U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals
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Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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U.S. Citizenship and Immigration Services

[redacted]

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Date: FEB 2 7 2012 Office: ORLANDO, FLORIDA 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 law was inappropriately applied by us 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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. 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 Shumway

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native of Columbia who was found to be inadmissible under 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; and section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), and for having been convicted of a crime involving a controlled substance (marijuana less than 30 grams). The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel declares that the applicant's wife has severe anxiety and depression and U.S. Citizenship and Immigration Services (USCIS) erred in not fully considering the extreme hardship to the applicant's spouse if the waiver is denied. Counsel cites *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), to establish that psychiatric treatment for depression is sufficient for a finding of extreme hardship. Counsel cites a prior AAO decision sustaining an appeal where there was emotional (depression and anxiety) and financial hardship to a spouse. Counsel states that the applicant and his wife have strong family ties to the United States: their two adult children and granddaughter. Counsel asserts that the applicant's wife will have extreme emotional and financial hardship if separated from the applicant. Additionally, counsel contends that the applicant's wife will have extreme emotional hardship if separated from family members in the United States.

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

> (2) Criminal and related grounds. —
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> (A) Conviction of certain crimes. –
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> (i) In general. – 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 –
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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, or
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> (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.
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> . . . .

On February 15, 1995, the applicant pled guilty to third-degree burglary in New York. He was sentenced to conditional discharge for three years and ordered to pay a surcharge. On August 23, 1995, the applicant pled guilty to second-degree criminal facilitation in New York. The judge sentenced the applicant to serve five years of probation. On April 6, 2004, the applicant pled nolo contender to possession of cannabis, less than 20 grams, in Florida. The judge withheld adjudication and ordered that the applicant pay costs.

As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) and (II) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B) . . . of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection as it relates to a single offense of simple possession of 30 grams of marijuana if –
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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 . . .

A section 212(h) waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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 provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment,

inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In rendering this decision, the AAO will consider all of the evidence in the record.

The applicant's wife stated in the letter dated September 13, 2009 that she has a close relationship with her husband and that the applicant is like a father to her son and daughter from a prior relationship. The applicant's wife conveys that the applicant has been with her during difficult periods such as when she had a miscarriage. She indicates that she requires moral and financial support from the applicant because she has custody of her granddaughter. She states that the applicant takes their granddaughter to school. The applicant's wife conveys that in November 2001 she was diagnosed with depression and anxiety. She indicates that the applicant drives her to medical appointments because she has panic attacks that prevent her from driving, and that stress triggers her attacks. The applicant's wife states that she lost her job as a flight attendant as a consequence of emotional problems. She asserts that she will be overwhelmed by the demands of her job and raising her granddaughter if the applicant is removed to Columbia. The applicant's wife

conveys that she cannot take her granddaughter to live in Cali, Columbia, where her husband is from, because it is not safe there due to the prevalence of violent crimes and terrorist groups.

The asserted hardship factors in the instant case are emotional and financial in nature. The record shows that the applicant and his wife have been married since January 7, 1998. Medical records are consistent with the applicant's wife's statement of having depression and anxiety and panic attacks, of losing her job, and of taking medication for clonazepam, which is prescribed for panic attacks. A letter from the director of Orange County Public Schools conveys that the applicant and his wife have limited guardianship of their granddaughter for the purpose of her attendance at a public school.

However, the applicant has not demonstrated that his wife will experience extreme hardship if she joined him to live in Columbia. We acknowledge that the applicant's wife will have anxiety as a consequence of adjusting to life in Columbia, but no documentation has been submitted that is consistent with her concern of crime and terrorist groups in Cali, Columbia. Moreover, the applicant indicates in the affidavit dated August 21, 2009 that he is from a middle class family in Cali, Columbia, and had studied engineering in Columbia, and that his sister is employed with the local government as an environmental engineer. Thus, in view of the applicant's socio-economic status in Columbia, we do not find that the applicant's wife would experience extreme hardship there. Additionally, the applicant's wife's guardianship of her granddaughter is temporary and limited to her granddaughter's education. The applicant and his wife's residential lease agreement did not state that the applicant's granddaughter resides with them. Thus, when the hardship factors are considered together, the applicant has not demonstrated that his wife will experience extreme hardship if she joined him to live in Columbia.

Furthermore, even were we to find extreme hardship, we would deny the waiver application in the exercise of discretion based on the adverse factor in the case, which is the applicant's criminal history and serious criminal behavior. *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996). The applicant's crime of criminal facilitation involved a kidnapping and robbery. Additionally, the applicant states in his August affidavit that, as a consequence of his "kind of life," he knowingly associated with people actively engaged in illicit drug trafficking. Such an association is indicative of the applicant's bad character. Thus, when we consider and balance the adverse factors in this case, the applicant's crimes and stated connections to people engaged in illicit drug trafficking, with the favorable factors such as hardship to his wife, we find that the adverse factors clearly outweigh the favorable factors. Therefore, we find that the grant of relief in the exercise of discretion would not be warranted in this case.

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. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed and the application is denied.