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: MAR 0 9 2013 Office: GUATEMALA CITY FILE:

IN RE: Applicant:

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)

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 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, Guatemala City, Guatemala, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala 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, 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 is the spouse of a U.S. citizen and seeks waivers of inadmissibility pursuant to sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h) and 1182(a)(9)(B)(v), 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 her admission would result in extreme hardship to her qualifying relative, as required under sections 212(h) and 212(a)(9)(B)(v) of the Act, and denied her Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated July 18, 2011.

On appeal, the applicant requests that the denial of her waiver application be reconsidered and granted. *See Form I-290B, Notice of Appeal or Motion*, dated September 2011.

The record of evidence includes, but is not limited to, the applicant's statement; statement of the applicant's U.S. citizen husband; the couple's marriage certificate and amendment of same; the applicant's certificate of completion of a domestic violence program; 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.
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> . . .
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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).

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

. . .

(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 applicant is a 43-year-old native of Guatemala. The record indicates that she initially entered the United States without inspection in approximately 2003 and thereafter, remained in the United States unlawfully. The applicant departed the United States in approximately September 2010. *See Applicant's Form G-325A, Biographic Information, and Statement,* signed January 25, 2010. During the period the applicant resided in the United States, she was arrested on two occasions. On March 24, 2006, the applicant was involved in a domestic dispute with her husband and was arrested and charged with Threatening a Crime with Intent to Terrorize in violation of section 422 of the California Penal Code (C.P.C.). However, prosecution was declined. On March 10, 2008, the applicant was arrested again in connection with a domestic dispute. She was charged with Infliction of Corporal Injury to Spouse/Cohabitant under C.P.C. § 273.5 and Assault with a Deadly Weapon, not a Firearm, under C.P.C. § 245(a)(1). The applicant was convicted of the latter charge and was sentenced to 43 days in jail, 36 months of probation, 24 hours of community service, and a fine and restitution in the amount of $629.38. In addition, she was ordered to enroll in a domestic violence program and was issued a protective order in favor of the victim.

The applicant has not disputed inadmissibility under sections 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 year or more from 2003 through 2010, 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 that finding of inadmissibility to be in error, the AAO will not disturb the determination.

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) ...(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 . . . .

Section 212(h) 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, 301 (BIA 1996). The record establishes that the applicant's qualifying relatives for purposes of this waiver are his U.S. citizen spouse and minor son.

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.

The applicant's husband, , asserts in his brief statement of December 9, 2010, that he needs the applicant in the United States to help him care for his elderly mother, who apparently needs care after a recent fall. He asserts that his elderly father passed away recently and fears his mother will as well with lack of care. Mr. states that he is unable to care for his mother because he works between twelve to sixteen hours a day, and he has no close family to assist him in her care. He asserts that the applicant's wife had been caring for his parents for the previous ten years since 2003. The record however does not contain any doctor's letters or medical records, corroborating the applicant's husband's mother's medical condition, the severity of the condition, or her prognosis. The applicant has not provided such evidence on appeal, particularly addressing how the applicant's spouse has managed his mother's care without his wife during the pendency of this appeal. 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)).

Mr. further asserts that he is concerned about his wife's safety in Guatemala, because he has heard in the news that Guatemalan women coming from the United States are targeted by the Mexican and Salvadoran cartels because they are thought to have a lot of money. He asserts that the applicant has already been receiving threats, as well as her four children in Guatemala. However, once again, the record does not contain supporting evidence of this claim. The applicant has not provided a letter or statement at a minimum to corroborate her spouse's assertion that she has received such threats. Moreover, the record does not contain copies of any news articles or background materials which were the source of the applicant's spouse's fears for his wife. The

applicant has not asserted that her husband would suffer any other hardships as a result of their ongoing separation.

Having considered the evidence of record, the AAO finds that it does not demonstrate that the applicant's citizen husband would experience extreme hardship as a result of separation from the applicant. The applicant has not shown the hardship her spouse 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 spouse would suffer extreme hardship upon relocation to Guatemala. However, we note that the record is silent as to any hardships the applicant's spouse may face by moving to Guatemala. Although the applicant's husband indicates that he has a job and an elderly parent in the United States, the applicant has otherwise presented no substantive or corroborating evidence of her spouse's ties to the United States to enable the AAO to meaningfully assess the hardship to the spouse upon relocation. In fact, neither the applicant, nor her spouse, addresses the possibility that the latter would relocate in their statements. As such, on the record before the AAO, we cannot find that the applicant established that her spouse would suffer extreme hardship if 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 her U.S. Citizen spouse as required under sections 212(a)(9)(B)(v) and (h) of the Act. She, therefore, remains inadmissible to the United States under section 212(a)(9)(B)(i)(II) and 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.