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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUL 30 2015

FILE #:
APPLICATION RECEIPT #:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

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 Field Office Director, Phoenix, Arizona, denied the application. An appeal to the Administrative Appeals Office (AAO) was dismissed. The matter is now before the AAO on a motion to reconsider. The motion will be granted, but the previous decision of the AAO will be affirmed, and the underlying appeal will remain 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. The applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her lawful permanent resident spouse and her U.S. citizen children.

The Field Office Director concluded that the applicant had not demonstrated that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* dated December 10, 2013.

On appeal, we concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established. Consequently, the appeal was dismissed. *See Decision of the AAO,* dated December 12, 2014.

On motion, the applicant, through counsel, requests reconsideration of the dismissal, as the dismissal failed to adequately consider the applicant's positive factors vis-à-vis the extreme hardship her lawful permanent resident spouse and U.S. citizen children will suffer. The applicant further submits articles on anxiety disorders, high blood pressure (hypertension), and additional country-conditions information on Sonora, Mexico.

The record includes, but is not limited to, the following documentation: the additional evidence submitted on motion, listed above; medical documentation for the applicant's spouse; financial documentation; letters of reference; country-conditions information about Mexico; evidence of birth, marriage, and citizenship; statements from the applicant, her spouse, and her children; and the applicant's criminal records. The entire record was reviewed and considered in rendering a decision on the motion.

Section 212(a)(2)(A) of the Act states, in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The record indicates that the applicant was convicted of attempting to hinder the prosecution of her son for aggravated assault. Inadmissibility is not contested on this present motion. As such, we concur

with the Field Office Director that the applicant is inadmissible under section 212(a)(2)(A) of the Act for having been convicted of a crime involving moral turpitude. The applicant therefore requires a waiver of inadmissibility pursuant to section 212(h) of the Act.

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

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2)... if—
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> . . .
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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 established to the satisfaction of the [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 inadmissibility is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. The applicant's lawful permanent resident spouse and U.S. citizen children are qualifying relatives in this case. Hardship the alien experiences upon removal is irrelevant to section 212(h) waiver proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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.

The applicant claimed on appeal that her spouse suffered chest pains attributed to severe anxiety attacks in 1997, 1999, and in 2002. The applicant asserts that in 2002, when their son died in an accident, her spouse began to suffer anxiety attacks almost every day and that his anxiety paralyzes him to the point that he cannot drive. However, although we noted on appeal that the applicant did not provide evidence regarding the 1997, 1999, and 2002 anxiety attacks, the applicant did not supplement the record with such documentation in this motion. Counsel contends that we mischaracterized the medication prescribed to the applicant's spouse as an "anti-depressant drug," and that we failed to acknowledge the severity of her spouse's conditions by characterizing them as solely emotional hardship. We again note that, as on appeal, other than the fact that the prescribed anti-depressant drug that may be required, the record still lacks detailed documentation about the husband's psychological state and any treatment that may be necessary.

The record indicates that the applicant's spouse suffers from high blood pressure and hyperglycemia. In our previous decision, we noted that the record does not include detailed information regarding the nature and severity of the condition, prognosis, or any necessary treatment, and that without such information, we are not in the position to reach conclusions concerning the severity of his condition or any treatment or family assistance needed. On motion, the applicant provides no more information specifically related to her husband's medical condition.

As such, the record lacks sufficient evidence demonstrating that the hardships to the applicant's spouse or other impacts of separation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, such that the applicant's spouse would experience extreme hardship if he is separated from the applicant.

With respect to relocation, while we noted in our previous decision that the applicant's spouse would face danger in certain locations in Mexico, we further noted that that the applicant's spouse was born in Mexico and thus is familiar with the language and customs of that country, and found that the evidence in the record was insufficient to demonstrate that the applicant's spouse would suffer extreme hardship were he to relocate to Mexico with the applicant. On motion, the applicant asserts that his spouse's entire family now lives in the United States; however, she provides no evidence to support this assertion. Therefore, the evidence on record, considered in the aggregate, does not show that the applicant's spouse would suffer hardship beyond the common results of removal if he were to relocate to Mexico to reside with the applicant.

The applicant claims her U.S. citizen children will suffer hardship if the waiver application is not approved. However, there is no evidence in the record regarding any hardship that the applicant's children may be encountering.

In this case, the record does not contain sufficient evidence to show that the hardships faced by a qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has not established extreme hardship to her lawful permanent resident spouse or U.S. citizen children as required under section 212(h) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In 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 motion is granted, but the previous decision of the AAO is affirmed, and the underlying appeal remains dismissed.