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

[redacted]

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Date: DEC 0 8 2012 Office: NEWARK 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 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,

Michael Shumway

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bolivia who was found to be 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 seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her U.S. citizen husband and lawful permanent resident (LPR) children.

In a decision dated March 28, 2011, the field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that her U.S. citizen husband and LPR children would experience extreme hardship as a consequence of her inadmissibility. The field office director also denied the waiver application in the exercise of discretion, finding that the applicant's criminal history outweighed the favorable considerations of her case.

On appeal, counsel for the applicant states the field office director erred in finding that the record evidence did not establish that the applicant's bar to admission would result in extreme hardship to his U.S. citizen husband and LPR children. Counsel avers that the additional evidence submitted on appeal outlining emotional, psychological, and economic difficulties to the applicant's LPR children, and the evidence outlining emotional difficulties to the applicant's U.S. citizen husband, demonstrate extreme hardship to her qualifying relatives.

The record includes, but is not limited to: counsel's brief; a statement by the applicant's husband; school certificates; a letter by Dr. [redacted] MD, stating that the applicant's daughter suffers from depression; a statement from the applicant's son, [redacted] country conditions documentation; tax documents and pay stubs; and documentation regarding the applicant's criminal 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 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 –
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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.

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....
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> 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 [redacted] 2003, the applicant was convicted in the Municipal Court, Township of North Bergen, New Jersey, of shoplifting in violation of New Jersey Statutes Annotated (N.J.S.A.) § 2C:20-11(b)(1). The applicant paid fines and court costs totaling $355. The record further shows that on [redacted] 2008, the applicant was convicted in the Criminal Court of the City of New York, of petit larceny in violation of Section 155.25 of New York's Penal Law. The applicant was sentenced to time served. Additionally, the record shows that on [redacted] 2009, the applicant was convicted of theft by deception in violation of N.J.S.A. § 2C:20-4. The applicant was sentenced for this offense on [redacted] 2009 to one day in jail and was placed in probation for a period of one year. The field office director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. As the applicant has not disputed inadmissibility from these convictions on appeal, and the record does not show the determination to be erroneous, the AAO will not disturb the finding of the field office director.

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), . . . of subsection (a)(2) . . . if –
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> . . .
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> (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 . . . .

The AAO begins its analysis by noting that a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). In this case, the applicant asserts that denial of her admission will impose extreme hardship upon her U.S. citizen husband and LPR children.

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.

In his brief on appeal, counsel states that the denial of the applicant's admission to the United States would result in psychological hardship to her daughter, [redacted] Counsel asserts that the applicant's daughter "is currently receiving long-term treatment for depression." He further states that any disruption of the relationship between the applicant's daughter and her treating physician, including relocation to Bolivia, would result in extreme hardship to the applicant's daughter. In support of these assertions, counsel submitted a one-paragraph letter from Dr. [redacted] MD, a physician at [redacted] in Hoboken, New Jersey. In his letter, dated August 15, 2011, Dr. [redacted] states that [redacted] suffers from depression. The deportation of Ms. [redacted] will result in great stress to [redacted] mental state. We highly recommend due to medical necessity that [redacted] stay with her mother Ms [redacted] Dr [redacted] does not indicate in his letter the tests he performed to conclude that the applicant's daughter is experiencing depression. That is, the letter does not indicate the methodology he employed to reach the clinical diagnosis of depression. Dr. [redacted] also does not explain in his letter the medical necessities compelling Emily to reside and remain with the applicant.

Additionally, there is no indication in the record that Dr [redacted] reached his conclusions after extensive treatment or observation of the applicant's daughter. Other than the letter prepared by Dr. [redacted] the record contains no other documentation or medical history from which to determine that the applicant's daughter underwent treatment for depression. In fact, there is no evidence in the record demonstrating that the applicant's daughter "is currently receiving long-term treatment for depression". The letter from Dr [redacted] references only his diagnosis of the applicant's daughter; it does not address the medical care she receives to treat her depression, if any. Thus, counsel's assertions that the applicant's daughter currently receives "long-term treatment for depression" are unsupported by the record evidence. Without supporting documentation, the assertions of counsel are insufficient to meet the burden of proof in these proceedings. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983). Consequently, the AAO finds that the medical documentation submitted as evidence lacks detail, as it does not reference the basis for the diagnosis nor the severity of the applicant's daughter's conditions and the required follow-up care. The record also does not contain sufficient detail explaining that the applicant is her daughter's only caretaker and that there are no viable alternatives to ensure her psychological well-being in Bolivia. The evidence is therefore insufficient to determine whether the applicant's daughter will experience extreme hardship as a result of separation from the applicant or relocation to Bolivia.

Counsel further asserts on appeal that the applicant's children will suffer educational hardships if the applicant is forced to return to Bolivia. In support of this assertion, counsel points to a letter by the applicant's oldest son, [redacted] In his letter, dated August 16, 2011, the applicant's son states that he is now a college student and that he believes he would stop attending school if the applicant were to be removed from the United States. However, the AAO notes that the applicant's son did not address nor state the reasons that would force him to stop attending college if the applicant is denied admission to the United States. The applicant's son has not asserted financial

emotional or any other difficulties resulting from the applicant's denial of admission. Though the record indicates that the applicant is currently employed, there is no evidence indicating that the applicant's son depends financially on the applicant, that the applicant covers his tuition costs, or that he receives monetary support from the applicant to attend college. That is, there is no evidence in the record indicating that the applicant's removal would require his son to leave college for economic or financial reasons. Additionally, the record does not contain evidence demonstrating how the applicant's inadmissibility would affect the emotional well-being of her son in a way which would force him to leave school or the pursuit of a higher-education degree. Here, the AAO recognizes the significance of family separation as a hardship factor, but concludes that the asserted educational and emotional difficulties, as demonstrated by the evidence in the record, are the common results of removal or inadmissibility and do not rise to the level of extreme hardship. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568.

The record contains documentary evidence indicating that the applicant is actively involved in the education of their children, as well as evidence that her children are excelling in school and that she participates with her children in various community activities. As such, the record evidence demonstrates that the applicant has a close relationship with her children and cares for their education and well-being. However, when considering the emotional and educational hardships collectively, the AAO finds that the applicant has not fully demonstrated that the hardship his LPR children will experience is more than the common result of inadmissibility or removal. *See generally Matter of Pilch*, 21 I&N Dec. at 632 ("The fact that economic and educational opportunities for the child are better in the United States than in the alien's homeland does not establish extreme hardship."). Furthermore, the AAO notes that in the event of relocation, neither counsel nor the applicant have asserted insufficient educational opportunities in Bolivia, or that the children would be unable to pursue and complete secondary education in the area where they would be living in Bolivia. Additionally, the record indicates that the applicant's LPR children have been living in the United States for five years, and that they resided in Bolivia without the applicant from 2000 until 2007. There is also evidence in the record indicating that the children speak Spanish and that, at least two of the children, lived a considerable amount of time in Bolivia. Therefore, they should have less difficulty readjusting to life in Bolivia should they relocate to that country with the applicant.

Counsel asserts that in the event of relocation, the applicant would be unable to provide her children the economic support necessary to continue their education. Yet, the record evidence does not establish that the applicant would not be able to find a job in Bolivia. Rather, the submitted country conditions documentation indicates that Bolivia has recorded economic growth rates in 2008, 2009, and 2010. Additionally, the record does not include evidence of the applicant's financial obligations or expenses indicating that she will be unable to provide the support necessary for her children to attend school. There is also no documentation in the record indicating that inadequacy of earnings in Bolivia is such that she could not meet the children's educational needs through employment in that country.

With regards to the applicant's husband's hardships, he asserts in a statement dated July 14, 2009, that he maintains a close and loving relationship with his wife and children, that he takes care of her children as if they were his own, and that the applicant's removal would have devastating effects on

his family. Here, the AAO acknowledges that the applicant's husband will experience some emotional difficulties if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the difficulties described by the applicant's husband, and as demonstrated by the evidence in the record, are the common results of removal or inadmissibility and do not rise to the level of extreme hardship. 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).

The AAO notes that the record evidence does not address the hardships the applicant's husband would experience as a result of relocation to Bolivia with the applicant. Rather, the applicant's husband asserts in his statement that he would remain in the United States in the event of the applicant's removal to Bolivia. As the applicant's husband has not asserted and the record does not indicate difficulties or hardships to him were he to relocate to Bolivia with the applicant, the AAO cannot make a determination of whether the applicant's husband will suffer extreme hardship upon relocation. The burden of proof in this proceeding lies with the applicant, and "while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts." *Matter of Ngai*, 19 I&N Dec. at 247.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's husband and children 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 she merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests 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.