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

U.S. Citizenship and Immigration Services

H2

DATE: DEC 0 5 2012 Office: LOS ANGELES, CA FILE: [redacted]

IN RE: APPLICANT: [redacted]

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:

[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 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 with the field office or service center that originally decided your case by filing a 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Hamway

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Israel who was found to be inadmissible to the United States 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 crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h)[1] of the Act, 8 U.S.C. § 1182(h), in conjunction with an application for adjustment of status, in order remain in the United States with his U.S. citizen wife.

The Field Office Director found that the applicant had failed to establish extreme hardship to his qualifying relatives, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision,* dated August 17, 2010.

On appeal, counsel contends that the decision denying the waiver application was incorrect and was generated inadvertently. Counsel submitted additional evidence on appeal, but has not submitted an appeal brief as indicated in the Form I-290B.

The record of evidence includes, but is not limited to, the psychological evaluations of the applicant's wife; the applicant's birth certificate; the applicant's and his wife's marriage certificate; the couple's 2009 tax returns; documents evidencing the bona fides of the applicant's marriage; and the applicant's conviction 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 parts:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
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> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

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[1] The director's decision in error references the applicant's waiver application as under section 212(i) of the Act, which relates to grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act for fraud and misrepresentation. We correct the record to reflect the applicant's waiver application is under section 212(h) of the Act to waive criminal grounds of inadmissibility. We note that this error appears to be harmless, as the qualifying relative in this case (the applicant's spouse) would be the qualifying relative under either waiver section, and the extreme hardship standard is also identical.

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(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).

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

> 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 -
>
> (1) . . .
>
> (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.

The record indicates that the applicant was admitted to the United States on or about September 8, 1989 as a nonimmigrant B2 visitor, and thereafter remained in the United States without permission. On November 24, 1993, the applicant was convicted of Grand Theft of Property in violation of section 487(1) of the California Penal Code (C.P.C.). He was sentenced to three years of probation and ten days community service, and was fined $1,000. The record indicates the applicant twice violated probation, which was later reinstated. After completion of probation, the criminal court amended the complaint to allege the original charge as a misdemeanor, and thereafter, ordered the finding of guilt vacated and dismissed the complaint on August 2, 2004 pursuant to C.P.C. § 1203.4. The record shows that the applicant was arrested again, and on October 18, 2007, was convicted by jury of felony Grand Theft of Property over $400 in violation of section 487(a) of the C.P.C. He was sentenced to 120 days imprisonment and three years of probation, and was ordered to make restitution to the victim in the amount of $5,100.

As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding to be in error, the AAO will not disturb the determination of inadmissibility under section 212(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant

seeks a waiver under section 212(h) to overcome inadmissibility. The qualifying relative for purposes of this waiver is the applicant's U.S. citizen wife.

Section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (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 of Immigration Appeals 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 v. INS*, 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.

The record contains no briefs from counsel and no statements from either the applicant or his qualifying relative. The Form I-601 merely indicates that the applicant seeks a waiver based on extreme hardship to his U.S. citizen wife. The record, however, does contain two psychological evaluations by clinical psychologist, [redacted] Ph.D., prepared following a single interview of the applicant and his wife, which asserts that separation from the applicant would be detrimental to the applicant's wife's emotional and physical health. The first evaluation, dated June 24, 2010, indicates that the applicant's wife reported that she will not survive emotionally if her life in the United States with her husband is disrupted. She describes her husband as her "rock" when she herself becomes emotionally unstable. The applicant's wife also reported that she was traumatized during her early childhood and abusive first marriage, resulting in severe depression, anxiety, panic disorder, mood disorder and posttraumatic stress disorder. The report indicates that the applicant's wife had suffered a nervous breakdown several years ago relating to her traumatic divorce and the death of her sister. [redacted] concludes the applicant's wife's symptoms have gotten significantly worse since the latter learned that her life as a wife and mother in the United States is in jeopardy and that she has a very high risk of an emotional breakdown. [redacted] indicates that she has referred the applicant's wife to a psychiatrist for medication and recommended she undergo psychotherapy.

Following the denial of the Form I-601, [redacted] submitted a second evaluation, dated September 28, 2010, relying on the same original interview of the applicant and his wife conducted on June 22, 2010. [redacted] elaborates on her professional opinion to state that the applicant's wife is not mentally stable enough to suffer another traumatic loss, which would put her at significant risk for a mental breakdown. [redacted] does not indicate why she failed to provide this opinion in her original report.

The AAO appreciates [redacted] evaluations and professional insight in this matter. However, we note that the evaluation makes no formal diagnoses and does not detail the psychological tests, if any, which were conducted in evaluating the applicant's wife's mental health status. We also observe the record contains no evidence corroborating the statements of the applicant's wife in the referenced evaluation. For instance, although the evaluations refer to the

applicant's wife's long history of mental health illness, the record contains no medical or psychiatric records. Likewise, there are no statements from the applicant, his wife, or close family members and friends relaying the applicant's wife's past mental health problems and treatment. 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)). We also note that although the Dr. [redacted] recommended psychiatric treatment in the original evaluation, there is no indication that the applicant's wife sought such treatment, even at the time the second updated evaluation was submitted.

The psychological evaluation also reports that the applicant's wife would suffer financial detriment upon separation. The applicant's wife reported that she previously owned her own salon business and had a home, both of which she lost during the economic crisis. She stated that she has had to live on her husband's income for the previous year. The applicant reported during the evaluation that if he had to return to Israel, he would lose the long-term business that currently supports the couple financially. He does not address, however, why he cannot have his wife or someone else run his business or even sell the business to mitigate his losses. The record also does not disclose the nature of the applicant's business. We also observe that the only evidence in support of the financial hardship claim in the record is the applicant and his wife's 2009 joint tax return, which indicates a gross income of approximately $4000 from the applicant's consulting business. However, the record contains no Internal Revenue Service (IRS) tax transcripts, IRS Form W-2s, social security statements, no records of the applicant's business, or any records of the couple's outstanding debts or financial obligations that would enable to assess the AAO to determine the financial impact to the applicant's wife upon separation from her husband. Without corroborating evidence, the applicant cannot meet his burden to demonstrate the financial hardship to his wife.

After careful review of the evidence of record, the AAO finds that it does not demonstrate that the hardships faced by his U.S. citizen wife upon separation, considered in the aggregate, rise to the level of extreme hardship. The AAO acknowledges that the separation from her spouse may cause the applicant's wife some emotional distress and financial detriment. However, the applicant has not shown the emotional, physical, and financial hardships his wife would suffer constitutes "significant hardship over and above the normal disruption of social and community ties" normally associated with deportation or refusal of admission. *Matter of O-J-O-*, 21 I&N Dec. at 385.

The AAO also reviews the record for evidence of extreme hardship to the qualifying relative upon relocation. The psychological evaluation indicates that the applicant's wife is greatly concerned about being separated from her three children and her grandchild. The record indicates that the applicant's wife has two adult children and one minor child with her ex-husband. According to her, although her minor daughter lives with her ex-husband, she has a close relationship with her daughter. She indicated that if she were to lose her current life in the United States with her husband, children, friends and spiritual community, she would not survive emotionally. We note, however, that, aside from the applicant's wife's statements at her psychological evaluation, the record is otherwise silent regarding the applicant's wife's ties in the United States. The record contains no birth certificates for her children, no statements from them or other family members or

friends, and no corroborating evidence of the mental health conditions she suffered from in the past, as she reported at her evaluation. There is also no evidence the applicant's wife provides any emotional or financial support to her minor child, as the 2009 tax return indicates that the applicant and his wife have no dependents. We also observe that the applicant's daughter resides with her father, even though the applicant's wife describes him in the evaluation as an alcoholic and abusive.

The evaluation also indicates that the applicant's wife would suffer financial hardship upon relocation. According to the evaluation, the applicant reported that he would lose his business in the United States and that the poor economy in Israel would make it difficult to find employment there. He further states that he has no connections in Israel anymore, aside from his elderly parents. Again, we note that the record does not set forth any indication of the financial value of the applicant's business or address why he cannot take steps to sell it to mitigate his losses. The applicant has also failed to present any evidence of his employment skills and experience or any background materials to support his claim that he would be unable to find employment in Israel.

During her psychological evaluation, the applicant's wife indicated that given her history of family trauma and domestic violence, she is terrified of having to potentially live in a war zone in Israel and being at risk to terrorist attacks. Once again, we note that the applicant has not provided any evidence in support of this claim. However, we take administrative notice of the U.S. Department of State's (DOS) most recent Country Specific Information report for Israel, West Bank, and Gaza from August 9, 2012, which refers to the prevalence of terrorist attacks and gives some credence to the applicant's wife's fears, which we acknowledge can constitute a hardship. However, we note that the attacks, when they have occurred, have primarily been in or near Gaza or the West Bank, and in highly populated public areas. The most recent DOS travel warnings, issued on August 10, 2012, specify the threats in Gaza, the West Bank, Southern Israel, and Jerusalem. There is nothing in the record to indicate that the applicant and his wife intend to reside in one of the more dangerous areas upon relocation to Israel. Most importantly, we observe that the applicant's parents live in Israel, and yet there are no statements from the applicant's parents and no other evidence indicating that they reside in area they deem dangerous or have faced or witnessed harm as a result of terrorist attacks in Israel.

After carefully reviewing the evidence of record, the AAO finds that it does not demonstrate that the applicant's wife would suffer hardships upon relocation that cumulatively rise to the level of extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen wife as required under section 212(h) of the Act. He, therefore, remains inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. Since the applicant failed to establish statutory eligibility for the waiver under section 212(h), the AAO finds that no purpose would be served in considering whether the applicant merits the waiver in the exercise of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.