of the Act, as he would still need to demonstrate extreme hardship to a qualifying relative for the waiver he would still need under section 212(a)(9)(B)(v) of the Act. As such, we limit our analysis here to the applicant's eligibility under section 212(h)(1)(B), which requires the same extreme hardship considerations.

first meet the lower burden he bears under section 212(h) of the Act, no purpose is served in assessing his ability to meet the more stringent burden of 8 C.F.R. § 212.7(d).

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 asserts that the applicant's fiancée [REDACTED], has been suffering, and will continue to suffer, physically, medically, psychologically and financially as a result of separation from the applicant. Counsel has submitted the applicant's fiancée's statements, psychological evaluation, medical records, and bank statements in support of this assertion. The applicant's fiancée states that she and the applicant have been together since 1984 and have three children together: [REDACTED]. She asserts that the applicant always financially supported their family prior to his deportation in 2006. In her first statement, [REDACTED] states that after being diagnosed with high blood pressure, diabetes, and cholesterol in 2000, she stopped working and the applicant completely supported the family, including paying for her expensive medications without insurance or government assistance. [REDACTED] states that she has been struggling with her small business and to support her family since the applicant's departure. At times, she states she gets desperate when she does not have enough to pay her bills and has to forego purchasing her medications in order to buy food for her children. She states that her oldest daughter is unable to help, as she has been laid off and has not been able to find a job. [REDACTED] provided copies of her savings and checking account statements, indicating balances of approximately \$2,000 and \$42 respectively. The record also includes [REDACTED] 2009 tax returns and Form I-134, Affidavit of Support, filed in support of the applicant's immigrant visa application. The former indicates that her business made a net profit of approximately \$22,744 and that her adjusted gross income was about \$15,141 in 2009. However, she reported an annual income of \$21,298 in the Form I-134 she submitted in connection with the applicant's immigrant visa application. The psychological evaluation indicates that [REDACTED] was distraught because she was forced to request Medicaid for her children and had to use community resources to pay her bills.

The AAO recognizes that separation may very well result in some financial detriment to an applicant's family in the United States. However, the applicant here has failed to demonstrate the financial hardship to his fiancée. We note that aside from the 2009 tax return, the record contains no evidence of [REDACTED] expenses or income, including social security statements, more recent tax returns indicating her current personal and business income, or other evidence to demonstrate the financial hardship that she claims, including evidence that her children are on Medicaid and her use of community resources to pay her bills. 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)). Moreover, the record lacks any evidence of applicant's income and financial contribution to the family prior to his deportation to enable the AAO to meaningfully assess the financial impact of his departure on his family. For instance, as noted, [REDACTED] asserted in her initial statement that after her 2000 diagnoses, she stayed home to take care of her children and was completely dependent on the applicant financially for the six years prior to the applicant's deportation. However, in her subsequent statement, she acknowledges that she opened up a small store to keep working. The record does not indicate if or how much this small business contributed to the family's support during those years in relation to the applicant's contribution.

also contends that her physical and emotional health has deteriorated considerably since the applicant's departure. A medical note, dated August 15, 2011, from [REDACTED] physician, [REDACTED] indicates that she is suffering from poorly controlled diabetes and that her prognosis is poor. Attached medical records also indicate that her past medical history includes hypercholesterolemia, hypertension, and liver disease and that she has complained of vision problems. There is no letter of explanation from her physician regarding the diagnoses or prognosis for these conditions. The medical records also appear to indicate that the prognosis for [REDACTED] diabetes condition is poor because although she complied with her medications, she failed to control/monitor her sugars, did not watch her diet and did not exercise as her treatment plan required. There is no indication in any of the medical documentation provided that the applicant's fiancée's health conditions cannot be managed with proper care and treatment or that they are so severe as to hinder her ability to work or carry out daily functions. Although [REDACTED] brief note indicates that [REDACTED] has difficulty traveling distances because of her medical condition, it utterly fails to explain how or why, and appears to be contradicted by [REDACTED] statement, indicating that she is working and providing for her family despite her medical conditions.

The crux of the applicant's hardship claim appears to be that she is suffering emotionally and psychologically as a result of the separation and resulting hardships. [REDACTED] notes that although she initially just had to adapt to the fact the applicant was not around, things got more difficult because she was alone to face all the different problems that came along subsequently. She states that she had to work harder to support her family. [REDACTED] asserts that she does not believe that she will be able to make it with all the pressure in her life if she had to live this way without the applicant's support forever. [REDACTED] further states that her children have suffered because of the separation from her husband. She states that she is worried about her youngest daughter, [REDACTED] who has been acting strange and has threatened to kill herself. Her children have to forego organized school sports and other pleasures due to the family's financial situation. [REDACTED] states that the family has not been able to afford visits to see the applicant in El Salvador after a single visit in 2006.

An evaluation⁴ by counselor [REDACTED] indicates that [REDACTED] reported these same concerns and fears during her consultation. [REDACTED], who is not a licensed psychologist, concludes that the applicant's fiancée is suffering from clinical or major depression. She notes her opinion that [REDACTED] who does not have a history of depression, is clinically depressed because of the separation from her husband and indicates that she recommended that [REDACTED] contact a physician to address the condition. There is no indication in the record that [REDACTED] acted upon the recommendation or intends to do so. Likewise, it does not show whether [REDACTED] sought help or treatment to address her concerns regarding the emotional health of her daughter, [REDACTED] also makes no comment upon the applicant's likelihood to manage her depression with proper treatment. We also note that [REDACTED] focuses much of her evaluation on issues for which it has not been demonstrated she has expertise, including addressing the symptoms of and treatment for diabetes. In another instance, [REDACTED] relies upon a "NPR" report about El Salvador to conclude that [REDACTED] fears regarding the applicant's safety due to violence there are valid. Yet, significantly,

⁴ The psychological evaluation appears to have a portion of the report missing. Although consecutively paginated, we observe that page four of the evaluation starts midsentence, indicating missing language, since the last sentence on page three was completed.

there is no indication whether she made any inquiry into whether the applicant himself has been targeted or encountered such violence during the five years he has been residing in El Salvador.

Having carefully reviewed the evidence of record, the AAO cannot conclude that the applicant met his burden to demonstrate that the hardships to his fiancée upon separation, even considered in the aggregate, rise to the level of extreme hardship. The applicant has not shown the hardship his fiancée would suffer 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.

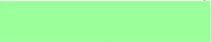
The AAO also considers whether the applicant's fiancée would suffer extreme hardship upon relocation. The record indicates that [REDACTED], a U.S. citizen, is a native of Mexico and is fluent in the Spanish language. *See Medical Records*. She reports that she and the applicant do not have any family, other than their children, in the United States. The record does not address whether the applicant has any family or property in El Salvador. The applicant's fiancée's psychological evaluation indicates that the applicant is employed in El Salvador, but only makes enough to pay his immediate bills and food. [REDACTED] indicates that she has not relocated to reunite with the applicant because her children are doing well in school in the United States and she wants them to have the opportunities here that they cannot have in El Salvador. She contends that her children say that they will not go to school if they have to relocate to El Salvador because getting an education there does not matter there due to the poverty there. [REDACTED] states that she does not want them to lose all their dreams for the future, or the life and friends they have in the United States. She reported to her counselor, [REDACTED] that she is torn between reuniting her family in El Salvador or staying in the United States where the children have stability and a future.

From the evidence submitted, the AAO cannot conclude that the applicant's fiancée would suffer extreme hardship if she were to relocate to El Salvador to reunite with the applicant. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. While we recognize that relocation may result in emotional and psychological distress to the applicant's fiancée, the record does not establish that the hardship that she would face rises to the level of extreme hardship.

As the applicant has failed to demonstrate extreme hardship, and thus, eligibility for relief under INA § 212(h), no purpose would be served in determining whether the applicant merits the waiver under the heightened discretionary standard of 8 C.F.R. § 212.7(d), or as a matter of discretion. Likewise, no purpose would be served in considering the applicant's waiver application under section 212(a)(9)(B)(v) of the Act or his Form I-212, Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Act. *See Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964).

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.

(b)(6)


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ORDER: The appeal is dismissed.