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: OCT 0 7 2013 Office: PITTSBURGH FILE:

IN RE:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Nigeria who was found to be 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 crimes involving moral turpitude. The applicant is the beneficiary of an approved I-130 Petition for Alien Relative filed on his behalf by his U.S. citizen spouse. 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 spouse.

On June 13, 2012, the Field Office Director denied the application for a waiver (Form I-601), finding that the applicant failed to establish extreme hardship to a qualifying relative.

On appeal, counsel for the applicant states that the applicant has not been convicted of a crime involving moral turpitude and does not require a waiver; or, in the alternative, that he has established extreme hardship to his U.S. citizen spouse. The AAO sent a request for evidence (RFE) to the applicant and counsel at their addresses of record on June 14, 2013 requesting "that the applicant submit ***all*** court records pertaining thereto, including, but not limited to, the information, indictment or charging document; a judgment or verdict; a plea agreement or comparable judicial record revealing the factual and legal basis for the plea; and any sentencing reports" for his convictions. Additionally, we requested that the applicant "submit certified dispositions for any and all arrests," noting that to the extent such official records are unavailable, the applicant must document this in accordance with the requirements of 8 C.F.R. § 103.2(b)(2)(ii). The applicant was allowed twelve (12) weeks to respond to this notice. *See* 8 C.F.R. § 103.2(b)(8)(iv). The AAO did not receive a response to our request for additional evidence. Pursuant to section 291 of the Act, 8 U.S.C. § 1361, the burden of proof is on the applicant to establish that he is admissible or, if inadmissible, that he is eligible for a waiver of that inadmissibility and should be granted the waiver as a matter of discretion. As the applicant did not respond to the RFE concerning his criminal arrests and conviction, he has not met his burden of proof, and we consider his argument, through counsel, that he is not inadmissible as a result of those convictions, effectively abandoned for purposes of his Form I-601 appeal. *See* 8 C.F.R. § 103.2(b)(13).

In support of the waiver application, the record includes, but is not limited to a brief from counsel for the applicant, a letter from the applicant's spouse, an evaluation of the applicant's spouse by a social worker, limited medical records and background medical information for the applicant's spouse, employment and financial information for the applicant's spouse, employment and educational information for the applicant, documentation regarding the applicant's anger management courses, country conditions information on Nigeria, and documentation in connection with the applicant's criminal conviction and immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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.

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....
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> 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.)

The record shows that on February 15, 2011 in the West Virginia, the applicant pled no contest to Domestic Assault, in violation of section 61-2-28(b) of the West Virginia Code. He was sentenced to six months in jail, suspended, and placed on probation for one year. The record also shows that on November 21, 2011 in the Arkansas District Court, the applicant was found guilty of Communicating a False Alarm in violation of section 5-71-210 of the Arkansas Code (Ark. Code). On that same date, he was also found guilty of Unlawful Computerized Communications in violation of Ark. Code § 5-41-108. In regards to the former, the applicant was ordered to pay fines and fees as well as perform community service. In regards to the later, the applicant was sentenced to 90 days in jail with 60 days suspended and 30 days of community service, in addition to fines and fees. Additionally, on March 16, 2007 in the Arkansas District Court, the applicant was found guilty of Assault in the First Degree, in violation of Ark. Code § 5-13-205. He was sentenced to 60 days in jail, suspended. The applicant did not submit the full record of conviction for these offenses.

The record also indicates that the applicant was arrested on June 21, 2005 by the Sheriff's Office in Arkansas and charged with Aggravated Assault on a Family or Household Member and Terroristic Threatening in the First Degree. The record does not contain a certified disposition for these arrests and charges.

As stated above, the applicant, through counsel, contested his inadmissibility on appeal; however, he failed to respond to our request for criminal records for his offenses. As it is the applicant's burden of proof in these proceedings and that burden has not been met, we will not disturb the Field Office Director's finding that the applicant is inadmissible under section 212(a)(2)(A) of the Act.

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

> The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) 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 . . . .
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> (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
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> … 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,
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> 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
>
> the alien has been rehabilitated; or
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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 . . .; 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.

As 15 years have not passed since the activities that led to the applicant's convictions, a waiver of inadmissibility in his case, 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 the U.S. citizen or lawful permanent resident spouse, parent, son, or daughter of the applicant. In this case, the applicant's qualifying relative is his U.S. citizen spouse. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS 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.

On appeal, counsel for the applicant states that the applicant's U.S. citizen spouse will suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. In particular, counsel states that the applicant's spouse would suffer extreme emotional hardship from separation and financial hardship from "living 'paycheck to paycheck,' not being able to save anything, unable to pay on her student loans and unable to afford the multiple trips to be with her husband…" The record indicates that the applicant and his spouse met in the spring of 2011 and they were married on June 11, 2011. The applicant's spouse's letter in support of the waiver application was prepared on August 22, 2011, only a few months after the couple met and were married. In regards to financial hardship, the record indicates that the applicant's spouse earns $32,000 in annual income from her job as a chemical dependency therapist. Although, in her August 2011 letter, the applicant's spouse states that she would suffer financial hardship without the financial contributions of the applicant, she does not indicate that she was unable to pay her day-to-day expenses months before she wrote the letter and did not yet know the applicant. Counsel also states that the "economic levels" are lower in Nigeria and that the couple's financial situation would be worse because the applicant would not be able to financially support his spouse from Nigeria. The record, however, does not support this assertion. The record indicates that the applicant is pursuing his Ph.D. in Petroleum Engineering. There is no documentation in the record to indicate what his income and expenses would be if he were to relocate to Nigeria and continue to provide support to his spouse from there. Counsel also states that the costs of international communication and travel expenses for the applicant's spouse to visit her husband would add to the hardship, but no documentation was provided regarding those anticipated expenses. Although the applicant's spouse'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 the applicant's spouse's August 2011 letter, she states that she cannot imagine life without the applicant. She also states that the depression and anxiety that she is presently experiencing is affecting her ability to perform her job. In regards to the applicant's spouse's emotional hardship,

the record contains a mental health assessment of the applicant's spouse prepared in July 2012 by LCSW, ACSW. Mr. s assessment, prepared on July 2, 2012, almost a year after the applicant's spouse's letter, does not indicate that the applicant's mental health status was affecting her job performance. The report indicates that the applicant's spouse stated that the first year of her marriage was the worst year of her life due to her learning about problems with the applicant's immigration status and suffering from a miscarriage. But, there is no mention that the applicant's spouse was presently experiencing problems with her work performance or that she could be expected to experience problems in the future. The assessment primarily focused on the applicant's spouse's family history and her past struggles with depression and anxiety. The record indicates, however, that in the period before the applicant's spouse met the applicant she maintained steady employment and a consistent relationship with her family, in particular her mother and niece. In the assessment, Mr. nonetheless concludes that the applicant affords his spouse "constancy, security, and stability," and that given her psychological history, the impact of separation on her "would be extremely severe and her prognosis poor." The record also contains a letter from Dr. MD, dated July 20, 2011 stating that the applicant's spouse suffers from severe anxiety and depression and that "she would suffer emotional hardship if her husband were to go overseas or if she were to have to go overseas." Dr. does not provide any basis for that conclusion, which in this case is particularly important where the applicant and his spouse had met only months prior to the doctor's letter. Dr. further states that the applicant's spouse's blood pressure is greatly affected by her anxiety and that she has recently had dangerously high blood pressures related to the anxiety that she was experiencing "related to her husband having to leave the country." Again, this information is important, however, Dr. does not comment on how the applicant's spouse managed her blood pressure before meeting the applicant nor does she state how the applicant's spouse's blood pressure could be managed in light of the applicant's spouse's anxiety. It is clear from the record that the applicant's spouse has a history of psychological hardship that has been at times incapacitating for her, but that hardship has been unrelated to the applicant. There is no documentation in the record from the applicant's spouse's physician or treating therapist on appeal to further indicate the role that the applicant plays in assisting his spouse with her mental health and related physical hardship. Although the record establishes that the applicant's spouse would suffer hardship if she were to be separated from the applicant, the record does not establish that the hardships that those hardships, considered in the aggregate, rise to the level of "extreme."

We must also consider whether the applicant's U.S. citizen spouse would suffer extreme hardship should she relocate to Nigeria to reside with the applicant. The applicant's spouse is a native of the United States and counsel states that she does not speak the language in Nigeria. The official language of Nigeria is English. The record would indicate, therefore, that the applicant's spouse does in fact speak the language. Nonetheless, the record indicates that the hardships that the applicant's spouse would suffer if she were to relocate to Nigeria, when considered in the aggregate, would amount to extreme. The record establishes that the applicant's spouse has a history of debilitating mental health problems associated with worry over her mother. The record indicates that the applicant's spouse's relationship with her mother is of particular importance to her. The applicant's spouse states that her mother is disabled and relies on her assistance. The record also indicates that the applicant's spouse's mother is the guardian for her grandchild, the applicant's

spouse's niece and that the applicant's spouse also places particular importance on helping to care for her niece when her mother is unable to do so due to her health condition. Although, the record does not establish that the applicant's spouse's medical conditions, which include hypertension, depression, and anxiety, would be untreatable in Nigeria, the record does establish that the disruption in the continuity of her care and the important family ties that she has in the United States would present a hardship. The record also establishes that the applicant's spouse has had long-term steady employment in the United States as a chemical dependency counselor, a position for which she obtained her master's degree and license to practice in West Virginia. Moreover, the record indicates that the applicant's likely source of employment in Nigeria would be related to the petroleum industry and would mean that the applicant and his spouse may need to reside in regions of Nigeria that have documented security concerns. Although the applicant's spouse could reside apart from her husband, in a safer region of the country, the record indicates that she would be doing so in a county where she has no family ties and where she has no experience living. Although these hardships individually may not be extreme in and of themselves, the evidence, when considered in the aggregate, establishes that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Although the applicant's qualifying relative's concerns over the applicant's immigration status are 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(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 hardship faced by the qualifying relative, considered in the aggregate, rises 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 a 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. Because the applicant has not established extreme hardship, we do not need to make a determination on this matter at this time.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.