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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

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U.S. Citizenship  
and Immigration  
Services

HG

[Redacted]

FILE:

[Redacted]

Office: COLUMBUS, OH

Date: MAR 21 2011

IN RE:

[Redacted]

APPLICATION:

Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[Redacted]

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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office District Director, Columbus, Ohio and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The Field Office Director will reopen the applicant's adjustment application for continued processing.

The applicant is a native and citizen of Iran who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 seeking admission within ten years of her last departure. The applicant is the daughter of a lawful permanent resident, and is married to a U.S. citizen and the mother of two U.S. citizen children.<sup>1</sup> She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain in the United States.

The Field Office Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative. She denied the Form I-601, Application for Waiver of Ground of Excludability, accordingly. *Decision of the Field Office Director*, dated November 18, 2010.

On appeal, counsel contends that the Field Office Director failed to properly consider all of the hardship factors in the applicant's case or all of the submitted evidence. Counsel further asserts that the Field Office Director did not consider the hardship factors in the aggregate or the impact of the hardship that would be suffered by the applicant's children on their father. He also finds the Field Office Director to have erred in failing to weigh the positive and negative factors in the applicant's case to determine whether she merited a favorable exercise of discretion. *Form I-290B, Notice of Appeal or Motion*, dated December 14, 2010.

In support of the waiver, the record includes, but is not limited to, counsel's briefs; statements from the applicant, his spouse and his sister-in-law; medical records and statements relating to the applicant, her spouse and her daughter; a letter from the principal of the school attended by the applicant's son; letters of support from friends and coworkers of the applicant's spouse; letters from the applicant's spouse's employer and supervisor; employment evaluations of the applicant's spouse; tax returns and W-2 forms for the applicant and her spouse; earnings statements for the applicant's spouse; financial records, including bank statements, bills, and credit card and loan statements; and country conditions materials relating to Iran. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(9)(B) states in pertinent part:

(B) Aliens Unlawfully Present.-

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<sup>1</sup> The record contains a birth certificate for the applicant's daughter, but not for her son. However, the AAO finds sufficient evidence to establish that the applicant also has a son born in the United States.

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

....

(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.

The record reflects that the applicant was the beneficiary of a Form I-129F, Petition for Alien Fiancé(e), approved on August 11, 1994 and was admitted to the United States on December 18, 1995 as a K-1 nonimmigrant. Although the record reflects that the applicant married the petitioner within the 90-day period required by section 214(d) of the Act, it also indicates that she did not file for adjustment of status prior to March 18, 1995, the date on which her 90-day period of admission expired, as she intended to divorce her first spouse. Following her divorce, the applicant remarried and based on the Form I-130, Petition for Alien Relative, filed by her second and current spouse submitted adjustment applications on February 8, 2001, October 31, 2002 and February 27, 2006, all of which were denied by United States Citizenship and Immigration Services (USCIS). The applicant ultimately departed the United States on June 19, 2007 under a grant of voluntary departure, thereby triggering the unlawful presence provisions of section 212(a)(9)(B)(i) of the Act.

Based on the applicant's history, the AAO finds that she accrued unlawful presence beginning April 1, 1997, the effective date of the unlawful presence provisions under the Act, until February 8, 2001, the date on which she filed her first Form I-485, Application to Register Permanent Residence or Adjust Status. She again accrued unlawful presence from July 29, 2001, the day after the Form I-485 was denied, until October 31, 2001, when she filed a second Form I-485, which was denied on January 28, 2005. Accordingly, the applicant's third period of unlawful presence began on January 29, 2005 and lasted until the filing of her third Form I-485 on February 27, 2006. This Form I-485 was administratively closed on June 15, 2006 and the applicant again accrued unlawful presence from June 16, 2006 until she was granted voluntary departure on February 21, 2007. Therefore, she accrued unlawful presence in excess of one year. As the applicant is seeking admission within ten years of her 2007 departure, she is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act and must seek a section 212(a)(9)(B)(v) waiver.<sup>2</sup>

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<sup>2</sup> The AAO notes that the record reflects that on March 27, 1996, the applicant pled no contest to petty theft, a first degree misdemeanor, under Ohio Revised Code § 2913.02 and was sentenced to 180 days in the Mahoning County Jail, 170 days of which were suspended. We do not, however, find it necessary to consider whether the applicant's theft conviction is a crime involving moral turpitude and would bar her admission to the United States under section 212(a)(2)(A)(i)(I) of the Act. In that the applicant was sentenced to no more than six months in jail and the maximum sentence for the applicant's misdemeanor conviction is no more than six months imprisonment, her conviction falls under the petty offense exception found in section 212(a)(2)(A)(ii)(II) of the Act. Accordingly, even if the applicant's theft conviction were found to be a crime involving moral turpitude, it would not render her inadmissible to the United States.

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.

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. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (BIA) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 BIA 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 BIA 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 BIA has also held that the common or typical results of deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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 BIA 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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the BIA considered the scenario of parents being separated from their soon-to-be adult son, finding that

this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

In a sworn statement, dated October 11, 2010, the applicant’s spouse states that if he and his children relocated to Iran with the applicant, they would be persecuted as a result of the family’s religious and political beliefs and activities. He asserts that he was unlawfully detained by Iranian authorities in 1979 and that since leaving Iran, he has been heavily involved in political demonstrations against the Iranian government. The applicant’s spouse states that he is on the Board of Directors of the Committee in Support of Referendum in Iran as its Treasurer and Director of Public Relations.

The applicant’s spouse also asserts that he and his children could not relocate to Iran because they would be unable to obtain adequate care for their medical and psychological conditions, and that the applicant would also suffer upon relocation as she has her own medical problems. He states that he has been diagnosed with Type II Diabetes, Hyperlipidemia, Obstructive Sleep Apnea, Gastrocophageal Reflux, colon polyps and Depression, and that both of his children suffer from

mental illness. Preventative and emergency healthcare, the applicant's spouse asserts, are not nearly as widespread, advanced or easily obtained in Iran as in the United States and it would be nearly impossible to get comparable treatment from a qualified facility.

The applicant's spouse further contends that his children are not familiar with Iranian culture and know little Persian. He also states that the educational system in Iran is not as sophisticated as that in the United States and that this disparity could mean the difference between his son and daughter achieving something "incredible" or losing all chance to reach their potential. He states that if his children lost the opportunity to develop their skills, it would negatively affect his mental health.

In support of the applicant's spouse's claims, the record contains country conditions materials on Iran, including the Department of State's Country Reports on Human Rights Practices – 2009, issued March 11, 2010, and a World Health Organization (WHO) report on public health issues in Iran. The Department of State report catalogs a range of human rights abuses in Iran, including the detention, abuse and torture of individuals who oppose or who are perceived to oppose the current government. The WHO report indicates that the health status of the Iranian people has improved over the four decades since the founding of the Islamic Republic but that considerable disparities remain, including restricted access and low service availability in Iran's less developed provinces. The record also contains news stories published in The New York Times and online BBC reports that focus on the efforts of the Iranian Government to suppress domestic dissent and political activism, as well as articles published by the International Campaign for Human Rights in Iran and Amnesty International, which report on the denial of medical care to political prisoners.

The AAO also notes that U.S. citizens are currently advised against traveling to Iran by the U.S. Department of State. In a travel warning, updated as of October 8, 2010, the Department of State indicates that U.S. citizens of Iranian origin risk being targeted by Iranian authorities. The warning states that the Iranian government does not recognize dual citizenship and has detained and harassed U.S. citizens who, like the applicant's spouse, were born in Iran.

Also contained in the record are copies of letters to members of Congress and former Secretary of State Condoleezza Rice Clinton concerning human rights in Iran, signed by the applicant's spouse as the Chairman of the Iranian-American Community of Ohio; a January 7, 1998 Columbus Dispatch newspaper article on conditions in Iran written by the applicant's spouse; and printouts of information relating to the Committee in Support of Referendum in Iran (CSRI), which identify the applicant's spouse as its Treasurer and Director of Public Relations. The AAO notes that the online printouts indicate that the Committee is a nonprofit organization founded to advance change in Iran through an internationally monitored referendum and to help Iran's democracy movement.

The record further includes medical statements and records that support the majority of the applicant's spouse's statements regarding his and his family's health problems. In a June 18, 2010 statement, Dr. Nicholas R. Watkins, reports that the applicant's spouse is under his care for the treatment of Type II Diabetes, Hyperlipidemia, Depression, Obstructive Sleep Apnea, Gastroesophageal Reflux Disease (GERD), colon polyps and smoking. Dr. Watkins indicates that the applicant's Hyperlipidemia, GERD, and Depression are all under control with medication, but that

his Diabetes is not. He further indicates that the applicant's spouse's sleep apnea is severe. The record contains copies of prescriptions documenting the medications that the applicant's spouse must take to control his medical conditions.

In support of the applicant's spouse's claims regarding his children's mental health, the record includes a May 29, 2010 statement from family therapist [REDACTED], who states that she has been treating the applicant's daughter for Anxiety Disorder for more than four years. [REDACTED] indicates that the applicant's daughter's anxiety is the result of her concern over her potential separation from the applicant. A May 13, 2010 letter from the applicant's son's school, signed by his principal, guidance counselor, and teachers, states that the applicant's son was emotionally distraught at the beginning of the 2008-2009 school year, and represented one of the most severe cases of anxiety the school has ever dealt with. The letter also notes that his behavior was markedly different at the beginning of the 2009-2010 school year, when he appeared to be a happy and productive child.

The record further documents that the applicant suffers from migraines, Chronic Obstructive Pulmonary Disease (COPD), Small Airway Disease, and has been found to have numerous nodules in both lungs, the cause of which has not been diagnosed. A September 5, 2008 letter from [REDACTED] reports that the applicant suffers from a neurological disorder known as hemiplegic migraines and trigeminal autonomic cephalgia that causes migraine headaches, which result in partial paralysis, visual disturbances and fainting. [REDACTED] indicates that the applicant has been hospitalized on several occasions as a result of her condition. A February 3, 2009 letter, addressed to [REDACTED] and signed by [REDACTED] PSC, Pulmonary & Sleep Consultants, diagnoses the applicant with COPD, severe Small Airway Disease and reports that the applicant has been found to have numerous pulmonary nodules in both of her lungs.

Having reviewed the evidence of record, the AAO finds it to demonstrate that the applicant's spouse would suffer extreme hardship upon relocation to Iran. In reaching our decision, we have taken note of the Department of State's report on the Iranian government's treatment of individuals perceived to oppose it; the current travel warning advising Iranian Americans of the risks of traveling to Iran; the applicant's spouse's leadership role in CRSI, an organization that publicly opposes the current government in Iran; and his activism as Chairman of the Iranian-American Community of Ohio. While we do not find the record to establish the state of the healthcare or educational systems in Iran, we, nevertheless, acknowledge the additional burdens that the applicant's health problems, as well as those of the applicant, would place on him if he relocates to Iran. We also note the impact on the applicant's spouse of relocating to Iran with children who have lived their entire lives in the United States and are not literate in Farsi. When these hardship factors are considered in the aggregate, the AAO finds them to support a finding that relocation to Iran would result in extreme hardship for the applicant's spouse.

In his October 11, 2010 statement, the applicant's spouse contends that he would also experience extreme hardship if the applicant's waiver application is denied and he remains in the United States. He asserts that fear of the applicant's removal would harm him and his children psychologically, medically, financially and personally. The applicant's spouse states that he and his children have

already experienced life without the applicant as she lived for more than a year in Canada after her June 19, 2007 departure from the United States.

The applicant's spouse claims that his children have lived with the possibility of their mother's removal their entire lives. He asserts that their separation from the applicant while she was in Canada has had life-altering effects, making it necessary for them to receive psychological treatment. Both children, he states, receive regular therapy. The applicant's spouse indicates that his son was so traumatized by his 2007-2008 separation from the applicant that his academic performance and his social development were affected, and that he is not emotionally equipped to handle a second separation. The applicant's spouse also notes that his daughter was in treatment for Anxiety Disorder even before the applicant's departure for Canada and that, because of the separation, her anxiety and fear have greatly increased. The applicant's spouse claims that his children's emotional distress has significantly worsened his own psychological health.

The applicant's spouse also states that he has several serious medical issues, physical and emotional, that have been made worse by his fear of losing the applicant. He indicates that he has been diagnosed with Type II Diabetes, Hyperlipidemia, Obstructive Sleep Apnea, GERD, colon polyps and Depression. He asserts that the applicant's assistance is essential if he is to survive Diabetes and manage his other conditions. The applicant's spouse asserts that without the emotional stability provided by the applicant, he would commit suicide. He notes that when the applicant was in Canada, his health deteriorated and that his psychological illness worsened as a result of his depression, the stress of trying to care for their children by himself and not maintaining a healthy lifestyle.

The applicant's spouse further asserts that his psychological state would be worsened as a result of his worry about the applicant in Iran as she would be arrested, detained, interrogated and tortured upon her return, and probably killed. He contends that the applicant has engaged in dissident activities aimed at the Iranian government and that, when she lived in Iran, she was expelled from her teaching position for writing a paper on women's rights. He also asserts that the applicant has recently begun the process of converting to Christianity, which is forbidden by Iranian law. The applicant's spouse states that he would also worry that the applicant's spouse's health problems would not receive adequate care in Iran.

With regard to his children, the applicant's spouse contends that, alone, he would be unable to provide the care they require and that, previously, his efforts to care for them in the applicant's absence resulted in a significant decline in his job performance, a decline that nearly cost him his employment. He states that if the applicant is permanently removed, the emotional impact would be even more overwhelming and that he is afraid it would result in the loss of his job. Should he lose his employment, the applicant's spouse states, he and his children would be required to depend on government benefits. He states that his financial situation would be made even worse by the fact that the applicant would be unable to obtain employment in Iran and that he would have to support her. Even if the applicant should find employment, her spouse states, she would earn only a third of what she would be paid for minimum wage employment in the United States. The applicant's spouse further contends that he has been borrowing money to pay for all of the expenses associated with the

applicant's immigration case and the family's medical bills, and worries about how he will pay this money back.

As previously noted, the record contains medical documentation that establishes the applicant has several serious medical problems; that her daughter has been treated for Anxiety Disorder since approximately 2006 as a result of her fears regarding the possibility of being separated from her mother; and that her spouse has been diagnosed with Type II Diabetes, Hyperlipidemia, Obstructive Sleep Apnea, GERD, colon polyps and Depression. It also includes a letter from the principal of the school attended by her son that indicates he experienced severe emotional trauma during her stay in Canada, trauma that could not be alleviated. Also found in the record is a June 18, 2010 letter from Carrie Wirick, a licensed professional clinical counselor, who states that she is treating the applicant's spouse for Major Depression, Moderate, Recurrent. [REDACTED] indicates that she has seen the applicant's spouse for three counseling sessions and that the focus of his treatment has been to help him cope with the uncertainty of the applicant's immigration situation, which, she states, has caused his depression and anxiety. She states that she has advised him to consult his physician regarding medication since he has been experiencing insomnia, racing thoughts, irritability, and hopeless thinking. [REDACTED] also reports that the applicant's spouse has lost weight and has difficulty concentrating. She states that the applicant and the children are being treated by a different counselor.

The record also includes a June 15, 2010 letter from the executive director of the Ohio government office employing the applicant's spouse, who states that his attendance at work and his productivity suffered as a result of the stress created by his concerns over the applicant's immigration situation in the year prior to her voluntary departure to Canada. The executive director also notes that providing financial support to the applicant, the costs of pursuing her residency and other expenses created by his separation from the applicant brought the applicant's spouse to the "verge of bankruptcy." A Performance Improvement Plan, dated May 1, 2006, indicates that the applicant's spouse, during the previous two months, had failed to meet the agency's performance goals and that his failure to increase his productivity might lead to further personnel action. The record also contains a June 10, 2010 letter from the applicant's spouse's immediate supervisor who reports that he and his family have been hit hard financially and emotionally as a result of the applicant's immigration problems. She states that during the applicant's time in Canada, her spouse did not know how to properly care for his children. She also indicates that although the applicant tried to be a good worker, he took a lot of time off to straighten out his children's problems at home and at school.

Documentation of the applicant's spouse's financial situation includes tax returns, earnings statements, and credit card, loan and mortgage statements, as well as copies of utility, cable, automobile insurance and dental bills. Based on the submitted financial evidence, the AAO notes that the applicant has significant debt, approximately \$21,000 on his or the applicant's credit cards; educational loans totaling more than \$291,500; a mortgage of \$180,500 and an equity line of credit of approximately \$43,900. However, a 2010 earnings statement in the record reflects that the applicant earns \$2,156.80 on a biweekly basis or approximately \$56,000 per year.

The applicant's spouse's claim that his depression and anxiety as a result of the applicant's removal would likely result in the loss of his employment is to some extent supported by the letter from the executive director of the Ohio government agency employing the applicant's spouse. The executive director states that the applicant's job performance suffered as a result of his concerns over the applicant's immigration situation. However, the Performance Improvement Plan submitted to establish the impact of separation on the applicant's spouse's job performance covers a two-month period in early 2006, rather than the period of time during which he was separated from the applicant. Accordingly, the record contains insufficient proof that the applicant's removal would be likely to result in the loss of her spouse's employment and financial hardship. Moreover, the applicant's spouse's annual income of \$56,000 places him well above the federal poverty guideline of \$18,530 for a family of three and no evidence establishes the impact of the applicant's removal on the family's financial situation. The record does not demonstrate that she would be unable to obtain employment in Iran and, therefore, need her spouse's financial support. Neither does it establish that her removal would decrease the family's income or add to their current financial obligations.

The record also fails to establish that the applicant's spouse requires the applicant's assistance in dealing with his health problems. Although he claims that the applicant's assistance is needed if he is to survive his diabetes or manage his hyperlipidemia, depression, sleep apnea, and GERD, no medical records or statements indicate that her presence is essential to his physical or mental health or that she plays any role in his healthcare. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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)).

The record does, however, demonstrate that the applicant suffers from the physical medical problems just noted, and from depression and anxiety, which are the result of his concerns over the applicant's immigration situation. We further acknowledge that the applicant would suffer additional emotional hardship because of his fears for the applicant's safety and health in Iran. While we do not find the record to include the documentation needed to establish that the applicant has engaged in any activity, including conversion to Christianity, that would place her at risk in Iran, we also acknowledge that she is married to an individual who is actively opposing the current government and the risk that such a connection could create for the applicant in Iran. We also accept that, upon separation, the applicant's own serious medical problems would provide a source of additional anxiety for her spouse, regardless of whether health care is available to her. Further, while dealing with his own health issues, the applicant's spouse would be required to care for two children who have already evidenced serious negative emotional reactions to being separated from their mother, one of whom has been in therapy for more than four years.

Although the AAO finds none of these health-related factors to individually establish that the applicant's spouse would experience extreme hardship as a result of their separation, we do find that when considered in the aggregate they demonstrate hardship that may be distinguished from that normally experienced by spouses who are separated as a result of removal or exclusion. When the applicant's spouse's physical and mental health conditions, the additional emotional hardship created by his concerns for the applicant's safety and health in Iran, and his responsibilities as the single

parent for two children, at least one of whom is being treated for ongoing mental health issues, are combined with the hardships normally created by the separation of a family, the AAO concludes that the applicant has demonstrated that her spouse would experience extreme hardship if he remains in the United States without her.

In that the applicant has established that the bars to her admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's unlawful presence in the United States for which she now seeks a waiver and her 1996 conviction for petty theft. The mitigating factors include the applicant's U.S. citizen spouse and children; her lawful permanent resident mother; the extreme hardship to her spouse if her waiver application is denied; her children's emotional dependence on her; her own serious medical conditions; the absence of a criminal record since her 1996 conviction; and the letters of support submitted by her and her spouse's friends.

The AAO finds that the immigration violation committed by the applicant and her conviction for petty theft are serious in nature and cannot be condoned. Nevertheless, we conclude that taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, the burden of proving eligibility remains entirely with the applicant. See 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 met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained. The Field Office Director will reopen the Form I-485 for continued processing.<sup>3</sup>

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<sup>3</sup> The Field Office Director administratively closed the Form I-485 filed by the applicant on June 8, 2010 based on her determination that jurisdiction was with the immigration judge. However, the applicant is an "arriving alien," paroled into the United States on the basis of an asylum claim made at a U.S. port-of-entry. As such, the authority to adjudicate her adjustment application rests with USCIS. 8 C.F.R. § 1245.2(a)(1)(ii).