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Date: JUN 20 2012

Office: MEXICO CITY, MEXICO

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IN RE: 

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

ON BEHALF OF APPLICANT:



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,

for Perry Rhew

Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was further found inadmissible under section 212(a)(1)(A)(iii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(A)(iii)(I), as an alien classified as having a physical/mental disorder with associated behavior that may pose, or has posed, a threat to the property, safety or welfare of the alien or others and under section 212(a)(9)(B)(i)(II) of 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 waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v), 212(g), and 212(h) of the Act in order to remain in the United States with his U.S. citizen spouse and two U.S. citizen children.

On his waiver application the applicant stated that he was also inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. However, in his decision, dated September 21, 2009, the field office director noted that the applicant had a record of three criminal convictions, but found that he had either not been convicted of a crime involving moral turpitude or if one of his convictions was a crime involving moral turpitude then he qualified for the petty offense exception and was not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The field office director then found that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) and section 212(a)(1)(A)(iii)(I) of the Act and that he had failed to show extreme hardship to his U.S. citizen spouse because he failed to submit supporting evidence of his spouse's assertions regarding the hardship she was suffering. The application was denied accordingly.

In a brief, dated October 16, 2009, counsel states that the applicant's spouse is suffering extreme emotional and financial hardship as a result of the applicant's inadmissibility.

The AAO notes that the record shows that the applicant has three criminal convictions. On October 7, 2004 the applicant was convicted of Driving While Intoxicated and fined for the offense. On December 4, 2004, the applicant was convicted of 3<sup>rd</sup> Degree Assault, Fight by Mutual Consent, a class two misdemeanor in Nebraska. The applicant was also fined for this offense. The applicant's third conviction occurred on January 10, 2008 and although he was originally charged with Terrorist Threats and Domestic Assault, those charges were amended and the applicant was convicted of Disturbing the Peace. For this offense the applicant was ordered to serve thirty days in jail, eighteen months of probation, attend a domestic violence class, and was fined. Based on the record, it appears that none of the applicant's convictions are for crimes involving moral turpitude, which is consistent with the field office director's decision.

We will now discuss the applicant's inadmissibility under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

The record indicates that the applicant entered the United States without inspection in April 2001. The applicant remained in the United States until June 2008. Therefore, the applicant accrued unlawful presence from when he entered the United States in April 2001 until June 2008. In

applying for an immigrant visa, the applicant is seeking admission within 10 years of his 2008 departure. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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

(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.

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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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-Morales*, 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 record of hardship includes two affidavits from the applicant's spouse, financial documents, and medical documents.

Counsel claims that the applicant's spouse is suffering emotional and financial hardship as a result of being separated from the applicant. Counsel states that since the applicant's departure his spouse has been suffering from depression that has caused her to quit her job as a social worker for the Nebraska Department of Health and Human Services, decreasing the family's income and losing the family's health insurance coverage. He states that she has been having significant financial difficulties as a result of having to leave her job and from being separated from the applicant

including not being able to pay her monthly expenses, incurring \$30,000 in debt, and being about to file for bankruptcy.

Counsel also claims that the applicant would suffer extreme financial hardship as a result of relocating to Mexico where neither she nor the applicant would be able to find employment and where her son would be unable to attend speech therapy sessions, which he requires as a result of developmental delays.

The AAO finds that the record indicates that the applicant has sought credit counseling services, the advice of an attorney regarding the possibility of filing for bankruptcy, and has outstanding debts in the amount of almost \$30,000. The record also includes letters from the applicant's two employers, stating that she is working one fulltime position at \$12.50 per hour and one part time position at \$8.50 an hour. The applicant's spouse's updated affidavit supports counsel's hardship claims and provides additional details regarding her depression, loss of income and health insurance, and her son's medical needs.

However, the AAO does not find that the applicant's spouse would suffer extreme hardship upon relocation. The record does not include country condition information to substantiate the claims that the applicant and/or his spouse would not be able to find employment in Mexico or that their son would not have access to speech therapy sessions in Mexico. The AAO recognizes that certain areas in Mexico are experiencing elevated incidents of narco-related violence, but the applicant has not made any hardship claims related to this violence nor has he established where in Mexico he and his family would likely reside. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, the applicant has not established that his spouse would suffer extreme hardship as a result of his inadmissibility.

The AAO finds that the applicant is also inadmissible under section 212(a)(1)(A)(iii)(I) of the Act as an alien classified as having a physical/mental disorder with associated behavior that may pose, or has posed, a threat to the property, safety or welfare of the alien or others and does not currently meet the requirements of a section 212(g) waiver.

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

(a) Classes of Aliens Ineligible for Visas or Admission.--Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.--

(A) In general.--Any alien-

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General [now Secretary of Homeland Security])—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others . . . is inadmissible.

(B) Waiver authorized.--For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

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

(g) The Attorney General may waive the application of—

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the [Secretary] after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

The record reflects that the panel physician who conducted the applicant's medical examination classified the applicant as having a Class A medical condition, Alcohol Abuse, due to his harmful behavior associated with his arrests in 2004 and more recently in 2007. The field office director found the applicant inadmissible under section 212(a)(1)(A)(iii) of the Act on this basis.

Regulations at 8 C.F.R. § 212.7(b) govern aliens with certain mental conditions, who are eligible for immigrant visas but require the approval of waivers of grounds of inadmissibility. The regulations require that the applicant submit the waiver application and a statement to the appropriate USCIS office indicating that arrangements have been made to provide the alien's complete medical history, including details of any hospitalization or institutional care or treatment for any physical or mental condition; the alien's current physical and mental condition, including prognosis and life expectancy; and a psychiatric examination. 8 C.F.R. § 212.7(b)(4). "For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery." *Id.* The medical report must then be forwarded to the U.S. Public Health Service for review. *Id.* These regulations further provide:

(ii) *Submission of statement.* Upon being notified that the medical report has been reviewed by the U.S. Public Health Service and determined to be acceptable, the alien or the alien's sponsoring family member shall submit a statement to the consular or [USCIS] office. The statement must be from a clinic, hospital, institution, specialized facility, or specialist in the United States approved by the

U.S. Public Health Service. The alien or alien's sponsor may be referred to the mental retardation or mental health agency of the state of proposed residence for guidance in selecting a post-arrival medical examining authority who will complete the evaluation and provide an evaluation report to the Centers for Disease Control. The statement must specify the name and address of the specialized facility, or specialist, and must affirm that:

(A) The specified facility or specialist agrees to evaluate the alien's mental status and prepare a complete report of the findings of such evaluation.

(B) The alien, the alien's sponsoring family member, or another responsible person has made complete financial arrangements for payment of any charges that may be incurred after arrival for studies, care, training and service;

(C) The Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA. 30333 shall be furnished:

(1) The report evaluating the alien's mental status within 30 days after the alien's arrival; and

(2) Prompt notification of the alien's failure to report to the facility or specialist within 30 days after being notified by the U.S. Public Health Service that the alien has arrived in the United States.

(D) The alien shall be in an outpatient, inpatient, study, or other specified status as determined by the responsible local physician or specialist during the initial evaluation.

The record reflects that the applicant does not meet the requirements for a waiver of inadmissibility under section 212(g) of the Act. The record fails to contain the following documentation: a Centers for Disease Control (CDC) form 4,422-1, Statements in Support of Application for Waiver of Inadmissibility; Part I of CDC form 4,422-1 reflecting that the Department of Health and Human Services Public Health Service (PHS) received the required medical documentation regarding the applicant's present condition with the PHS reviewing official classifying the applicant as having a Class A medical condition, Alcohol Abuse, which renders him inadmissible under section 212(a)(1)(A)(iii)(I); Part II of CDC form 4,422-1 showing that, pursuant to 8 C.F.R. § 212.7(b)(4)(ii), the applicant obtained the required statement from a licensed health professional, at a PHS-approved facility; and Part III of Form CDC 4,422-1, statement from the applicant's spouse showing that the necessary arrangements for further examination of the applicant will be made upon his entry to the United States. In addition, the record fails to show that the PHS reviewing official approved the applicant's Form CDC 4,422-1, thus certifying PHS's opinion that appropriate follow-up care would be provided upon the applicant's entry to the United States, and that PHS has no objection to his entry. Therefore, the AAO finds that the applicant has not established eligibility for a waiver of the ground of inadmissibility arising under section 212(g) of the Act pertaining to aliens who have been classified as having a Class A medical condition.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility the burden of proving eligibility remains entirely with the applicant. *See* 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.