(b)(6)

U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF D-G-R-

DATE: JAN. 27, 2016

APPEAL OF ST. PAUL FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

The Applicant, a native and citizen of Liberia, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, St. Paul, Minnesota, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible under section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), for having multiple criminal convictions for which the aggregate sentences to confinement were five years or more. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, which his U.S. citizen spouse filed on his behalf. The Applicant seeks a waiver of inadmissibility under section 212(h) of the Act in order to reside in the United States with his U.S. citizen spouse and children.

The Director denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, on May 1, 2015, finding that the Applicant did not establish that a qualifying relative would suffer extreme hardship as a result of the Applicant's inadmissibility.

On appeal, the Applicant states that his inadmissibility would "lead to great set back and severe economic hardship" for his family since he is one of the providers. He also states that his family would suffer trauma without him. The Applicant states that he has been rehabilitated and that he maintains employment to support his U.S. citizen spouse and their two U.S. citizen children.

In support of these statements, the Applicant submits copies of documentation previously submitted as well as newly dated letters from himself and his spouse, and a new certificate showing completion of a course with the [redacted] program.

The record also includes, but is not limited to, documents establishing relationships and identity, affidavits, financial records, criminal records, and photographs. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(B) of the Act, states:

> (B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 101(a)(48(B) of the Act, 8 U.S.C. § 1101(a)(48)(B), states that:

> Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

Between 2011 and 2014, the Applicant was arrested for and convicted of Driving While Intoxicated (DWI) four times, receiving sentences to confinement that total five years or more. On 2014, the Applicant was convicted of felony DWI in violation of Minnesota Statutes § 169A.20.1(5) and sentenced to 42 months' incarceration, partially stayed. On 2013, the Applicant was convicted of second degree gross misdemeanor DWI in violation of Minnesota Statutes § 169A.20.1(5) and sentenced to 365 days' confinement, partially stayed. On 2011, the Applicant was convicted of gross misdemeanor DWI in violation of Minnesota Statutes § 169A.20.1(5) and sentenced to 365 days, partially stayed. On 2011, the Applicant was convicted of misdemeanor DWI in violation of Minnesota Statutes § 169A.20.1(5) and was sentenced to 30 days, partially stayed. As a result of the terms of confinement sentenced for these convictions totals five years or more, the Applicant is inadmissible under section 212(a)(2)(B) of the Act. The Applicant does not contest his inadmissibility on appeal.

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

> The Attorney General [now Secretary, Department of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B)…
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> > (1)(A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that –
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> > > (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 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 [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
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> (2) the [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.

The activities that led to the Applicant's inadmissibility did not occur more than 15 years ago; therefore the Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the Applicant has three qualifying relatives, his U.S. citizen wife and his two U.S. citizen children. Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury," *Matter of Ngai,* 19 I&N Dec. 245, 246-47 (BIA 1984), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *see also Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

On appeal the Applicant states that his family will suffer financially and experience trauma without him. The Applicant does not discuss the hardship to individual qualifying relatives, but rather addresses them as a family unit, particularly his two children. The Applicant states that he is one of the providers for his family, and therefore, his family will experience severe economic hardship as a result of his absence. The most recent financial documentation the Applicant submits is a paycheck dated December 14, 2014, showing that he worked 40 hours during that pay period, with a net pay of

$462. The Applicant's 2013 Form 1040A, U.S. Individual Income Tax Return, filed jointly with his spouse, indicates an adjusted gross income of $24,840 and is only a partial copy. It does not show who claims to have earned the claimed income. The Applicant provided no W-2 forms or a copy of his 2014 Form 1040A. The Applicant's spouse's Form G-325A, Biographic Information, signed on January 10, 2014, indicates that she was employed by as a specialist, but the record lacks evidence of her present employment and income and the extent to which she depends on the Applicant's financial contributions. The evidence of one paycheck for $462 does not illustrate that the Applicant is one of the financial providers for the family, as he claims in his statement dated June 2014. Moreover, the Applicant provides no documentation of the expenses that his spouse and children incur. Therefore it is not possible, based on the evidence submitted, to determine the economic impact of loss of the Applicant's income.

The Applicant also states that his children depend on him for provision, shelter, and well-being. The Applicant's spouse, however, states that she has been both the provider and caregiver for her children. The Applicant provides no documentary evidence of the role that he plays in his children's lives, aside from his own statements. Although the Applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). The Applicant's spouse requests that the Applicant be given a chance to make things right so that she does not have so much to handle on her own. To show that the Applicant is making an effort to make things right in his life and contribute to his family, the Applicant provides documentation of two educational programs that he completed related to his criminal sentences for DWI and documentation that he applied for admission and financial aid at a community and technical college in May and June of 2014. These documents may show that the Applicant is making positive steps in his own life, but the record lacks documentation of the role that the Applicant plays in the life of each of his qualifying relatives, financially, physically, or emotionally. Without such evidence, we are unable to conclude that the hardship they would experience in his absence rises to the level of extreme hardship. We find, therefore, that the Applicant has not established extreme hardship to his qualifying relatives as a result of separation.

The Applicant does not state on appeal what hardship each qualifying relative would suffer were they to relocate to Liberia with the Applicant. The Applicant's spouse is a native of Liberia who became a naturalized U.S. citizen in 2013, and the Applicant's two U.S. citizen children, ages and and have no claimed medical conditions or ties to the United States other than their parents. The Applicant previously stated he may die from the Ebola outbreak if he were to return to Liberia, and that as a result, his children would be fatherless. Presumably due to the improved conditions in Liberia at the time of the appeal[1], the Applicant no longer claims Ebola-related

[1] The Centers for Disease Control website indicates that the "CDC no longer recommends that US residents practice

hardship. Although there is believed to be little risk of Ebola currently, travelers are still advised to take certain precautions. Moreover, while the health infrastructure in Liberia was severely strained by the Ebola outbreak, it is now returning to normal. No documentation in the record demonstrates that the Applicant's qualifying relatives would suffer extreme hardship were they to relocate to Liberia with him.

As the Applicant has not demonstrated extreme hardship to a qualifying relative or relatives, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of D-G-R-*, ID# 15329 (AAO Jan. 27, 2016)

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enhanced precautions when traveling to Liberia." Centers for Disease Control and Prevention, *Ebola in Liberia, http://wwwnc.cdc.gov/travel/notices/watch/ebola-liberia.*(Dec. 29, 2015).