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

[redacted]

DATE: JAN 29 2013 Office: OAKLAND PARK, FL FILE: [redacted]

IN RE: Applicant: [redacted]

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:

[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 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,

Michael Rosenberg

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of India who was found to be inadmissible to the United States 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. The applicant is the spouse of a U.S. citizen and the parent of U.S. citizen and lawful permanent resident children. 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 to remain in the United States as a lawful permanent resident.

The director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to the qualifying relatives, as required for a waiver under section 212(h) of the Act, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Director's Decision*, dated January 20, 2011.

Counsel contends on appeal that the director erred by finding that the applicant had failed to demonstrate extreme hardship to her qualifying relatives. *See Form I-290B, Notice of Appeal or Motion*, dated February 15, 2011; *see also Counsel's Brief.*

The record of evidence includes, but is not limited to, the applicant's multiple statements; multiple statements of the applicant's husband and children; a psychological evaluation; tax records; character references; background materials on country conditions in India; the applicant's previous immigration applications and history; 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).

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

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . 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 . . . .

The record discloses that the applicant was admitted to the United States on or about December 13, 1995 as a B2 nonimmigrant visitor for an authorized period not to exceed June 12, 1996. The applicant thereafter remained in the United States unlawfully beyond the authorized period of stay. Subsequently, the applicant was arrested on May 23, 2007 for Grand Theft in the Third Degree in violation of section 812.014(2)(c)(1) the Florida Statutes (Fla. Stat.). She pled no contest to the charge and was sentenced to 18 months of probation.

The record also indicates that following her divorce from her first husband from India, the applicant married a U.S. citizen who filed a Form I-130, Petition for Alien Relative on behalf of the applicant. Although the petition was approved, the applicant was found inadmissible to the United States based on her criminal conviction. On August 14, 2009, her application for a waiver of inadmissibility under section 212(h) of the Act was denied. The applicant's minor son from her first marriage, however, was granted adjustment of status as the stepchild of a U.S. citizen through the applicant's marriage to The record indicates that some months following the denial of the applicant's waiver application, she and her second husband were divorced on December 16, 2009. On December 20, 2009, the applicant then married her current U.S. citizen husband, who also filed a Form I-130 on behalf of the applicant, which has been approved and is the basis of the applicant's current adjustment of status application.

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.

The applicant contends that her U.S. citizen husband would suffer extreme hardship upon relocation and separation. In support of her assertion, the applicant has provided on appeal a psychological evaluation, prepared by Ph.D., ABPP, a licensed psychologist, who concludes that the applicant's husband and two children would suffer extreme hardship if the applicant's waiver application was denied. The AAO observes, however, that report is based on a single interview of the two children and the applicant only. There is no indication that the applicant's husband was ever interviewed or evaluated. Furthermore, subsequent to the denial of the applicant's waiver application, the applicant's husband, submitted a letter, dated January 25, 2011, indicating his intention of filing for divorce before March 1, 2011. He included a lease in his name as evidence of his intention to move out of the marital residence. In his letter, states that he and the applicant have had serious marital issues and that he has found several untruths about the applicant's past that he cannot forgive. In contrast, report does not indicate that the applicant ever reported any marital distress during the psychological evaluation conducted on February 24, 2011. Instead, the applicant reported her relationship with to be one of true love, trust and honesty and stated that she believed he would want to go with her if she were deported. It is unclear whether the applicant's spouse has in fact filed for, or obtained, a divorce. We note that the applicant has not submitted an updated letter from her spouse on appeal and has instead, resubmitted his old statement from April 16, 2010. Given the record before us indicating that the applicant's marriage may no longer be viable, we cannot conclude that the applicant has demonstrated that her spouse would experience extreme hardship if the waiver is denied.

The AAO further observes that if in fact the applicant and her spouse are divorced, then the Form I-130 visa petition filed on the applicant's behalf by her spouse would be subject to automatic revocation pursuant to 8 C.F.R. § 205.1(a)(3)(i)(D). In that event, no purpose would be served in considering the applicant's waiver application, as there would no longer be an underlying basis for the applicant to seek adjustment of status (and the applicant's husband would no longer be a qualifying relative). However, as the record does not conclusively establish that the approved Form I-130 is subject to automatic revocation by the dissolution of the applicant's marriage, the AAO will consider here whether the applicant has met the requirements of a section 212(h) waiver by demonstrating extreme hardship to her minor children, who are also qualifying relatives.

In support of her waiver application, the applicant asserts that her son and daughter would suffer extreme hardship upon relocation should the application be denied. The record indicates that the applicant's twenty-year-old son, a lawful permanent resident for the past three years, has resided in the United States since he was approximately three years old. He indicates that he suffers from a stuttering problem for which he receives speech therapy. The record contains no medical records, although the applicant has submitted an email and attached unsigned letter from her son's high school speech language-pathologist, M.A., SLP. We note that letter does not suggest that the applicant's son stuttering problems would anyway hinder his ability to realize his dreams of attending college. She does, however, hypothesize that it would be disastrous for him to relocate to India where he is unfamiliar with the language and cultural expectations and that his speech impairment could possibly make it impossible for him to be accepted by others. We note that there is no evidence that is an expert on social and country conditions in India, and particularly the area of India from where the applicant comes.

Moreover, is now an adult and the record does not show that the hardships he may face upon relocation are extreme, notwithstanding his stuttering problem. We also note that the U.S. Department of State reported English to be one of 18 official languages of India. *See* Bureau of Consular Affairs, U.S. Dep't of State, *Background Note: India* (Apr. 17, 2012). It also reports that India "is capitalizing on its large numbers of well-educated people skilled in the English language to become a major exporter of software services and software workers." It is unclear whether the applicant's son is currently in college in the United States, but the record suggests that his native English language and U.S. education may in fact be an asset in India should he decide to relocate there with his mother.

The record also shows that the applicant's twelve-year-old daughter was born and has resided in the United States all her life. Aside from the normal educational ties in the United States, we note that there is very little evidence of other strong ties the young girl may have in the United States to support a determination that relocation would result in extreme hardship to her. The closest ties suggested by the record are her mother and brother. We note it is unclear whether the applicant's son or daughter have any relationship with their biological father, who may or may not be in the United States. Likewise, there is no evidence of any maternal or paternal relatives who reside permanently in the United States. The psychological evaluation by indicates that the young girl has concerns about the poverty and treatment of women in India and the cultural differences she would face. For instance, she indicates she does not wish to wear "Hindu" fashion, meaning that she does not want to cover her face. However, we note that her fears are not supported by the record. It is also not corroborated by the applicant, who does not address these concerns in her own statements. We also note that background materials reflect the diversity of India where Muslims account for only 13.4% of the population of India. *See* Bureau of Consular Affairs, U.S. Dep't of State, *Background Note: India* (Apr. 17, 2012). The applicant has not demonstrated she and her daughter would be restricted in their native region of India because of their faith and gender.

The applicant states that both of her parents in India have passed away and that her family would not be accepted in India because her marriage to someone outside of her culture and Muslim faith. She asserts that they would be considered outcasts. The applicant further asserts that she would have no way to live and work in India. The applicant's husband affirms these contentions in his April 2010 statement, stating that the applicant has no support system in India. report indicates that the applicant reported that her extended family considers her an outcast and has nothing to do with her or children. Similarly, the report indicates that her son stated that his mother is the black sheep of the family and that he would be considered the same way, as someone that does not matter. Yet, this appears contradicted by the applicant's twelve-year-old U.S. citizen daughter, who reported to that she had once previously visited India with her *maternal* aunt. Additionally, although the applicant's son contends in his most recent written statement that his mother would have to live alone in India because all her family members have their own families and her parents are deceased, he does not assert anywhere that his mother's or his father's families in India would treat his mother, his sister or him as outcasts. The record also fails to address why the applicant cannot move elsewhere in India to more urbanized and populated areas to find employment and escape any ostracism she may face.

The AAO also notes that it is unable to determine from this record the financial impact of relocation upon the applicant's children. While the record contains old joint tax returns during the applicant's marriage to her second husband, the applicant has submitted no evidence of her own income and

assets, educational and employment history, or more current tax and income records to enable whether the applicant's has demonstrated financial hardship. 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)).

On brief, counsel also contends that evidence in the record regarding conditions in India was not given sufficient weight by the director in his determination that the applicant had not demonstrated extreme hardship. The referenced evidence includes travel alerts and reports issued by the U.S. Department of States in early 2010. We note, however, that there currently is no travel warning for India issued by the Department of State. Moreover, we observe that the State Department's reports indicate violence and terrorism in specific areas of India, which is composed of numerous separate states. *See* Bureau of Consular Affairs, U.S. Dep't of State, *Country Specific Information: India* (Dec. 18, 2012). While certain areas and regions are affected by violence, there is no indication that the applicant is from or would return to any such region in India where she and her family would be likely to face any danger.

Based on the evidence of record, the AAO finds that the applicant has not demonstrated that her children would face extreme hardship upon relocation to India. 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.

We consider now whether the applicant has demonstrated that her children would suffer extreme hardship upon separation from her. However, we note that the record fails to indicate that the applicant's minor daughter, would in fact be separated from the applicant at all. As previously noted, there is absolutely no evidence that father is in the United States and plays any role in her life. Thus, should the applicant be denied admission to the United States, there is no indication that her daughter would remain here without her. We note that the April 2010 letter of the applicant's husband, and the psychological evaluation by indicate that the children would return with the applicant if she had to return to India. As such, on the record before the AAO, we cannot find that the applicant established that her daughter would suffer extreme hardship upon separation.

We also do not find that the applicant has established that her son would face extreme hardship upon separation. We note again that is now twenty years and need not return to India with his mother. There is nothing in the record to suggest that he is not physically, mentally or financially able to pursue an education or employment on his own without his mother's assistance. While his history of stuttering may cause him some difficulties, the record does not indicate that this has hindered, or will hinder, him in anyway in his educational, professional or social prospects in the United States, such that the separation from his mother would cause him extreme hardship. In addition, although he may face emotional distress upon such separation from his mother, the record does not show that it would be any more than the normal results of separation commonly faced by those in his circumstances, even when considering the various hardship factors in the aggregate.

Having considered the evidence of record, the AAO finds that it does not demonstrate that the applicant's citizen children 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.

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 lawful permanent resident son and U.S. citizen daughter 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.