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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: FEB 0 1 2013 Office: Baltimore, MD FILE:

IN RE: Applicant:

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

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 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 that any motion must 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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to 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 committed crimes involving moral turpitude. The applicant is the spouse and daughter of U.S. citizens. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in conjunction with an application for adjustment of status, in order to remain in the United States as a lawful permanent resident.

The director, in a decision dated September 13, 2011, found that the applicant had failed to establish extreme hardship to her qualifying relatives, as required under section 212(h) of the Act, and denied her Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, counsel contends that the director's decision was arbitrary and contrary to law, because the applicant had clearly established all the requirements of a waiver under section 212(h) of the Act. *See Form I-290B, Notice of Appeal or Motion*, dated October 11, 2011.

The record of evidence includes, but is not limited to, counsel's brief; the applicant's statement; statements of the applicant's U.S. citizen spouse and mother; letters from the treating physicians for the applicant's spouse and mother; doctor's letter and medical records for the applicant; tax records; family photographs; and the applicant's criminal records. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

> (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 (other than a purely political offense) 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 (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
> >
> > (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential

> elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The record reflects that the applicant was admitted to the United States on September 1, 2002 as a B2 nonimmigrant visitor for an authorized period not to exceed February 28, 2003. She thereafter remained in the United States beyond the authorized period without permission. The record indicates that the applicant had been arrested in the United States on two occasions prior to her 2002 admission. On April 8, 1999, the applicant was arrested and charged with Forgery in the Second Degree in violation of section 170.10(3) of the New York Penal Law (NYPL); Possession of a Forged Instrument in the Second Degree under NYPL § 170.25; and Grand Larceny in the Third Degree under NYPL § 155.35. On April 29, 1999, the applicant was pled guilty to Forgery in the Third Degree, a Class A misdemeanor, in violation of NYPL § 170.05. She was sentenced to three years of probation and fined five hundred dollars. On April 16, 1999, the applicant was again arrested on charges of Possession of a Forged Instrument in the Second Degree under NYPL § 170.25; Criminal Possession of Stolen Property in the Third Degree under NYPL § 165.50; and Criminal Impersonation in the Second Degree under NYPL § 190.25. She pled guilty to Criminal Possession of Stolen Property in the Fifth Degree, a Class A misdemeanor, under NYPL § 165.40, and was again sentenced to three years of probation and a five hundred dollar fine on April 29, 1999.

As the applicant has not disputed inadmissibility under section 212(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, and the record does not show that finding of inadmissibility to be in error, the AAO will not disturb the determination.

Section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

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 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 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.

Counsel contends that the applicant's U.S. citizen husband, , would suffer extreme hardship upon separation. The record indicates that the applicant and her husband have been married for approximately four years since January 2009. In his July 17, 2009 statement, asserts that the applicant is the head of their household and takes care of his needs fulltime. He states that he cannot imagine life without his wife and the thought of his wife having to leave the United States is causing him great deal of anxiety and depression. The applicant's husband hypothesizes that he fears that this level of stress will lead to panic attacks, cardiac arrest, and other consequences. He indicates that at the advice of his children, he has sought guidance from his pastor to reflect on his wife's and his future. The applicant submitted an undated letter from physician, Dr. , MD, indicating that suffers from arthritis and osteoporosis and has developed anxiety/depression because of the fear of losing his wife. We note, however, that there is no suggestion that his conditions are not being successfully managed or how they hinder him particularly. In fact, the record shows that is currently employed and is the sole

financial provider in the marital relationship. Although Dr. also indicates that has developed anxiety/depression due to fear of losing his wife, we observe that there is no indication of Dr. qualifications to diagnose and treat mental health conditions. There is also no indication of when or how long the applicant's husband has been suffering from this condition, if he has a history of mental illness, whether he is receiving treatment for the condition, or, if not, how treatment might impact the condition. Moreover, based on the physician's assertion, the diagnosis of depression and anxiety appears to be a situational one, stemming specifically from the applicant's current unsettled immigration future. There is no suggestion that is susceptible to ongoing emotional health problems once the applicant's immigration problems are resolved, even if unfavorably. Furthermore, we note that the record discloses that the applicant's husband has extensive family in the United States from whom he appears to receive emotional and moral support, including adult children and grandchildren. *See July 17, 2009 Statement of*

also expresses fears for the health and safety of his wife if she went to Ecuador, where he asserts that quality of life is devastating and unsanitary and medical care ineffective. *See id.* In an updated letter on appeal, dated October 12, 2011, the applicant's husband states that his wife was diagnosed with breast cancer in March 2011 and has undergone a double mastectomy. He states that this has been an emotionally difficult time for them and that he is at a loss as to how to comfort his wife or make her happy. The record contains a November 1, 2011 letter from Dr. MD, Director of Breast Surgery at and medical records, confirming the applicant's diagnosis and surgery. Dr. indicates that the applicant was planning breast reconstruction surgery, was being monitored closely by medical staff, and required frequent clinic appointments.

Although the AAO sympathizes with the applicant and her husband regarding the former's medical diagnosis, we cannot conclude from this record that the applicant has demonstrated that the hardships to her husband upon separation, considered in the aggregate, rise to the level of extreme hardship. The applicant has not shown that the emotional, physical, and medical impact of separation is greater than those faced by others in the applicant's husband's situation. We note that the medical records for the applicant appear to show that the applicant has successfully undergone surgery for breast cancer. Moreover, they do not provide a prognosis for the applicant's medical condition, although we recognize that the applicant will likely face ongoing medical monitoring. Additionally, while the applicant's husband expressed fears that his wife would not have access to adequate medical treatment in Ecuador, the record lacks evidence to support such fears. In fact, the U.S. Department of State reports that adequate medical care is available in the major cities of Ecuador. *See* Bureau of Consular Affairs, U.S. Dep't of State, *Country Specific Information: Ecuador* (Dec. 12, 2011). We also observe that the record indicates that the applicant has two adult children who were born in Ecuador. The record, however, does not address whether or not the applicant's adult children continue to reside in Ecuador and would be in a position to provide her with emotional and financial support. *See Form I-485, Application to Register Permanent Residence or Adjust Status, and Form I-130, Petition for Alien Relative.* Accordingly, we cannot conclude the applicant's medical condition would result in emotional hardship to the applicant's husband upon separation that is more than the normal or usual hardships faced by others in his circumstances.

Counsel has also asserted that the applicant's 78-year-old mother, would suffer extreme hardship upon separation. asserts in her statement that she suffers from

hypertension, diabetes mellitus, and osteoarthritis, as corroborated by letters from her doctor, Dr. MD. She states that because of her conditions she is currently on several medications and is often in the hospital, and that the applicant is her only companion to and from the hospital. She also states that her health condition is worse and that she does not know who she can depend on if the applicant is forced to leave the United States. The AAO observes that doctor's letters do not indicate that her health conditions are not being treated or managed. Moreover, although Dr. indicates that relies on the applicant for assistance, there is no indication that her health condition will deteriorate without the applicant. Moreover, we note that the record shows that is married and has a U.S. citizen son, who resides in New York, as well as a niece. *See Statements of and* There is discussion of whether the applicant's brother can and will provide the assistance or support to their mother should the applicant depart the United States. Although the applicant's mother may face some emotional distress and the usual hardships associated with separation from a family member, the record does not support a finding that the asserted hardships rise to the level of extreme hardship.

Having considered the evidence of record, the AAO finds that it does not demonstrate that the applicant's citizen husband or mother would experience extreme hardship as a result of separation from the applicant. The applicant has not shown the hardship they would suffer constitutes "significant hardship over and above the normal disruption of social and community ties" normally associated with deportation or refusal of admission. *Matter of O-J-O-*, 21 I&N Dec. at 385.

We also consider whether the applicant's qualifying relatives would experience extreme hardship upon relocation with her to Ecuador. The applicant's husband indicates that he would suffer by relocating to Ecuador because he has no relatives, no property, and no ties there. He states that his life revolves around his family, who are all in the United States, and that his children and grandchildren would suffer extreme hardship to lose their father and grandfather. Furthermore, states that he would have to find a job in Ecuador and that at his age (65), he would not be able to do so, noting that unemployment rate is very high there. The AAO observes that the record shows that like the applicant, is a native of Ecuador, who became a U.S. citizen in 1996 as an adult. Thus, he is not unfamiliar with the language or culture of Ecuador. Although the AAO acknowledges that the applicant's husband may very well suffer distress as a result of separation from his family and friends in the United States, we observe that the applicant herself more recently departed Ecuador and may very well have ties there that may assist her and her spouse in transitioning there. However, the record as previously noted is unclear about the applicant's ties in Ecuador, particularly as to whether she has family there, including adult children, who could assist her and her husband in relocating there. Finally, although the applicant's husband has expressed concerns regarding their financial future and the availability of adequate medical care in Ecuador, the applicant has not provided supporting evidence to corroborate these fears. 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)). Consequently, the AAO cannot conclude from this record that the applicant has demonstrated extreme hardship to her husband upon relocation in the event her waiver application is denied.

Similarly, the applicant has also failed to demonstrate that the applicant's mother would suffer extreme hardship upon relocation, where there is no indication in the record that she has any

intention of such relocation. While the applicant and her mother address the hardships the latter would face upon separation from the applicant, they fail entirely in addressing those she would face if she relocated. Accordingly, the applicant has not met her burden to demonstrate extreme hardship to her mother upon relocation. Moreover, we note that the applicant's mother has asserted that the applicant is the one who assists her and that the loss of such assistance would cause her extreme hardship. Thus, upon relocation, the applicant's mother would continue to have her daughter's support and care, although she contends that she has no ties in Ecuador anymore. Further, the applicant's mother would not face the hardship of adapting to an unfamiliar country, culture or language, as she is also a native of Ecuador. Finally, there is no indication that the applicant's mother's health conditions are such that cannot be treated adequately in Ecuador.

Based on the evidence of record, the AAO finds that the applicant has not demonstrated that her husband or mother would face extreme hardship upon relocation to Ecuador. We recognize that relocating may result in emotional distress and the usual hardships associated with relocation. However, the applicant has failed to show that the hardship factors, in the aggregate, rise to the level of extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, 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 her qualifying relatives as required under section 212(h) of the Act. She, therefore, remains inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. Since the applicant failed to establish statutory eligibility for the waiver under section 212(h) of the Act, the AAO finds that no purpose would be served in considering whether the applicant merits the waivers in the exercise of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.