U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529

dentifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: MAY 23 2006

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of India who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the spouse of a citizen of the United States and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 8, 2004.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) erred in finding that the applicant's spouse would not suffer extreme hardship if the applicant's waiver were denied. Counsel contends that CIS failed to properly consider tragedies suffered by the applicant's spouse and her medical condition. Moreover, counsel indicates that CIS violated the applicant's due process rights by conducting an inadequate and flawed waiver interview. *Addendum to a Notice of Appeal to the AAU (Form I-290B)*, dated December 10, 2004.

In support of these assertions, counsel submits, *inter alia*, a brief, dated January 7, 2005; a declaration of the applicant; a declaration of the applicant's spouse; a copy of the divorce decree terminating a prior marriage of the applicant's spouse; a neuropsychological evaluation of the applicant's spouse; newspaper reports; copies of medical records for the applicant's spouse; letters of support; documents relating to the criminal record of the applicant; findings of a clinical interview of the applicant and a declaration of counsel. The entire record was considered in rendering a decision on the appeal.

The record reflects that on January 13, 1994, the applicant was convicted of Conspiracy to Make False Statements to a Government Agency and to Make and Sell Fraudulent Documents in the United States District Court for the Central District of California. The applicant was sentenced to pay a fine of $2500 and probation for three years.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.
>
> (ii) Exception – Clause (i)(I) shall not apply to an alien who committed only one crime if –
>
> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed . . . more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States ...

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> . . . .
>
> (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act; the only relevant hardship in the present case is that suffered by the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

The record reflects that the applicant's spouse possesses a history of abuse beginning at the hands of her parents and continuing in her relationship with her first husband. *See Evaluation by* dated December 2, 2004 (stating that the applicant's spouse was physically and verbally abused by both of her parents and that she attempted suicide as a result of her abusive relationship with her previous spouse). In addition to the psychological scarring commensurate with these situations, the applicant's spouse has endured the endangerment and loss of her children. The record reflects that, in 1975, the child of the applicant's spouse was kidnapped by a child molester. *See Boy, 8, Feared Kidnap Victim in Hollywood*, dated April 15, 1975, *and related articles*. The son of the applicant's spouse was returned, but, at the age of 25, was killed in a road rage shooting. *See Passenger Shot in Traffic Dispute Dies*, undated, *and related articles*. The other child of the applicant's spouse died at the age of 19 when he was struck by a car in 1992. *See Driver Dies When Car Hits Guardrail*, undated. *See also Evaluation by* at 1. The applicant's spouse reports that she has not yet recovered from her losses and that she does not believe that she ever completely will. *Declaration of* dated January 5, 2005.

The record indicates that the applicant's spouse was involved in a car accident on November 30, 2003 during which she suffered several injuries. *Brief*, dated January 7, 2005. The record reflects that the applicant's spouse underwent physical therapy in order to combat her symptoms and was diagnosed with some permanent disability. *See Letter from* undated. As a result of the accident, the applicant's spouse is unwilling to drive and requires assistance in completing routine tasks. *Brief* at 5. *See also Declaration of* Owing in part to these injuries, but more significantly to the psychological suffering endured as described *supra*, the applicant's spouse "feels detached and estranged from everyone other than her husband." *Evaluation by* at 4. The submitted psychological evaluation of the applicant's spouse concludes that the applicant's spouse requires the assistance of the applicant for support in most areas of life; that she is unable to live independently and that the loss of the applicant would "jeopardize her physical and emotional wellbeing and safety." *Id.* at 5.

The situation presented in this application rises to the level of extreme hardship because the record demonstrates that the applicant's spouse would suffer extreme psychological and emotional distress if the applicant were denied admissibility to the United States. The suffering experienced by the applicant's spouse would surpass the hardship typically encountered in instances of separation because of the life tragedies endured by the applicant's spouse and the evidenced effects, both temporary and permanent, that have accrued as a result. The record reflects that the applicant is uniquely positioned to provide physical and emotional support to his spouse and that the applicant's spouse would likely not accept or benefit from assistance from another source. As stated by the applicant's spouse, "After the losses I have already suffered, I am certain I cannot survive the loss of my husband." *Declaration of*

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship that would be imposed on the applicant's spouse a result of the applicant's inadmissibility to the United States.

The unfavorable factor in this matter is the applicant's conviction for Conspiracy to Make False Statements to a Government Agency and to Make and Sell Fraudulent Documents. While the AAO cannot emphasize enough the seriousness with which it regards this flagrant breach of the federal laws of the United States, the severity of the applicant's crime is at least partially diminished by the fact that, according to the record, the applicant has not been convicted of any other crime for the past twelve years. Moreover, the record evidences that the applicant engages in charitable work and is an upstanding member of society. *See Brief* at 11-12 (listing charitable organizations to which the applicant contributes). The record includes several letters of support declaring the applicant to be a "compassionate, kind and gentle person." *Declaration of* , dated January 5, 2005. A psychological evaluation of the applicant concludes that the applicant possesses remorse for his actions and has successfully rehabilitated. *See Letter from* , dated December 8m 2004.

It is concluded that the favorable factors in the application outweigh the unfavorable ones. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The previous decision of the district director is withdrawn and the application is approved.