**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: MAY 10 2013 Office: LIMA 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); and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

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 its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, 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 any 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Officer Director, Lima, Peru. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Peru, is inadmissible to the United States pursuant to 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 also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with his U.S. citizen father and U.S. citizen children. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen father. The applicant was ordered removed from the United States and is also inadmissible under section 212(a)(9)(A)(ii) of the Act. In regards to that ground of inadmissibility, the applicant has concurrently filed an Application for Permission to Reapply for Admission (From I-212), which is the subject of a separate appeal.

In a decision dated May 21, 2012, the Field Office Director concluded that the applicant did not establish extreme hardship to a qualifying relative and denied the waiver accordingly.

On appeal, counsel for the applicant states that the Field Office Director did not consider all of the relevant factors in making the determination that extreme hardship was not established.

In support of the waiver application, the record includes, but is not limited to statements from counsel, a statement from the applicant, a statement from the applicant's father, medical records for the applicant's father, educational and medical records for the applicant's children, financial and employment records for the applicant, letters of support from family and community members, photographs of the applicant and his family, 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.

The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more. Section 212(a)(9) of the Act provides:

> (B) ALIENS UNLAWFULLY PRESENT.-
> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> ...

> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
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> ...
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> (v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant states that he entered the United States without inspection in December 1991. The record indicates that the applicant was placed into removal proceedings where he initially applied for asylum, but withdrew that application and applied for cancellation of removal. The Immigration Judge denied the applicant's request for relief from removal and granted the applicant voluntary departure on August 21, 2003. The applicant appealed the Immigration Judge's decision and that appeal was denied by the Board of Immigration Appeals on May 5, 2005. The applicant filed a motion to reconsider before the Board and that motion was denied on July 22, 2005. Subsequently, the applicant filed multiple untimely motions to reopen and appeals of the denials of those motions to the Ninth Circuit Court of Appeals. The applicant's appeals were ultimately denied and the applicant was removed from the United States on October 31, 2009. During the applicant's period of time in the United States, he accrued one year or more of unlawful presence in the United States and as a result is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this ground of inadmissibility on appeal.

The AAO notes that the applicant was also found to be inadmissible under section 212(a)(2) of the Act which provides, in pertinent part,

> (A)(i) 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-
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime; or...
> is inadmissible.
> (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
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> ....
>
> (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien

was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The record establishes that on April 11, 1994, the applicant was convicted of Forgery in violation of California Penal Code section 470, Possession of a Bad Check or Money Order, in violation of California Penal Code section 470A, Receiving Stolen Property, in violation of California Penal Code section 496, and Burglary in the Second Degree, in violation of California Penal Code section 460. The Field Office Director found the applicant to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a result of his convictions and the applicant does not contest this finding of inadmissibility on appeal. As the applicant has not contested inadmissibility on appeal, and the record does not show that determination to be in error, we will not disturb the finding that the applicant is inadmissible under section 212(a)(2)(A) of the Act.

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

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

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if 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. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

Since the activities that are the basis for the applicant's criminal conviction occurred more than 15 years ago, the applicant is eligible for a waiver under section 212(h)(1)(A) of the Act, and addition to section 212(h)(1)(B). Section 212(h)(1)(A) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated. The applicant, however, must also illustrate that he is eligible for a waiver under section 212(a)(9)(B)(v).

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent, a different standard than under section 212(h)(1)(A) of the Act, but similar to the standard under 212(h)(1)(B). Under section 212(a)(9)(B)(v) of the Act, the record establishes that the applicant's only qualifying relative is his U.S. citizen father. Hardship to the applicant or to the applicant's children will not be separately considered, except as it may affect hardship to the applicant's father. 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 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.

We will first consider the hardship claimed to the applicant's U.S. citizen father if he were to remain in the United States and be separated from the applicant. The applicant's father is a 67 year old U.S. citizen and native of Peru who resides in Las Vegas, Nevada. In his statement, the applicant's father states that the applicant is his son and his best friend. He states that the applicant was his strongest support and that his health has "decreased" since his son's departure. The applicant's father states that his emotional, financial, and physical well-being have been affected by separation from the applicant. The applicant's father states that it has been emotionally rough for him in his son's absence. He describes how the applicant supported him, served as a mentor for his brothers, and was a very involved father to his children. The AAO takes note of this emotional hardship which will be considered in the aggregate with the other types of hardship documented in the record. In regards to the applicant's father's financial well-being the record contains no documentation of his income, expenses, or claimed financial support of the applicant in Peru. Lastly, the applicant's father states that his physical health has suffered in the applicant's absence. He states the applicant when in the United States was available to help him attend his medical appointments. He also states that the applicant provided him financial support for his copays; however, there is no documentation in the record to support that statement or to illustrate that the applicant's father is presently having trouble affording his medical treatment. Although the applicant's father'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 record contains documentation of the applicant's father's physical health, including letters from his physicians and copies of his medical records. In an undated letter submitted on appeal, LTD in Las Vegas, Nevada states that the applicant's father has been a patient at the clinic since August, 2005. He states that the applicant's father suffers from multiple medical conditions, including depressive and anxiety issues, which require a stronger support system. Mr. also states that the applicant's father suffers from end stage degenerative joint disease in both knees and will need surgical intervention in the near future. As a result, Mr. states that the applicant's father would benefit greatly from a stronger support system. The record also contains a letter dated July 11, 2012 from Dr. M.D., of the Dr. states that the applicant's father has been his cardiac patient for several years and has a complex history of cardiovascular illness, noting that his condition has improved but that he continues to have recurrent symptoms with some remaining disease. Dr. also notes that he believes that the applicant's presence "is necessary in terms of helping his father to have long-term successful cardiovascular help." The AAO respects the opinion of Dr. and notes the important role that the applicant previously played in his father's life, but the record also makes clear that the applicant's father has three other sons who reside in Nevada. Although one of those sons, in his letter of support, states that he travels frequently for work, no other explanation or documentation is provided in the record to illustrate why these other sons are unwilling or unable to provide support to the applicant's father. Additionally, the AAO notes that the record indicates that the applicant's father still works on a full-time basis. The record does not indicate that the applicant's father has trouble performing the duties of his wok or requires the applicant's financial assistance. The AAO recognizes that the applicant's father is suffering hardship as a result from separation from the applicant; however, the hardships documented in the record, even when considered in the aggregate, do not rise to the level of extreme hardship.

We must also consider whether the applicant's U.S. citizen father would suffer extreme hardship should he relocate to his native Peru to reside with the applicant. Counsel states that the applicant's spouse cannot relocate to Peru due to the quality of medical care there, the economic situation, and his lack of family ties in that country. The AAO notes the applicant's father's long residence and strong family ties in the United States. The AAO also notes that applicant's father's medical condition and needs as set forth in the record by medical professionals. The AAO notes that the record contains country conditions reports on Peru that indicate that medical care is generally good in Lima and the other major cities of that country. The applicant's father, in his statement, also says that he would not be able to find employment in Peru and that in the United States, he has a stable well-paying job. The AAO notes that the record does not contain

documentation of the applicant's father's employment in the United States. 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 record also indicates that the applicant is working as a taxi driver in Peru, although there is no documentation of his income or expenses. The AAO nonetheless acknowledges that relocation to Peru to reside with the applicant would cause extreme hardship to the applicant's father, primarily as a result of his advanced age, chronic medical conditions for which he has received ongoing care in the United States, and his longtime residence and family ties in the United States. This evidence, considered in the aggregate, establishes that the applicant's father would suffer extreme hardship were he to relocate abroad to reside with the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 father will face extreme hardship if the applicant is not granted a waiver of inadmissibility. Although the AAO acknowledges that the applicant's father 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 section 212(a)(9)(B)(v) of the Act, no purpose would be served in discussing whether the applicant meets the standard for a waiver under section 212(h) of the Act or 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 will be dismissed.

**ORDER**: The appeal is dismissed.