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

U.S. Citizenship and Immigration Services

[redacted]

H6

DATE: NOV 04 2011 OFFICE: TEGUCIGALPA, HONDURAS FILE: [redacted]

IN RE: APPLICANT: [redacted]

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

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. 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,

Ellen C. Johnson

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua who was found to be inadmissible to the United States pursuant to 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 readmission 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 U.S. Citizen spouse.

The Field Office Director concluded that the applicant had not established his qualifying relative would suffer extreme hardship due to the applicant's inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated July 8, 2009.

On appeal, the applicant's spouse contends she suffers from medical, psychological, and financial hardship due to her spouse's absence. *Form I-290B, Notice of Appeal or Motion,* July 30, 2009. The applicant's spouse explains she has been treated for bone mass loss on her upper jaw, and she needs the applicant to help her with transportation to her medical appointments. *Id.* She further states her daughter [redacted] had to return from college to help her, which has caused her to fail classes. *Id.* The applicant's spouse further states she has been taking antidepressants for her depression, but she does not have the "energy to be psychologically treated." *Id.*

The record includes, but is not limited to, the spouse's brief in support of appeal, an unofficial transcript, copies of prescriptions for Keflex, Peridex, and Vicodin, post-operative care instructions, statements from the applicant's spouse, letters from the applicant's spouse's physician and dentist, copies of medical records and appointment cards, a credit card statement, and a birth certificate. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (B) ALIENS UNLAWFULLY PRESENT.-
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> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
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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.

> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.
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> . . . .
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> (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 record reflects the applicant entered the United States without inspection on February 14, 2006, and returned to Nicaragua on October 13, 2008. The applicant has therefore accrued more than one year of unlawful presence, and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative in this case is his U.S. Citizen spouse, whom he married on February 23, 2008.

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. *See Salcido-Salcido*, 138 F.3d at 1293 (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 spouse asserts she "has had several surgeries since [her] husband left" and has been treated "at the [redacted] due to loss of bone mass on [her] upper jaw." *Statement of applicant's spouse*, July 30, 2009. She explains she has to be put under general anesthesia for these surgeries, and needs her husband to help her. *Id.* The spouse states that her daughter [redacted] "had to move with me to help me, but this caused her to fail in her studies and drop her classes in order to take care of" her. *Id.* In support, the applicant submits an unofficial transcript, dated June 9, 2009, showing [redacted] received "F"s in basic math skills, child growth and development, and general biology classes. *See unofficial transcript*, June 9, 2009. As evidence of the spouse's medical difficulties, the record contains a prescription from [redacted], D.D.S. for Keflex, Peridex, and Vicodin as well as a printout of post-operative care instructions, dated July 20, 2009. *See prescription and post-operative care instructions*, July 20, 2009. The applicant submitted a letter dated October 22, 2008 confirming an "oral surgical procedure on October 31, 2008. [The applicant's spouse] will be sedated and will require her husband to drive her to and from the [redacted] before and after her surgery and subsequent follow-up appointments." *Letter from* [redacted], October 22, 2008. The record also

contains medical records which show the spouse had influenza in 2008. [redacted] *medical records,* November 17, 2008. The applicant's spouse explains she contracted influenza when she "had to drive [herself] to the hospital for the removal of [her] stitches. Even though, that day [she] had a fever with a temperature of over 103°, low back pain, headache, and tremendous stress. In addition, [she contracted] a terrible influenza." *Statement of applicant's spouse,* November 20, 2008. Moreover, the applicant's spouse asserts: "I started to suffer from migraine headaches, depression, and acute stress. I went to the doctor and he prescribed me medication, yet I have not been able to recover." *Id.*

These difficulties, the applicant's spouse explains, are also tied to her psychological and emotional conditions. The applicant's spouse indicates her mother passed away after battling thyroid cancer in 2008. *Statement of applicant's spouse,* November 20, 2008. After her mother's death, the applicant's spouse indicates: "Since then, [redacted], my husband, was the only person close to me giving me peace, love, joy and care. He has given me all the love and tenderness that I have needed and he became the light and the purpose of any life." *Id.* With the applicant in Nicaragua, the spouse relates she feels "very sad, hopeless, and deeply depressed." *Statement of applicant's spouse,* July 30, 2009. In support, the applicant submits a letter from [redacted] Therein, [redacted] opines: "My patient currently is experiencing severe emotional distress related to her several difficult circumstances. Presently she has been diagnosed with depression that appears related to these circumstances and she will be needing medication. Please be advised as this may relate to her concern over her husband's immigration status." *Letter from* [redacted] *M.D.,* October 27, 2008. An "after visit summary" indicates her diagnosis is "Depression, Major, Single episode" and she has been taking Citalopram and Temazepam. *After visit summary* and *prescriptions,* [redacted]., October 27, 2008. The spouse's daughter, [redacted] asserts:

> I was living apart from my mother living with friends and to college; I had no idea what my mother was going through until my sister [redacted] told me... When I came back home to see my mother, I hardly recognized her, she had lost a lot of weight, had panic attacks and she was taking 'Celexa,' a strong medication for depression. My mother had ideation of harming herself... Thereafter, I immediately moved back with her... I helped her through. I practically forced her to eat and to care for herself again. She started to recuperate hoping that her husband would come back soon. Meanwhile, I did take her to doctor's visits and to follow her treatment. However, her depression came again when she received your notice informing her [of] the denial [of] her husband's application.

Affidavit of [redacted], July 30, 2009. The applicant's spouse states she does "not have the energy to be psychologically treated." *Statement of applicant's spouse,* July 30, 2009. The spouse further asserts her work as a registered nurse is suffering because of these problems. *Statement of applicant's spouse,* November 30, 2008.

The applicant's spouse contends in addition to her medical and psychological difficulties, she also has economic hardship. *Statement of applicant's spouse,* November 30, 2008. She explains: "I

own two properties in the United States and I am liable for the mortgages of both... It would be devastating to me to support two households... It would be an extreme hardship to support my husband's stay in Nicaragua. With all those extra expenses, I would not be able to visit him and our marriage and my life would be destroyed." *Id.* The spouse indicates she also cannot move to Nicaragua: "I have absolutely no family in Nicaragua. Our home is here in the United States... As I mentioned, I am a Register[ed] Nurse and I have a good job here in the United States. There is a lot of instability in Nicaragua as you can see with the enclosed articles. That would make it impossible for my husband and me to find a job in Nicaragua. Without my current salary to rely upon, not only would we be subjected to the extreme hardship of living in terribly sub-standard conditions, but also we would have nothing to return to [in] the United States except damaged credit and debt." *Id.* No articles on country conditions in Nicaragua were enclosed.

The applicant's spouse's assertions of financial hardship are unsupported by the record. Although she claims it would be "devastating to [her] to support two households" the record does not contain sufficient evidence of the spouse's or the applicant's household income or expenses, including mortgage statements, to support assertions of financial hardship. *Statement of applicant's spouse,* November 30, 2008. The applicant further fails to provide any evidence on whether he would be able to contribute financially if he could join his spouse in the United States, or whether he contributes while in Nicaragua. Without details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

There is also insufficient evidence of the applicant's continuing medical difficulties. Even though the record reflects the applicant's spouse has undergone some dental procedures and has had influenza, the record lacks an explanation from a medical services provider with details about the severity of the spouse's complete medical condition and how it affects her quality of life to allow an assessment of the spouse's medical needs and whether the applicant can assist with those needs. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed, or the nature and extent of any hardship the applicant's spouse would suffer as a result of the applicant's inadmissibility.

The record contains a letter from [redacted] M.D., discussing the applicant's spouse's psychological condition. See *letter from* [redacted] *M.D.,* dated October 27, 2008. Therein, [redacted] notes that applicant's spouse is "experiencing severe emotional distress," and she is diagnosed with "depression." *Id.* [redacted] adds: "Please be advised as this may relate to her concern over her husband's immigration status." *Id.* There is some evidence that the applicant's spouse is taking medication for these issues. *See after visit summary* and *prescriptions,* [redacted] October 27, 2008. Although the statement from [redacted] confirms the applicant's spouse is undergoing psychological difficulties, nothing in the record, including the letter from [redacted], shows that her emotional/psychological hardship goes beyond that normally experienced by family members of inadmissible aliens.

While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Nicaragua without his spouse.

There is also insufficient evidence to show the applicant's spouse would experience extreme hardship upon relocation to Nicaragua. Although the applicant's spouse claims she would be unable to find employment as a United States licensed registered nurse in Nicaragua, there is no evidence to support this assertion. There is also no indication the applicant's spouse would be unable to communicate with people in Nicaragua, or that she needs continuing medical care which would be unavailable in Nicaragua. The AAO again acknowledges the applicant's spouse would experience some difficulties as a result of relocation to Nicaragua; however, without evidence in support, the AAO cannot find that the applicant's spouse would suffer extreme hardship upon relocation to Nicaragua.

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 his U.S. Citizen spouse as required under section 212(a)(9)(B)(v) 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 proceedings for a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.