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

U.S. Citizenship and Immigration Services

(b)(6)

Date: OCT 2 2 2013 Office: CHICAGO, IL FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (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 Field Office Director, Chicago, Illinois, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Lithuania who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Act for having been convicted of several crimes. The applicant is the son of a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act in order to reside with his father in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering his father's health problems. Counsel also contends that several of the applicant's convictions were juvenile offenses that do not render him inadmissible to the United States.

The record includes, but is not limited to, the following documents: a letter from the applicant's father, Mr. a letter from Mr. s physician; copies of medical records; and copies of criminal records. The entire record was reviewed and considered in rendering this decision on the appeal.

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

> (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, or
>
> (II) a violation of (or a 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 802 of Title 21),
>
> is inadmissible.
>
> (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
>
> (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States…

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

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

In this case, the field office director found, and counsel concedes, that the applicant has been convicted at least eight times, as follows:

1. battery/bodily harm – September 19, 2000
2. possession of a stolen automobile (two counts) - September 19, 2000
3. criminal damage to property (two counts) - September 19, 2000
4. negligent driving – July 22, 2003
5. driving without valid registration - July 22, 2003
6. leaving the scene of an accident - July 22, 2003
7. possession of cannabis – May 22, 2005
8. driving under the influence of alcohol – October 30, 2008

Counsel contends that many of the applicant's convictions occurred when he was a minor and that some of the offenses do not involve moral turpitude. However, counsel concedes in his brief that, in any event, the applicant is inadmissible based solely on his conviction for possession of cannabis in

2005. The exception for minors found under section 212(a)(A)(2)(ii) of the Act does not apply to convictions related to a controlled substance

The AAO acknowledges that generally, an offense committed by a juvenile in juvenile delinquency proceedings may not considered a "crime" under the Act. *See generally Matter of Ramirez-Rivero*, 18 I&N Dec. 135, 137-38 (BIA 1981) (holding that the applicant's foreign conviction committed when he was 13 years old is not a crime under the Act, but stating that "[a] juvenile whose alleged offense is perpetrated between his sixteenth and eighteenth birthday is likewise proceeded against as a juvenile delinquent unless he is charged with committing an act which, if committed by an adult, would be a felony punishable by a maximum penalty of 10 years imprisonment or more, life imprisonment or death."). In *Matter of C– M-*, the Board of Immigration Appeals (BIA) held that convictions for criminals under the age of 18 may be considered under the Act, but that persons who have been treated as juvenile offenders in the disposition of their cases may not be considered. *Matter of C– M-*, 5 I&N Dec. 327, 329 (BIA 1953). In *Matter of De La Nues*, the BIA emphasized that the burden of proof is on the applicant to establish that he has been in juvenile delinquency proceedings rather than criminal proceedings. *Matter of De La Nues*, 18 I&N Dec. 140, 144 (BIA 1981) ("it is incumbent upon the applicant to show that he was in fact dealt with as a juvenile delinquent in Cuba, and not as an adult criminal"); *see also* Section 291 of the Act, 8 U.S.C. § 1361 (the Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant). The AAO also acknowledges that the BIA has referred to moral turpitude as "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." *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992).

In this case, although most of the applicant's convictions were for offenses committed when the applicant was between sixteen and eighteen years old, the record shows that the applicant was convicted in criminal proceedings. The applicant has not met his burden of showing that he was dealt with as a juvenile delinquent. In any event, the AAO need not determine whether each conviction renders the applicant inadmissible as the record shows, and counsel concedes, that the applicant's sole conviction for possession of cannabis renders him inadmissible. Specifically, the applicant's 2005 conviction for possession of cannabis of less than 2.5 grams in violation of 720 Illinois Compiled Statutes (ILCS) 550/4(a), renders him inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The applicant is eligible to apply for a waiver under section 212(h)(1)(B) of the Act.

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).

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 at 1293 (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.

In this case, the applicant's father, Mr. [redacted] states that he and his son have an extraordinary, strong emotional bond, particularly considering he raised his son as a single parent. According to

Mr. his son rebelled during his adolescence and went through a difficult age. Mr. states that when his son turned sixteen, he fell in love with his girlfriend, with whom he is still romantically involved, and contends that she has been able to bring out his best qualities, pulling him away from his "criminal friends." In addition, Mr. contends his son is his best friend and has become his partner and successor in their family business. Mr. states he is a dental technician and started a small dental lab where his son has taken over the managerial duties. He further states that the business is now thriving and that without his son's assistance, he will not earn enough to sustain himself, make mortgage payments, or buy food. Furthermore, Mr. contends that after he learned his son would likely get deported unless a waiver was granted, he suffered a massive heart attack and underwent quadruple bypass surgery. He asserts he has over $158,000 in medical bills he must repay.

After a careful review of the record, there is insufficient evidence to show that the applicant's father, Mr. will suffer extreme hardship if the applicant's waiver application were denied. If Mr. decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding financial hardship, there is insufficient documentation in the record to evaluate the extent of Mr. s hardship. Although the record contains documentation corroborating Mr. s claim that he owes approximately $140,000 in medical expenses, there is no evidence addressing his dental business' income or assets, and there is no evidence in the record addressing his regular, monthly expenses, such as mortgage. With respect to Mr. s medical problems, the record contains a letter from his physician stating he has a complicated medical history which includes Acute Myocardial Infarction with Ventricular Fibrillation as well as new onset Atrial Fibrillation and Hyperthyroidism. Although the input of any medical professional is respected and valuable, the letter does not describe the prognosis, treatment, or severity of Mr. s conditions. The AAO acknowledges the physician contends Mr. "will need the assistance of his son . . . to be effectively treated." Nonetheless, the physician fails to specify the assistance Mr. requires. The record indicates Mr. continues to work in his dental business and he does not describe any limitations with his daily activities. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. In sum, although the AAO is sympathetic to the family's circumstances, the record does not show that Mr. 's hardship is unique or atypical compared to others separated from a loved one. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected).

With respect to relocating to Lithuania to avoid the hardship of separation, there is insufficient evidence in the record to show extreme hardship. Significantly, Mr. himself does not address the hardship, if any, he would suffer if he returned to Lithuania, where he was born. To the extent counsel contends Mr. would be unable to be self-sufficient in Lithuania and would be forced to rely on others for financial support, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the

hardship the applicant's father would experience if he returned to Lithuania amounts to extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.[1]

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.

[1] The record contains an I-130 Petition for Alien Relative filed by the applicant's father in February 1998. The petition was denied due to abandonment on December 29, 2005 for failure to appear for an interview. There is no evidence in the record that this denial has been reversed or that a subsequent petition has been filed and approved. This should be examined prior to any further processing of the applicant's case.