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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JUN 0 4 2013 Office: CHICAGO FILE: [redacted]

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:

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 any motion to 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 application for waiver of inadmissibility was denied by the Field Office Director, Chicago, Illinois 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 under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having violated a law relating to a controlled substance. The applicant was also found inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed a crime involving moral turpitude. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen parents.

On June 16, 2012, the Field Office Director determined that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The Field Office Director also noted that the application would be denied as a matter of discretion.

On appeal, counsel for the applicant states that the evidence demonstrates that the applicant's U.S. citizen parents will suffer extreme hardship as result of the applicant's inadmissibility.

In support of the waiver application, the record includes, but is not limited to statements from counsel; statements from the applicant's mother; a statement from the applicant; medical records pertaining to the applicant's mother; copies of utility statements, telephone bills, and insurance bills for the applicant and his parents; biographical information for the applicant and his U.S. parents; and documentation of the applicant's criminal and immigration history.

We will first address the applicant's admissibility.

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

> (A) Conviction of certain crimes. -
> (i) In general. - Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> ...
>
> (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

On March 3, 2010, the applicant was convicted of Possession of Cannabis, in violation of 720 Ill. Comp. Stat. 550 section 4(b), which states in pertinent part:

> § 4. It is unlawful for any person knowingly to possess cannabis. Any person who violates this section with respect to:

...

(b) more than 2.5 grams but not more than 10 grams of any substance containing cannabis is guilty of a Class B misdemeanor;

...

The records indicate that the applicant was fined $295 as a result of the conviction. He is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a crime involving a controlled substance.

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

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if -
> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --
> (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> (iii) the alien has been rehabilitated; or
> (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 . . .; and
> (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The applicant was also found to be inadmissible under Section 212(a)(2)(A) of the Act which 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.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.
>
> (Citations omitted.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General, clarified that for a crime to qualify as a crime involving moral turpitude (CIMT) for purposes of the Act, it "must involve both reprehensible conduct and some degree of scienter, whether specific intent, deliberateness, willfulness, or recklessness." First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to reach conduct that does not involve moral turpitude. *Matter of Silva-Trevino, 24 I&N Dec.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an "actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

Where the conviction is not categorically a CIMT, a modified categorical inquiry is used to inspect the specific documents comprising the record of conviction (such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, or the plea transcript) to discern the nature of the underlying conviction. *Id.* at 690, 698-99. Finally, if the record of conviction is inconclusive, the Attorney General has held that because moral turpitude is not an element of an offense, evidence beyond the record of conviction may be considered when evaluating whether an alien's crime involved moral turpitude. *Id.* at 690, 699-701.

The record indicates that the applicant was soliciting a prostitute in violation of 720 Ill. Comp. Stat. 5/11-15(a)(1), which stated at the time of the applicant's conviction:

> (a) Any person who performs any of the following acts commits soliciting for a prostitute:
> (1) Solicits another for the purpose of prostitution; or

> (2) Arranges or offers to arrange a meeting of persons for the purpose of prostitution; or
> (3) Directs another to a place knowing such direction is for the purpose of prostitution.

As a result of this conviction, the applicant was sentenced to three months of court supervision. The AAO finds that solicitation of prostitution is an inherently base act and that the applicant's conviction for solicitation, is for a crime involving moral turpitude. *See Rohit v. Holder*, 670 F.3d 1085, 1089 (9th Cir. 2012). The applicant does not qualify for any exception to the ground of inadmissibility at section 212(a)(2)(A) of the Act and he does not contest his inadmissibility on appeal.

Since the activities that are the basis for the applicant's last conviction leading to inadmissibility under section 212(a)(2)(A) did not occur more than 15 years ago, he must prove that the denial of his admission would result in extreme hardship to a qualifying relative. A waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes a U.S. citizen or lawfully resident spouse, parent, or child of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen parents are the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and the AAO then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (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 deportation, 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, 885 (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.

The AAO notes that although the applicant's U.S. citizen father is a qualifying relative no documentation has been submitted to support the claim that he would suffer extreme hardship if he were to be separated from the applicant or if he were to relocate to his native India to reside with the applicant. It is the applicant's burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361.

On appeal, counsel for the applicant asserts that the applicant's U.S. citizen mother will suffer extreme hardship if she were to be separated from the applicant. Counsel states that the applicant provides for his mother financially. He also states that the applicant is his mother's emotional support system and that she is suffering depression and anxiety at the thought of being separated from him. Additionally, counsel states that the applicant's mother's physical health has been affected by the applicant's inadmissibility. In support of those statements the record indicates that the applicant's mother is a 58-year-old U.S. citizen who came to the United States as a lawful

permanent resident in 2004 and became a U.S. citizen through naturalization on February 18, 2010. The applicant's mother states that the applicant works two jobs to support her and her husband; however, there is no documentation in the record of the applicant's income. 2009 Federal Income Tax Returns for the applicant's co-sponsor indicate that the applicant was married to the co-sponsor, but no income is listed for the applicant on the return. No other documentation in the record indicates that the applicant has been married. 2009 Federal Income Tax Returns for the applicant's mother and father indicate that the applicant's father reported $6,000 in business income. Utility, insurance, and telephone bills in the record indicate that the bills are addressed to the applicant at the residence where he resides with his parents. Numerous invoices indicate a past due balance.

Although the record indicates that the applicant resides with his parents and is responsible for the rent and other expenses incurred in the home, the record indicates that the applicant's mother has two additional sons, at least one of which resides in Illinois. The AAO notes that the applicant's father is 64 years old, but there is no indication in the record whether the applicant's brothers are able to financially provide for the applicant's mother. Additionally, there is no indication that the applicant's mother is unable to obtain employment or whether she and her husband have savings or retirement income. In one of the applicant's mother's statements she indicates that she owns property in the United States, but there is no documentation of that property or any rental income made from the property.

Although the applicant's mother's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In regards to the applicant's mother's physical health, the record contains a letter from Dr. of Illinois dated June 27, 2012. Dr. states that the applicant's mother is being treated for diabetes, hyperlipidemia, hypertension, hypothyroidism, osteopenia, and GERD and is on various medications. He also states that the applicant's mother is feeling depressed and "is unable to sleep and eat, and has been crying" and has started an antidepressant due to the news of a delay in the applicant's immigration case. Dr. does not indicate any role that the applicant plays in assisting her mother with her medical care. The AAO recognizes the applicant's medical conditions and notes that significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. In this case; however, the evidence on the record is insufficient to establish that the applicant's

spouse suffers from a disabling condition or that her condition is affected by the applicant's inadmissibility. The record does not establish that the applicant's spouse would be unable to work in the United States as the result of her condition. Nor does the record establish what treatment and assistance the applicant's spouse requires and the role the applicant plays in assisting his spouse with her conditions. The AAO notes that Dr. indicates that the news of the applicant's immigration inadmissibility affected the applicant's mother's daily functioning, but Dr. also stated that the applicant's mother began to take an antidepressant. Additionally, there is no indication how the applicant's mother's daily functioning has been affected or will be affected in the future. Dr. states that the applicant's mother reported that she was not eating or sleeping, but at the same time he did not state how that was affecting the applicant's mother's condition especially considering that she suffers from diabetes. The AAO recognizes the impact of separation on families, and the record establishes that the applicant's mother would suffer some emotional hardship and possibly financial hardship in the applicant's absence, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship to the applicant's mother's due to separation from the applicant would be extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Counsel also states that the applicant's mother would experience extreme hardship were she to relocate to her native India. Counsel states that the applicant's mother would need to leave "the country she dearly loves" and "she would be forced to sell the parties' real estate." He also states that she has no family ties in India. Counsel adds that the country conditions in India "are not safe." The applicant's mother states that she would not be able to obtain medication for her diabetes in India. The record does not make clear if the applicant was being treated for her medical conditions in India prior to coming to the United States and it also does not establish that medical care is unavailable for the applicant's mother's diabetes and other conditions in India. In fact, the record does not contain any country conditions information concerning India. As stated above, 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. at 165. Additionally, a letter from the applicant's mother's doctor from May 4, 2011 indicates that the applicant's mother's "English is poor and she has difficulty communicating unless in her native language." The record establishes that the applicant's mother is a native of India, speaks one of the native languages there, and resided there until 2004. The AAO recognizes that the applicant's mother's family ties in the United States, including her husband and sons, but based on the information in the record considered in the aggregate, the hardship to the applicant's mother should she relocate to India does not rise to the level of extreme.

Although the applicant's mother's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying

relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(h) of the Act, be above and beyond the normal, expected hardship involved in such cases.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 his qualifying relative as required under section 212(h) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter 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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.