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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: APR 0 1 2014 Office: LOS ANGELES, CA [redacted]

IN RE: [redacted]

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:

[redacted]

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, Los Angeles, California, 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 Armenia who filed an application to waive his inadmissibility pursuant to section 212(a)(2)(A)(i) of the Act for having been convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant section 212(h) of the Act in order to live with his wife and daughter in the United States.

The field office director found that the applicant failed to establish extreme hardship to his daughter and denied the application accordingly.

On appeal, counsel contends that USCIS erroneously failed to acknowledge the applicant's wife as a qualifying relative and contends that the applicant's wife and daughter testified regarding hardship before the adjudicating officer. According to counsel, the applicant and his wife remarried after a fifteen-year separation and both have health problems, requiring their daughter to care for them. Counsel contends the applicant's daughter cannot uproot her own family (her husband and child), leave her full-time job, and relocate to Armenia to care for her father.

The record includes, but is not limited to, the following documents: a copy of the most recent marriage certificate for the applicant and his wife, indicating they were married on December 2, 2009; a letter from Ms. letter from the applicant's physician and a work/school excuse form; a note from Ms. medical appointment; copies of tax records and other financial documents; and an approved Immigrant Petition for Alien Relative (Form I-130). 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 . . . is inadmissible.

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

> (h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> > (1)(A) in the case of any immigrant it is established to the satisfaction of the [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,
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> (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
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> (iii) the alien has been rehabilitated.
>
> (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 [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 [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.

In this case, the record shows that on May 23, 1996, the applicant was convicted of theft of personal property in violation of California Penal Code section 484(a) and sentenced to 36 months of probation. The record also shows that on May 15, 2003, the applicant was convicted of making false statements in violation of 18 U.S.C. § 1001 and sentenced to 48 months of probation.

The record shows, and counsel concedes in his brief, that the applicant's convictions are for crimes involving moral turpitude. Therefore, we will not disturb the finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act and is eligible to apply for a waiver of inadmissibility under section 212(h) 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, counsel summarizes the testimony of the applicant, his wife, and their daughter, According to counsel, the family is a close-knit family and lives together. is reportedly the couple's only child and she supports her parents. Counsel contends that the applicant and both suffer from health problems, and that the applicant suffered a heart attack and underwent open heart surgery. Counsel states that would not be able to relocate to Armenia because she has a husband and child of her own and cannot uproot her family, leave her job, and provide the same level of care for her father in Armenia. Counsel contends would be emotionally and financially torn between her obligations to her father and to her own husband and child. In

addition, according to counsel, would suffer emotional hardship if her husband departed the United States and would not be able to support him in Armenia because she no longer works.

After a careful review of the record, there is insufficient evidence to show that the either applicant's wife or daughter will suffer extreme hardship if his waiver application were denied. If or decide 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. Although the record shows the applicant was admitted to the hospital on April 22, 2013, with congestive heart failure and pneumonia, has chronic severe diabetic retinopathy, and is legally blind from diabetes, the applicant himself is not a qualifying relative under the Act. Although the AAO is sympathetic to the family's circumstances and recognizes the closeness of the family, the record does not show that any hardship the applicant would suffer would cause extreme hardship to his wife or daughter. In addition, according to counsel, the applicant and his wife own a home in Las Vegas, Nevada where they spend "part of their time," and the record shows that the applicant was admitted to a hospital in Las Vegas. A letter from the applicant's physician, dated July 9, 2012, is also from Las Vegas, Nevada, and a Work/School Excuse, dated April 12, 2013, is from Henderson, Nevada. The applicant has not addressed how his daughter, who lives hundreds of miles away in Glendale, California, can be his primary caretaker when the applicant was hospitalized in Nevada and has his physicians in Nevada. To the extent the record shows had a medical visit on July 9, 2012, for back pain, constipation, hypertension, migraine headache, muscle spasm, and osteopenia, there is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of her conditions and, in any event, there is no suggestion that the applicant assists his wife in any way. 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.

Regarding financial hardship, and her husband each submitted an Affidavit of Support Under Section 213A of the Act (Form I-864), affirming they would financially support the applicant based on income of $33,782 and her husband's income of $64,272. The record does not address regular, monthly expenses or any income the applicant or his spouse may have. Although the AAO does not doubt that Diana will experience some financial hardship, there is insufficient information in the record to evaluate the extent of her hardship. In sum, the record does not show that the applicant's situation is extreme, unique, or atypical compared to other individuals in similar circumstances. *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).

To the extent counsel contends that USCIS failed to consider the testimony of the applicant, Ms. during the adjustment interview, the record does not contain a transcript of the interview and counsel has not submitted any additional supporting documentation on appeal. Although counsel claims the testimony established extreme hardship, 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 these factors cumulatively, there is insufficient evidence showing that

the hardship either will experience if they decide to remain in the United States amounts to extreme hardship.

Furthermore, the record does not show that would suffer extreme hardship if either of them relocated to Armenia to avoid the hardship of separation. The record shows that both Ms. were born in Armenia. In addition, the record indicates that first married the applicant in Armenia. Therefore, the record indicates have some familiarly with, and ties to, Armenia. Although return to Armenia would entail uprooting her family and leaving her job, nonetheless, the record does not show that any hardship she may experience will be unique or atypical. *See Perez, supra*. In sum, the record does not show that readjustment to living in Armenia would be any more difficult than would normally be expected under the circumstances. Even considering all of the evidence cumulatively, the record does not show that hardship would be extreme, or that either of their situations is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife or daughter 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.

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.