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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: FEB 2 7 2013 Office: BALTIMORE, MD FILE: [redacted]

IN RE: Applicant: [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:

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 in accordance with the instructions on 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,

Michael Shumway

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, 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 found to be inadmissible 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 director stated that the applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

In a Request for Evidence dated October 24, 2012, we discussed the applicant's inadmissibility for having been convicted of a crime involving moral turpitude.

Counsel argues that the applicant established extreme hardship to his U.S. citizen daughter, and U.S. Citizenship and Immigration Services (USCIS) abused its discretion in denying the waiver application.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section 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 -
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> . . .
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> (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 violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in the instant case is the applicant's youngest daughter, who is a U.S. citizen. If extreme hardship to the 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 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 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.

In rendering this decision, the AAO will consider all of the evidence in the record such as income tax records for 2010 and 2011, the document of household expenses and income, invoices, real estate

records, photographs, birth certificates, school records, letters, affidavits, information from the World Bank Group and the U.S. Department of State, news articles, and other documentation.

Counsel asserts in the letter dated September 7, 2005 that the applicant's spouse and oldest daughter are applying for adjustment of status as the derivative of the applicant's employment-based immigrant petition, and that the applicant's infant daughter, [redacted] is the only qualifying relative. Counsel declares that the applicant would not be able to leave his daughter with relatives in the United States and would be forced to take her and the rest of the family to live in Mexico if the waiver is denied.

The applicant stated in his affidavit dated August 29, 2005 that he was born in Mexico City and had to work at an early age. The applicant conveyed that his first daughter was born the same year he married his wife, which was 1994. He asserted having come to the United States in August 1998 at the age of 25. The applicant contended that his youngest daughter was born in the United States on January 12, 2004, and they have no one to take care of her if she remained. He stated that "we would have to leave her at the care of the Government, most likely in the foster care system."

Thus, the asserted hardships to the applicant's daughter in remaining in the United States while the applicant and her mother and sister live in Mexico are financial and emotional in nature. The applicant contends that if the waiver application is denied his wife and oldest daughter, who are seeking to adjust status on the basis of his employment-based immigrant petition, would have to leave the United States with him, and only his infant daughter would be able to remain. The applicant asserts that his infant daughter would have to be placed in foster care because there is no family member to take care of her. In light of the claimed hardships and the young age of the applicant's daughter, we believe she will experience hardship if she remained in the United States while her parents and sister lived in Mexico.

Counsel contends that if the applicant's daughter relocated to Mexico, she would lose her home, her father would lose his job, and she would forgo the opportunities available in the United States. Counsel asserts that in Mexico "[redacted] would have to live with her grandparents in a cramped house where she could never expect to concentrate on her studies or to have some privacy." Counsel contends that due to the applicant's limited education and training, he would not be able to provide books and entertainment for his daughter. Counsel states that in view of the submitted Washington Post article the educational system in Mexico has little to offer. Counsel argues that the submitted articles and information from the U.S. Department of State show the applicant's daughter's physical safety would be in jeopardy in Mexico from violent drug-related crime and kidnapping. Counsel contends that the applicant's daughter would "suffer from the lack of adequate educational and medical facilities, endure deprivation as a consequence of the week [sic] economy, and run the risk of being physically endangered by the criminal realities of Mexico."

The applicant asserts that his limited education and training would hinder him from finding a job that would allow him to earn enough to support his family. He states that "[e]ven if I manage to generate enough money it would be only sufficient for the basic necessities . . . [redacted] would have to live in my parent's house, where she would not have her own room, nor any privacy." The applicant declares that his daughter would no longer have the opportunity to seek a better education and socialize with a higher social class, and would "would face economic deprivation and gender

discrimination . . . she would be stripped from privileges and opportunities that all American children receive." Lastly, the applicant contends that his daughter would be exposed to violent and dangerous crime in Mexico.

In sum, the asserted hardships to the applicant's daughter are lack of adequate education and medical facilities; losing social opportunities; and enduring a reduced living standard, gender discrimination, and exposure to violent crime in Mexico City. The applicant contends that his limited education and training will make it difficult to find a job in Mexico, and that even if he has a job, it will pay only enough for basic necessities. As the Application for Alien Employment Certification shows the applicant has experience as a roofer and has a combustion engine mechanic certificate, he will have some skills in which to find employment and support his family while they live with his parents. The submitted BBC news articles discuss gang wars over control of Nuevo Laredo, a port of entry into the United States. The U.S. Department of State, Bureau of Consular Affairs, Consular Information Sheet (July 25, 2005) states that there are high levels of violent crime and kidnapping in Mexico City. These documents are consistent with the assertion that there is violent crime in Mexico. The claim that Mexico lacks adequate medical facilities is not consistent with the U.S. Department of State information, which indicates that adequate medical care can be found in all major cities and excellent health facilities are available in Mexico City. The assertion that Mexico's schools have problems is in accord with the Washington Post article dated July 14, 2004, discussing problems with education in Mexico from powerful unions which protect teachers who do not fulfill their obligations, buying and inheriting teaching positions, lack of funding and technology, low teacher salaries, and inadequate infrastructure. The applicant contends that his daughter will no longer have the opportunity to socialize with a higher social class, confront gender discrimination, lose the privileges and opportunities available in the United States, and have to share a room in his parent's house. When we consider the asserted hardship factors together - lack of adequate education and medical facilities, forgoing social opportunities, a reduced living standard, possible gender discrimination, and violent crime in Mexico City, we find they do not demonstrate that the hardship to the applicant's daughter in relocation to Mexico with her family will be more than the common or typical result of inadmissibility, and therefore extreme.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

ORDER: The appeal is dismissed.