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

H6

[redacted]

DATE: DEC 19 2012 OFFICE: KINGSTON, JAMAICA File: [redacted]

IN RE: [redacted]

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

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Bahamas 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 readmission within 10 years of his 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 failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* dated August 26, 2011.

On appeal counsel asserts that proper weight was not given to the hardship in the present matter, and that "in this case it's not just a spouse but also a family that would suffer extreme hardship." *See Counsel's Statement in Support of the Appeal*, dated September 19, 2011. Counsel does not specify the identities or relations of any other family members who would suffer hardship if a waiver is not granted and the AAO notes that the applicant and her spouse have no children and that she is the only qualifying relative. Counsel also contests the field office director's findings that the applicant is inadmissible under section 212(a)(2)(A)(i) of the Act and may be under section 212(a)(2)(C) of the Act. *Id.*

The Field Office Director concluded that the applicant is additionally inadmissible to the United States under section 212(a)(2)(A)(i) of the Act, for having been convicted of a crime involving moral turpitude and asserts that "there is *reason to believe*" he is also inadmissible under section 212(a)(2)(C) of the Act for having been convicted of a crime involving a controlled substance for which no waiver is available. With regard to the latter, while the applicant admits to having been arrested in the Bahamas in 1989 for conspiracy and possession of 9.2 kilograms of cocaine, the record as constituted at the time of the field office director's decision shows that these charges were dismissed for lack of sufficient evidence. The AAO finds that there is insufficient evidence in the record to support a finding that the applicant has been involved in the illicit trafficking of a controlled substance rendering him inadmissible under section 212(a)(2)(C) of the Act.

With regard to the former, counsel contends and submits corroborating documentary evidence from the Royal Bahamas Police Force demonstrating that the applicant has never been convicted of any criminal offense or even any traffic offense in the Bahamas. While the applicant admits to having been arrested on an allegation of stealing a car in 1994, counsel maintains that the applicant was never tried or convicted for the offense. Counsel asserts that had such a trial taken place and had the applicant been convicted, the Royal Bahamas Police Force Official Police Certificate would reveal such conviction. In addition to documentary evidence showing that the applicant has no criminal or traffic convictions in the Bahamas, the record contains a letter from the Chief Magistrate, Nassau, the Bahamas stating that a thorough search was conducted in the

Magistrate's Court to retrieve records pertaining to the applicant and that no such records could be located. Based on the foregoing, the AAO finds that the applicant has met his burden of proof to submit evidence related to his arrests, and that there is no basis on which to conclude that the applicant has been convicted of a crime involving moral turpitude rendering him inadmissible to the United States under section 212(a)(2)(A)(i) of the Act. Accordingly, the field office director's findings regarding sections 212(a)(2)(A)(i) and 212(a)(2)(C) are withdrawn. The applicant remains inadmissible, however, under section 212(a)(9)(B)(i)(II) of the Act.

The record contains, but is not limited to: Form I-290B and counsel's statement in support of the appeal; various immigration applications and petitions; a hardship letter; the applicant's spouse's school schedule, grades, and 2010 tuition deduction; tax and income records; letters related to foster care; and documents related to the applicant having no criminal or traffic convictions. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act provides:

> (B) ALIENS UNLAWFULLY PRESENT.-
>
> > (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 entered the United States in or about 1995 with a B1/B2 non-immigrant visa authorizing him to remain no longer than six months. The applicant did not depart the United States until December 31, 2010. The applicant accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions under the Act, to December 31, 2010, a period in excess of one year. As the applicant is seeking admission within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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. *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 is a 42-year-old native and citizen of the United States who has been married to the applicant since May 2009. She writes that the first few weeks of separation were very stressful and she had difficulty sleeping and much anxiety as she and the applicant had never been apart during nearly two years of marriage. The applicant's spouse indicates that if her husband is not permitted to return to the United States he will be unable to complete the requirements to become a foster parent, something important to them both. She explains that under Georgia regulations a child cannot be placed in a home where a couple is separated, though in March 2009 before she was married, a sibling group was temporarily placed in her care alone. No other separation-related hardship assertions have been made, and the applicant's spouse states that her employment provides the sole source of income for their household. The record contains no documentary evidence demonstrating that the applicant ever contributed financially to the household while residing in the United States.

The AAO acknowledges that separation from the applicant has caused and may continue to cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse indicates that she has resided her entire life in the United States. She explains that she is currently pursuing an accounting degree at the University of Phoenix and thus relocation would disrupt her education. The applicant's spouse adds that the financial aid with which she funds her education would not be available to her in the Bahamas in which she would have to pay for college out-of-pocket. Corroborating evidence has not been submitted for the record. She contends that the unemployment rate in the Bahamas is 14.2% which makes it unlikely she would find employment. The record contains no corroborating documentary evidence addressing country conditions of any kind in the Bahamas. 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 applicant's spouse writes that she has worked as a medical biller for the same company for approximately five years and that losing this steady employment would make it impossible for her to fund her college education and meet her existing financial obligations including student loans, a vehicle loan, and installment payments to the Internal Revenue Service. While the AAO recognizes that the applicant's spouse would likely lose her current employment should she choose to relocate, the evidence is insufficient to establish that she would be unable to secure employment in the Bahamas or other income sources through which she could continue meeting her financial obligations during the remainder of the applicant's temporary period of inadmissibility.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including that she has resided her entire life in the United States and likely has close family and community ties hereto; her steady employment of more than five years with the same company; and her stated economic, employment and educational concerns regarding the Bahamas. The AAO finds that considered in the aggregate, the evidence as currently constituted in the record is insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to the Bahamas to be with the applicant during the remainder of his temporary period of inadmissibility.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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 application for 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.