U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAR 1 1 2013 Office: LONDON FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the United Kingdom who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or willful misrepresentation of a material fact. The applicant was further found to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of 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 the husband of a U.S. citizen. The applicant seeks waivers of inadmissibility under sections 212(i) and 212(h) of the Act, 8 U.S.C. §§ 1182(i) and (h), in order to reside in the United States with his U.S. citizen spouse.

The district director found the applicant inadmissible under section 212(a)(6)(C)(i) for failing to disclose his convictions when he sought admission into the United States as a visitor under the Visa Waiver Program. The district director further found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the applicant asserts that he did not willfully misrepresent a material fact on his Visa Waiver Application. The applicant refers to provisions of the United Kingdom's Rehabilitation of Offenders Act of 1974, and states that he believed that since his record was expunged he was no longer required to disclose his criminal convictions. The applicant asserts that he did not believe that he was required to answer affirmatively to prior convictions once he was past the rehabilitation period. The applicant further states that it never occurred to him that the provisions of the United Kingdom Act would not apply to the United States. The applicant asks the AAO to grant the waiver of inadmissibility under section 212(h)(1)(A), as more than 15 years have passed since his 1989 convictions for indecent assault.

The record includes, but is not limited to: the applicant's affidavit submitted on appeal; the applicant's statement; the applicant's wife's affidavit; documentation concerning the applicant's criminal history; a copy of the relevant provisions of the United Kingdom's Rehabilitation of Offenders Act of 1974; affidavits from family members and friends attesting to the applicant's good moral character; documentation regarding the applicant's community service and volunteerism; and a marriage certificate.

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 has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, 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

The Board of Immigration Appeals (Board) 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.

(Citations omitted.)

The record shows that on the applicant was convicted in the Maidstone Crown Court in Kent, England, of two counts of indecent assault on a female 16 or over, in violation of section 14(1) of the United Kingdom's Sexual Offenses Act 1956. The applicant was sentenced to a term of imprisonment of three years. The district director found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. As the applicant does not dispute inadmissibility from this conviction on appeal, and the record does not show the determination to be erroneous, the AAO will not disturb the finding of the district director.

However, the applicant claims that he is not inadmissible for willful misrepresentation of his criminal record on his 18 Visa Waiver Applications. Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The Supreme Court in *Kungys v. United States*, 485 U.S. 759 (1988), found that the test of whether concealments or misrepresentations were "material" was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, United States Citizenship and Immigration Services (USCIS) decisions. In addition, in *Matter of* S- *and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961), the Board found that a misrepresentation made in connection with an application for visa or other documents is material if either: (a) the alien is excludable on the true facts, or (b) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded. *Matter of* S- *and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961).

The Attorney General states in that case that "[w]hile a misrepresentation as to identity will generally have the effect of shutting off an investigation, so also will misrepresentation as to place of residence, prior exclusion or deportation from the United States, criminal record, Communist Party membership, etc." *Id.* at 448. The requirement of willfulness under section 212(a)(6)(C) of the Act is satisfied by a finding that an alien's misrepresentation was deliberate and voluntary. That is, willfulness is established if the alien had knowledge of the falsity of his statement when made. *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28-29 (BIA 1979).

Based on the record evidence, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant's misrepresentation of his criminal record was made in connection with his entry or admission into the United States. The applicant states that "I therefore genuinely believed that I was not obliged in law to disclose the existing 2 offences for which I was sentenced back in 1989," and that his convictions "no longer had to be declared to the United Kingdom authorities as a preexisting conviction at any time after May 1999." The applicant therefore admits he knew that he had a criminal record, and he does not indicate that he was unaware that his crimes were crimes involving moral turpitude. Yet, the applicant states that because he believed he no longer had to disclose his crimes to United Kingdom authorities, he was not required to disclose them on his multiple Visa Waiver applications.

However, the AAO notes that the provisions of the United Kingdom's Rehabilitation of Offenders Act of 1974 cited by the applicant relate solely to disclosure of convictions before judicial authorities in Great Britain. The AAO therefore finds that the record established that the applicant's misrepresentation of his criminal history was willful – it was deliberately made with knowledge of its falsity. The immigration officer would not have known of the applicant's criminal convictions unless the applicant divulged them. Additionally, the AAO notes that the applicant's misrepresentation of his conviction record on his Visa Waiver application constitutes a material misrepresentation under the Act. By stating that he was not convicted for an offense or of a crime involving moral turpitude, the applicant cut off a line of inquiry that was relevant to his request for a nonimmigrant visa. Specifically, the applicant cut off a line of inquiry which might have resulted in a denial of his multiple nonimmigrant visa applications under section 212(a)(2)(A) of the Act. Accordingly, the AAO finds that the applicant willfully misrepresented a material fact to an immigration officer and is inadmissible under section 212(a)(6)(C)(i) of the Act. Lastly, the AAO notes that foreign expungements are generally not given effect under federal immigration law. *See Matter of Adamo*, 10 I&N Dec. 593, 596-97 (BIA 1964).

It is noted that the applicant does not dispute that he is inadmissible for having been convicted of crimes involving moral turpitude in September 1989. Because the applicant's most recent conviction for a crime involving moral turpitude occurred more than 15 years from the date of his application for admission, the applicant must satisfy the section 212(h)(1)(A) waiver requirements. However, because we have determined that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for willful and material misrepresentation, he will need to demonstrate extreme hardship to his qualifying relative for the grant of a waiver under section 212(i) of the Act.

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

> (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien ....

A waiver of inadmissibility under section 212(i) 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 lawfully resident spouse or parent of the applicant. Hardship to the applicant or other family members 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). Here, the record reflects that the applicant is the spouse of a U.S. citizen who has an approved Form I-130, Petition for Alien Relative, which was filed on the applicant's behalf. The applicant's U.S. citizen wife therefore meets the definition of a qualifying relative.

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 the 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 is 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.

The AAO now turns to the issue of whether the applicant has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

The asserted hardship factors to the qualifying relative are the emotional hardships the applicant's wife would experience in the event of separation and relocation. In her affidavit dated July 12, 2011, the applicant's wife states that she met the applicant in 1995 and that she married the applicant on July 11, 2009. The applicant's wife indicates that the applicant was forthcoming about his criminal record before they married and that he has always treated her with respect and love. The applicant's wife asserts that the applicant's denial of admission into the United States would cause her undue hardship in that it "forces [her] to choose between living in England with [the applicant] or being in Ohio near [her] 101 year old mother who is becoming very frail." The record also includes an affidavit dated August 2, 2011, by the applicant's daughter in which she states that the relationship between her father and his wife is based on mutual love, respect, and trust. The applicant's daughter further asserts that she is aware of the strain the applicant's wife is under because of the separation from the applicant.

Here, the AAO finds that the hardships related to separation and relocation presented in this case do not rise to the level of extreme hardship. The AAO acknowledges that the applicant's spouse would experience emotional difficulties as a result of separation from the applicant and as a result of relocation and separation from her mother, but finds that the evidence does not demonstrate that this hardship is extreme. The record evidence indicates that the applicant's qualifying relative faces no greater hardship than the unfortunate but common difficulties arising whenever a spouse is denied admission. The Board has long held that the common or typical results of inadmissibility do not

constitute extreme hardship, and has listed separation from family members and emotional difficulties as factors considered common rather than extreme. *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). U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991).

Moreover, though the applicant's wife noted that her mother is becoming frail, the record does not contain documentation addressing her specific medical conditions, if any. In fact, the applicant's wife failed to list her mother's medical conditions, and the applicant did not indicate the level of medical care and attention she currently needs, if any. Additionally, the record does not contain any evidence indicating that the applicant's wife's mother depends on the applicant's wife for her daily care. Furthermore, there is no evidence in the record from which to conclude that the applicant's wife is the sole caretaker of her mother, and that her mother has no other family members willing to assist with her care. 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)). Though the AAO is sympathetic to the applicant's wife's circumstances and her desire to care for her 101 year old mother, the record evidence is insufficient to demonstrate extreme hardship to the applicant's qualifying relative. Put another way, while it is understood that the separation of qualifying relatives often results in emotional challenges, the applicant has not distinguished his wife's emotional hardship upon separation from her mother and the applicant from that which is typically faced by the qualifying relatives of those deemed inadmissible.

Therefore, based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under sections 212(i) of the Act. As the applicant has not established statutory eligibility, we need not address whether he warrants a waiver as a matter of discretion.[1]

In proceedings for an application for a waiver of grounds of inadmissibility under sections 212(h) and 212(i) of the Act, the burden of proving eligibility rests entirely with the applicant. *See* 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.

[1] Although we need not make the determination at this time, it appears that the applicant has been convicted of a violent crime. Thus, he must meet the requirements of 8 C.F.R. § 212.7(d) to warrant a favorable exercise of discretion.