U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
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 8 2013 Office: OAKLAND PARK 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, Oakland Park, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada who is 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 to be inadmissible under section 212(a)(2)(A)(i)(I), 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) and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse.

On August 4, 2011, the Field Office Director denied the Form I-601 application for a waiver, concluding that the applicant failed to establish extreme hardship to a qualifying relative. The file was received by the AAO on July 1, 2013.

On appeal, counsel for the applicant states that a 212(h) waiver should not be required, and in the event that it is, the applicant has established extreme hardship to his U.S. citizen spouse.

In support of the waiver application, the record includes, but is not limited to: a brief by counsel; affidavits from the applicant's spouse; an affidavit from the applicant; a death certificate for an individual stated to be the applicant's spouse's uncle; biographical information for the applicant and his spouse; documentation submitted in support of the Form I-130; employment information for the applicant's spouse; and documentation of the applicant's criminal 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). The entire record was reviewed and considered in rendering a decision on the appeal.

We will first address the applicant's inadmissibility and eligibility for a waiver of inadmissibility.

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

> (A) Conviction of certain crimes. -
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> (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-
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> . . .
>
> (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.

The record indicates that on November 1, 1999 before the County Court, Twentieth Judicial Circuit in and for Collier County, Florida, the applicant entered a plea[1] related to violation of section 893.13(6)(b), Possession of a Controlled Substance. Adjudication was withheld by the court and the applicant was ordered to pay court costs and fees to certain court funds.

Section 893.13(6) of the Florida Statutes stated, in pertinent parts, at the time of the applicant's conviction that:

> (6)(a) It is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice or to be in actual or constructive possession of a controlled substance except as otherwise authorized by this chapter. Any person who violates this provision commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
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> (b) If the offense is the possession of not more than 20 grams of cannabis, as defined in this chapter, the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For the purposes of this subsection, "cannabis" does not include the resin extracted from the plants of the genus Cannabis, or any compound manufacture, salt, derivative, mixture, or preparation of such resin.

As a result of the applicant's conviction for possession of marijuana he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of an offense involving a controlled substance. Counsel for the applicant states that the applicant does not concede inadmissibility, but no argument was provided to explain why the applicant should not be inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

The AAO notes that the applicant was also arrested and convicted on three additional occasions after the previously mentioned conviction for possession of marijuana. The Field Office Director found that in relation to the applicant's July 30, 2001 conviction for trespassing and petit theft, the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. On appeal, the counsel for the applicant states that this conviction falls within the petty offense exception and, as such, the applicant should not be inadmissible. We do not need to reach a conclusion concerning this conviction at this time as the record reflects that the applicant is separately inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

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

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) and

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[1] Information on the plea was not provided by the applicant. It is the applicant's burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361.

> 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; or
> (C) the alien is a VAWA self-petitioner; 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 occurrence of the activities that led to the applicant's inadmissibility, a waiver under 212(h) of the Act is dependent on a showing that the bar to the applicant's 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the qualifying relative in this case. 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 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).

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.

We will first consider the hardship claimed to the applicant's U.S. citizen spouse if she were to remain in the United States and be separated from the applicant, who is presently in the United States. The applicant's spouse, in her affidavit dated August 29, 2011, states that her uncle committed suicide on March 3, 2011 and that because her aunt, a drug addict and alcoholic, was committed under the Florida Baker Act, she was the only family member that could deal with the "cleanup" following her uncle's death. The applicant's spouse states that she had trouble dealing with this and that she would be seeking counseling. The applicant's spouse also stated that she

must look after her aunt on a daily basis. The AAO notes that a death certificate was submitted for an individual named by the applicant's spouse as her uncle. No other documentation was provided to indicate that the applicant's spouse was responsible for taking care of her aunt or of the emotional hardship that the applicant's spouse suffered as a result of this experience, or after the death of her father, which the applicant's spouse states also has affected her ability to deal with her husband's immigration status. 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). The applicant and his spouse's 2010 Federal Income Tax Returns reflect that the applicant's spouse is the primary breadwinner for the family, earning $39,597.48 in 2010. Additionally, a letter from the applicant's spouse's employer dated June 13, 2011, indicates that the applicant's spouse was a full time employee working as the Assistant Director of the [redacted] where she earned a salary of $38,000 and would receive full health benefits. No documentation in the record indicates that the applicant's spouse would suffer financial hardship were she to be separated from the applicant. The AAO recognizes the applicant's spouse's difficult position; however the hardships presented, considered in the aggregate, do not rise to the level of extreme hardship.

We must also consider whether the applicant's U.S. citizen spouse would suffer extreme hardship should she relocate to Canada to reside with the applicant. In her prior affidavit dated June 11, 2011, the applicant's spouse stated that she would be devastated if the applicant were to remain inadmissible to the United States, but that she would go to Canada with the applicant in lieu of being separated from him. Counsel states that the applicant's spouse cannot relocate to Canada without suffering from extreme hardship. The applicant's spouse states that she must care for her aunt and that her 86-year-old grandmother also needs her assistance. But, again the record does not contain any documentation in support of this statement. Additionally, the applicant's spouse states that separation from her mother would create hardship for her. The AAO notes that the record does not contain documentation of the extent of the applicant's spouse's relationship with her mother. In her statement dated August, 29, 2011, the applicant's spouse states that her mother lives in Northern Florida and is unable to assist in the care of the other family members that live close the applicant's spouse. As such, it is not clear how often the applicant's spouse sees her mother and why she would not be able to maintain ties with her mother were she to relocate to Canada. 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.

The applicant states that his spouse would suffer extreme hardship if she were to relocate to Canada as her cosmetology license is only valid in the United States. No documentation was provided concerning why the applicant's spouse would not be able to obtain other employment in Canada or obtain a cosmetology license there. The AAO recognizes the applicant's spouse's difficult position; however, as stated above the inability to pursue one's chosen profession has been found to be one of the common or typical results of inadmissibility and not the type of hardship that is considered extreme. *See generally Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 568; *Matter of Pilch, 21 I&N Dec. at 632-33*; *Matter of Ige, 20 I&N Dec. at 885*; *Matter of Ngai,* 19 I&N Dec. at 246-47; *Matter of Kim,* 15 I&N Dec. at 89-90; *Matter of Shaughnessy,* 12 I&N Dec. at 813. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Canada, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-,* 21 I&N Dec. at 383.

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 sections 212(h) of the Act, be above and beyond the normal, expected hardship involved in such cases.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is not granted a waiver of inadmissibility. Although the AAO acknowledges that the applicant's U.S. citizen spouse will suffer some hardship, the record does not establish that the hardship rises to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief under sections 212(h) of the Act, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden and the appeal is dismissed.

ORDER: The appeal is dismissed.