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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: NOV 20 2013 Office: TEGUCIGALPA

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Michael Shumway

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Tegucigalpa, Honduras, denied the waiver application and the Administrative Appeals Office (AAO) remanded the matter for a determination of the applicant's inadmissibility under section 212(a)(6)(B) of the Act. Following a determination that the applicant is not inadmissible under section 212(a)(6)(B), the appeal was returned for adjudication by the AAO. The appeal will be sustained.

The applicant is a native and citizen of Honduras who was found to be inadmissible to the United States 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 admission within 10 years of her last departure, and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and lawful permanent resident child.

In a decision dated May 3, 2012, the field office director found that the applicant had failed to demonstrate that her qualifying spouse would experience extreme hardship if the waiver application were denied. The director explained that the record lacked evidence to support the applicant's claims that her spouse was experiencing financial and emotional hardship in her absence. The director also found that the qualifying spouse's concerns regarding relocation to Honduras, which were based on the anticipated loss of employment and health benefits and unstable political conditions in that country, were common results of inadmissibility and did not constitute extreme hardship. Accordingly, the director denied the applicant's waiver application.

This matter was first before the AAO on appeal on June 21, 2013. In our decision of that date, we confirmed the director's finding that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accrued more than one year of unlawful presence in the United States between July 23, 2001 and December 19, 2010.

However, we found that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. We noted that the applicant was convicted of theft by shoplifting on January 10, 2003 in violation of section 16-8-14 of the Georgia Code and was sentenced to probation for 12 months. We also noted that theft by shoplifting is a first degree misdemeanor which is punishable by imprisonment not exceeding one year. Therefore, we indicated that even were we to find the applicant's conviction to be a crime involving moral turpitude, we would also find the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act to apply because the maximum possible sentence for the crime does not exceed one year and the applicant was not sentenced to a term of imprisonment in excess of six months. Additionally, we stated that although the applicant was arrested on February 6, 2003 for misdemeanor battery and cruelty to children, the record reflects that she was not charged or convicted for those offenses. Therefore, the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

We also indicated in our June 21, 2013 decision that the applicant may be inadmissible under section 212(a)(6)(B) of the Act for failure to attend a removal proceeding on September 21, 2001. Accordingly, we remanded the matter for a determination of whether the applicant is inadmissible under section 212(a)(6)(B) of the Act, for which no waiver is available. A consular officer has since determined that the applicant is not subject to the section 212(a)(6)(B) ground of inadmissibility. Therefore, the matter is again before the AAO on appeal and we will now adjudicate the applicant's application for a waiver under section 212(a)(9)(B)(v) of the Act.

On appeal, the applicant's qualifying spouse claims that separation has been extremely difficult for him, the applicant, and their family. He asserts that the applicant is an important part of his life and that they wish to spend the rest of their lives together. He contends that he is experiencing financial, medical, and emotional hardships in the applicant's absence and that the applicant's son is suffering as well. The qualifying spouse also asserts that he and the applicant's son would be unable to relocate to Honduras. Additionally, he states that the applicant was previously in an abusive relationship and that her arrest for cruelty to children, which has now been expunged from her record, was the result of false accusations by her abusive former boyfriend.

The record includes, but is not limited to: statements from the qualifying spouse; medical records relating to the qualifying spouse; financial records; documentation relating to the temporary legal guardianship of the applicant's son by the qualifying spouse; a statement from the applicant's son; records relating to the applicant's son's education; documents regarding the applicant's criminal history; and country conditions information. 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.-
>
> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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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.
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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 applicant entered the United States without inspection on July 23, 2001 and remained in the United States until December 19, 2010, when she complied with a voluntary departure order. Therefore, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. She has not contested this ground of inadmissibility on appeal.

A waiver under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent. Children are not qualifying relatives for purposes of a waiver under section 212(a)(9)(B)(v) of the Act, so the applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant's child will be considered only to the extent that it results in hardship to her spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (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 of Immigration Appeals (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 U.S. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

On appeal, the qualifying spouse states that his separation from the applicant is causing health problems for him. He contends that he has "lost everything" while waiting for the applicant's immigration situation to be resolved. He states that he is depressed and has been suffering headaches, hair and weight loss, severe joint and muscle pain, and other physical problems which his doctor believes are the result of exhaustion and stress. The record contains prescription receipts indicating that the qualifying spouse was prescribed the depression medication [redacted] on August 28, 2012 and October 1, 2012. Additionally, appointment records from [redacted] indicate that the qualifying spouse has been diagnosed with chronic major depression and that he attended appointments with behavioral health specialists on at least eight occasions between August 13, 2012 and January 28, 2013. Medical records also show that the qualifying spouse has been treated for abnormal weight loss, hair loss, numbness and tingling, and joint pain.

The qualifying spouse also states that he worries about the health and safety of the applicant in Honduras. He explains that the applicant has experienced discoloration on her face and possible ovarian cysts. He has submitted medical records relating to the applicant, including a report of a diagnostic mammogram, the results of which were normal, a test of cholesterol levels, and dental care. The record contains additional medical records in Spanish, but those records cannot be considered because they are not accompanied by certified English translations as required by 8 C.F.R. § 103.2(b)(3). In addition to his concerns about the applicant's medical conditions, the qualifying spouse also worries that the applicant is living in unsanitary and unsafe conditions in Honduras. He asserts that the applicant has limited access to clean water and is forced to ration her supplies of water while awaiting delivery of water by the government. To support these claims, the qualifying spouse has submitted photographs of empty bottles, which he states are water collection containers, and a photograph of an outdoor toilet, which he alleges the applicant must use when water is not available to the indoor facilities. The qualifying spouse also notes that Honduras has the highest murder rate in the world and he has submitted numerous articles regarding crime and violence in Honduras. Additionally, he contends that the applicant's abusive former boyfriend lives in Honduras and has asked the applicant's family for information on her whereabouts.

Furthermore, the qualifying spouse asserts that the applicant's son and her other family members have suffered in her absence. He notes that the applicant has missed the births of her grandchildren and that her family misses her. The qualifying spouse also has been appointed legal guardian of his stepson and he is responsible for providing all support to in the applicant's absence. The record contains a copy of the Temporary Letters of Guardianship of Minor, dated April 16, 2012, which indicate that the qualifying spouse was appointed because was "found by [the] Court to be in need of a guardian . . . ." The qualifying spouse asserts that has struggled in school and that his "attitude and demeanor" have changed while he has been separated from the applicant. The record contains a letter from who states that his grades have dropped because he misses the applicant and that he has been unable to focus in school since learning that the applicant's waiver request was denied. Additionally, the record includes report cards which show that earned A's, B's, and C's in elementary and middle school but is now failing most of his classes at E-mails from his teachers to the qualifying spouse also indicate that sleeps in class, fails to complete most assigned work, often misses class or arrives late, and performs poorly on tests.

The qualifying spouse also contends that he is facing financial hardship in the applicant's absence. He states that he is working seven days per week at three jobs in order to support himself, the applicant, and . However, he states that he is still struggling financially and that he and have been forced to move in with the qualifying spouse's parents. He also notes that collection agencies have contacted him about several past due bills. He asserts that the applicant used to earn a small income cleaning houses in the United States and that her contributions assisted the family in buying food. In support of the qualifying spouse's claims of financial difficulties, the record contains a letter he wrote to on December 20, 2010 indicating his intent to vacate his apartment due to his inability to afford the

rent, as well as a January 6, 2011 letter from regarding a late fee for failure to pay that month's rent. The record also contains past due bills, notifications from collections agencies regarding failure to pay debts to the apartment complex and at least three other companies, and a cancellation of the qualifying spouse's car insurance policy for failure to pay. Furthermore, the qualifying spouse has submitted his pay stubs from his jobs at where he works approximately seven to 16 hours per week, where he works between 20 and 40 hours per week, and where he works 40 hours per week. He has also submitted his tax returns, which show that he earned $23,673 in 2010 and $22,437 in 2009. Finally, the record contains numerous money transfer receipts indicating that the qualifying spouse has sent payments generally ranging between $100 and $500 to the applicant on approximately a weekly basis since January 2011.

The qualifying spouse also alleges that he would be unable to relocate to Honduras. He notes that his only work experience is in law enforcement, which he would be unable to do in Honduras due to his inability to speak Spanish. He also is unfamiliar with the culture of Honduras. He also fears that could be targeted by gangs in Honduras and would receive an inferior education there. Additionally, he notes that he and would lose their health insurance if they were to leave the United States.

The AAO finds that the qualifying spouse will suffer extreme hardship if his separation from the applicant continues. The record reflects that the qualifying spouse has been diagnosed with depression for which he has required prescription medication and ongoing treatment with behavioral health specialists for a period of at least six months. Medical records also support his claim that he has been treated for unexplained weight loss and other physical symptoms. The record also demonstrates that the qualifying spouse is experiencing financial hardship in his efforts to support himself, the applicant, and The financial documentation shows that despite the qualifying spouse's working three jobs, sometimes in excess of 80 hours per week, his income is insufficient to cover his rent, car insurance, and other bills. The qualifying spouse is also legally responsible for supporting in the applicant's absence and he is attempting to support the applicant in Honduras.

Additionally, the record reflects that the applicant is suffering hardship due to his responsibility as legal guardian. In addition to the financial stress of supporting as discussed above, the applicant is also struggling to manage emotional, behavioral, and academic difficulties in the applicant's absence. Although is not a qualifying relative for purposes of this application, hardship to can be considered to the extent that it causes hardship to the qualifying spouse. In this case, the evidence demonstrates that the difficulties is experiencing will cause extreme hardship to the qualifying spouse if he continues to be solely responsible for wellbeing. The record shows that the qualifying spouse has made significant efforts to be involved in education and to work with teachers to improve behavior and grades at school, but that is struggling to focus on school while separated from the applicant.

The AAO also finds that the qualifying spouse would face extreme hardship if he were to relocate to Honduras with the applicant. The country conditions information in the record indicates that Honduras has the world's highest murder rate and that drug violence in the country is prevalent. The U.S. Department of State also issued a Travel Warning regarding Honduras on June 17, 2013, noting that "the crime and violence levels in Honduras remain critically high." The Travel Warning also indicates that homicide rates are higher than the national average in certain areas, including Tegucigalpa, which is the applicant's current place of residence. The Travel Warning further notes that kidnapping, carjacking, armed robbery, and other violent crimes are serious problems. The qualifying spouse is also unfamiliar with the language and culture of Honduras. He was born in the United States and has close ties to family, friends, and employment in this country. Adjustment to life in Honduras, particularly in light of the high levels of violence there, would likely be very difficult for him. Relocation would also separate the qualifying spouse from his doctors and would cause him to lose his health insurance, thereby interrupting the treatment he has been receiving for depression and other medical problems.

Additionally, relocation by the qualifying spouse would likely cause hardship for who is the qualifying spouse's legal ward. There is no indication that anyone else would be available to care for in the absence of the qualifying spouse. Leaving alone in the United States without appropriate care would cause extreme hardship for the qualifying spouse because he is legally obligated to care for and is emotionally and financially invested in his wellbeing. Relocating to Honduras also would likely result in hardship for the qualifying spouse as he would be forced to assist with a difficult transition in his living conditions, culture, health care, and education. explained in his letter that he struggled to adjust to life in Honduras when he lived there with the applicant from 2010 to 2011 because he had grown up in the United States and did not speak Spanish. Medical records also show that Jorge has been diagnosed with a heart murmur which requires him notify his doctor if his heart rate exceeds 120 beats per minute. may be unable to access necessary care for this condition in Honduras, which would create hardships for the qualifying spouse in maintaining health.

We acknowledge that some of the hardships are not necessarily uncommon, but when considered in the aggregate, the AAO finds that the difficulties the qualifying spouse would face if the waiver application were denied would amount to extreme hardship. *See Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996); *see also Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 566 (BIA 1999).

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).

Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 unfavorable factors in this case are the applicant's unlawful presence in the United States and her conviction for theft by shoplifting.[1] Favorable factors include the extreme hardship the qualifying spouse would suffer if the waiver application were denied and the hardship the applicant's son is experiencing in her absence. Additionally, we note that the applicant's conviction occurred over ten years ago and that there is no indication she has been involved in additional criminal activity since that date. Also, a letter from , dated August 1, 2003, indicates that the applicant was ordered to attend a domestic violence program in June 2003 but that her participation in the program revealed that she had been "battered for many years" in a previous relationship. The letter notes that the applicant "made excellent use of her time" in the domestic violence program.

Although the applicant's violation of immigration law and her criminal conviction cannot be condoned, the positive factors in this case outweigh the negative factors. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.

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[1] The AAO does not consider the applicant's arrest on suspicion of cruelty to children to be a relevant factor because she was ultimately neither charged with nor convicted of the crime.