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

(b)(6)

Date: AUG 2 6 2015

FILE:
APPLICATION RECEIPT:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude and under section 212(a)(9)(B)(i)(II) of 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 again seeking admission 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 lawful permanent resident spouse and his U.S. citizen children.

The Director found that the Applicant had been convicted of a violent or dangerous crime and had not established that a qualifying relative would experience exceptional and extremely unusual hardship due to the Applicant's inadmissibility. *Decision of the Director* dated August 25, 2014.

On appeal the Applicant's spouse contends that the Director's decision did not fully consider the difficulties she experiences and that favorable factors outweigh negative ones. With the appeal the spouse submits a statement and indicates that additional evidence will be submitted later; however no additional information has been received. The entire record was reviewed and considered in rendering this decision.

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

> (h) 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 -
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> . . . .
>
> > (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(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-

> (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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

The record reflects that the Applicant entered the United States without inspection in March 1980 near California, departing in September 1987. The Applicant reentered the United States without inspection in October 1987 and did not depart until he was removed on December 23, 2011, following an order of removal issued by an immigration judge on December 22, 2011. The director determined that the Applicant was thus inadmissible for accruing more than one year of unlawful presence in the United States.[1] The record also reflects that on 2011, the Applicant was convicted of child endangerment under California Penal Code section 273a(a). The record shows that the Applicant's conviction was for a felony and that he was sentenced to 177 days in prison, four years of probation, fines, and other restrictions as indicated by the court.

At the time of the Applicant's conviction Cal. Penal Code § 273a(a) provided in pertinent part:

> § 273a. Willful harm or injury to child; endangering person or health; punishment; conditions of probation
>
> (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

[1] Although the Applicant entered the United States in 1987, he did not begin to accrue unlawful presence until the April 1, 1997, effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

The director found that the Applicant's conviction was for a crime involving moral turpitude and that it was a violent or dangerous crime, so the Applicant must show exceptional and extremely unusual hardship to a qualifying relative. On appeal the Applicant has not contested that his conviction was for a crime involving moral turpitude.

Although the Applicant's children are qualifying relatives for a waiver under section 212(h) of the Act, the Applicant requires a waiver under section 212(a)(9)(B)(v) due to his unlawful presence accrued in the United States. 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. The Applicant's spouse is the only qualifying relative for a waiver under section 212(a)(9)(B)(v). If extreme hardship to a qualifying relative is established, the Applicant is statutorily eligible for a waiver, and 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 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. *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.

On appeal, the Applicant's spouse asserts that without the Applicant she must work long hours and that in 2015 her company will relocate, which is causing her to become nervous and depressed. She states that with no family in the United States, she is afraid she might lose everything because there is no one to help her. In an earlier statement the spouse states that when the Applicant was detained in 2011 she lost her job, so she was alone with three children and no money, making her depressed and unable to eat or sleep. She states that she emptied her 401k account, sold her car, and pawned her jewelry. The spouse states that in 2012 she got her job back, but that it is difficult to pay bills as a single parent and she risks losing her house. She states that when the Applicant was with her they both worked, and the Applicant states that he cannot help his family financially from Mexico.

In a statement dated June 23, 2011, the Applicant's oldest daughter states that it is a financial hardship without the Applicant and that she stopped attending college to work full time and help the family with expenses like the mortgage, car payments, food, clothes, and utility bills. A letter dated May 31, 2011, from a brother of the Applicant states that the Applicant's absence causes an economic burden, so the oldest daughter has to work to contribute.

Documents submitted to the record include a pay statement for the spouse from 2014 for $1,284 and copies of utility and credit card bills and loan statements. The record also contains income tax returns for the Applicant from 2006, 2007, and 2009.

Although the evidence in the record shows that the Applicant's spouse has experienced some financial difficulties, it is insufficient to establish that she is unable to meet her financial obligations or that she experiences financial hardship beyond what is common upon the removal of a spouse. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic

disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The Applicant's spouse states that she and the Applicant have been inseparable since she was [redacted] years old. The Applicant states that separation is hard for his family and that he is missing his children's graduations and other things the family is going through. The oldest daughter states that her younger siblings suffer having no male role model, and another daughter states that it is heartbreaking not to have the Applicant at events like her senior prom. The Applicant's spouse states that it affects her to see her son go through important years of his life without his father and that he needs fatherly guidance and support. The Applicant's son states that he feels horrible not having a father figure around, that he feels safer with the Applicant here, and that he has emotional pain thinking he is unable to protect the family on his own.

The record contains little detail and no supporting evidence of the spouse's emotional hardships and does not establish that such hardships are outside the ordinary consequences of removal or that any hardship to the Applicant's children is resulting in extreme hardship to the Applicant's spouse. The assertions made by the Applicant's spouse and children have been considered. However, assertions cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Nor has it been established that the Applicant's spouse would be unable to travel to Mexico to visit her husband.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the record shows that the Applicant's spouse endures some hardship as the result of separation from the Applicant. However the record does not establish that the hardships she faces, considered in the aggregate, rise to the level of "extreme."

The Applicant has made no assertion nor submitted documentary evidence that his spouse would experience extreme hardship if she were to relocate to reside with him in Mexico. We therefore find the record fails to establish that the Applicant's spouse would experience extreme hardship if she were to relocate to Mexico, her native country.

The director found that the Applicant's conviction was for a violent or dangerous crime and that pursuant to 8 C.F.R. § 212.7(d), he is required to show exceptional and extremely unusual hardship for a waiver under section 212(h) to be granted as a matter of discretion. As we have determined that the Applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion under the heightened exceptional and extremely unusual hardship standard.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.