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

DATE: OCT 0 7 2013 Office: BOSTON FILE:

IN RE:

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:

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 application for waiver of inadmissibility was denied by the Field Office Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ireland 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 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 March 9, 2013, 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 accordingly.

On appeal, counsel for the applicant states that the record demonstrates that applicant's U.S. citizen spouse 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: a legal memo by the applicant's counsel: an affidavit from the applicant; an affidavit from the applicant's spouse; biographical information for the applicant and his U.S. citizen spouse; a psychological evaluation of the applicant's spouse; federal income tax returns for the applicant's spouse for 2011; country conditions information on Ireland; and documentation of the applicant's criminal and immigration history.

The applicant was 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.
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> (Citations omitted.)

The record indicates that the applicant was convicted of over 20 crimes between December 2001 and January 2004. We need not analyze each of those convictions in this decision. The Field Office Director found the applicant to be inadmissible based on the following convictions, all of which occurred in the applicant's native Ireland: Handling Stolen Property in violation of Section 33 of the Larceny Act, 1916, as amended by Section 3 of the Larceny Act, 1990 (December 3, 2001); two counts of Unauthorized Taking of a Motor Propelled Vehicle in violation of Section 112 of the Road Traffic Act, 1961 (as amended by Section 65 of the RTA, 1968, and by Section 3(7) of the Road Traffic (Amendment) Act, 1984) (September 3, 2002); three counts of Burglary in violation of Section 23A of the Larceny Act 1916, as inserted by the Criminal Law (Jurisdiction) Act, 1976 (March 27, 2003); Handling Stolen Property in violation of Section 33 of the Larceny Act, 1916, as amended by Section 3 of the Larceny Act, 1990 (March 27, 2003); Unauthorized Taking of a Motor Propelled Vehicle in violation of Section 33 of the Larceny Act, 1916, as amended by Section 3 of the Larceny Act, 1990 (April 10, 2003). U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involves moral turpitude. See *Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974) (stating, "It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude[.]" However, the Board of Immigration Appeals (BIA) has indicated that a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). The applicant has not submitted a complete record of conviction for his offenses, but rather has only provided a listing of his offense prepared by the Garda Siochana, the police force of Ireland, which includes the court, date of offense, and the result. It is the applicant's burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361. As the applicant has not contested inadmissibility on appeal, and the record does not show that the Field Office Director's determination is in error, we will not disturb the finding that the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act as the result of his convictions.[1]

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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[1] The record does not indicate how the applicant obtained permission to enter the United States on the visa waiver program in light of his extensive criminal history. Although we do not need to make a determination on this matter in this decision, the applicant may also be separately inadmissible under section 212(a)(6)(C)(i) of the Act for having obtained admission to the United States through fraud or willful misrepresentation if he failed to disclose his criminal history when seeking admission to the United States on May 6, 2011.

> (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,
>
> 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
>
> (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.

Since the activities that are the basis for the applicant's last conviction leading to inadmissibility under section 212(a)(2)(A) occurred within the past 15 years, he must prove that the denial of his admission would result in extreme hardship to 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 spouse is 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.

Counsel for the applicant asserts that the applicant's U.S. citizen spouse will suffer extreme hardship if the applicant is not admitted to the United States. We will first consider the hardship claimed to the applicant's spouse if she were to remain in the United States and be separated from

the applicant. The applicant and his spouse were married on July 29, 2011. It is unclear from the record when the couple met and formed a relationship, but the record indicates that the applicant was admitted to the United States on the visa waiver program on May 6, 2011 and it appears that they met after that admission. In the applicant's spouse's affidavit dated January 16, 2013, she states that she and the applicant are very close and that the applicant's "love and support" give her the "strength to live a happy and healthy life." The record contains a psychological evaluation by Ph.D., Licensed Clinical Psychologist, dated January 20, 2013. The applicant's spouse reported to Dr. that she has attention-deficit-hyperactivity disorder (ADHD) and post-traumatic stress disorder from a previous relationship, but the record does not document that assertion. Based on those assertions, Dr. diagnosed the applicant's spouse with Adjustment Disorder with Mixed Anxiety and Mood and concluded that the applicant's spouse would suffer extreme emotional hardship if she were to be separated from the applicant, exacerbating her PTSD symptoms. The applicant's spouse will suffer emotional hardship in the applicant's absence and this hardship will be taken into consideration with the other variables. There is no indication in the record, however, that the emotional hardship is in and of itself extreme.

The applicant's spouse also states that she suffers from Lyme disease and travels to New Jersey every three months for treatment. She states that if her condition were to worsen she would need to rely on the applicant. 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. Although the applicant and her spouse both state that the applicant's spouse suffers from Lyme disease, there is no diagnosis by a medical professional in the record. Nor does the record indicate the applicant's spouse's present condition or future risks based on her diagnosis. The applicant's spouse states that she has been in remission since 2010. The record also indicates that the applicant's spouse relies on her parents financially and physically to assist her with her medical care. 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). It is the applicant's burden of proof in these proceedings. Section 291 of the Act, 8 U.S.C. § 1361.

The applicant's spouse also states that she is not sure how she would be able to support herself if she could no longer rely on the applicant. The record indicates that the applicant's spouse works as a restaurant manager and that she reported an income of $22,197 on her 2011 Federal Income

Tax Returns. The record does document the applicant's income or financial contributions to his household. It is not clear, therefore, what financial hardship his spouse would suffer in his absence. The AAO recognizes the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case as a result of the applicant's spouse's 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 spouse would experience extreme hardship if she were to relocate to Ireland to reside with the applicant. The applicant states that he is worried that his spouse would not be able to adjust to life in Ireland. He also states that his spouse would not have access to specialists in Lyme disease in Ireland. The record does not support that assertion. The country conditions information in the record point to economic conditions in Ireland, problems with the educational system and issues with depression and suicide, in particular for men. It is unclear from the record how these issues would impact the applicant's spouse specifically. Additionally, Dr. [redacted] in her psychological report states that moving to Ireland would present "significant psychological and practical challenges" for the applicant's spouse. In particular, she states that the applicant's spouse would not be able to continue her work and she would be separated from her close-knit community of family and friends. The record does not support the conclusion that the applicant's spouse would be unable to find work in Ireland. Additionally, the record does not document the applicant's spouse's reported close family ties in the United States. There are no letters of support from her parents or other family members in the record. 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. Considered in the aggregate, the hardship to the applicant's spouse as a result of relocation to Ireland, does not rise to the level of extreme beyond the common results of removal.

Although the applicant's spouse'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(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 such, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In application proceedings, 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.