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

[Redacted]

H₂

Date: **JUN 22 2012** Office: MIAMI (OAKLAND PARK) 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,

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Peru 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. The director stated that 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 had failed to establish that her 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 asserts that in denying the waiver application U.S. Citizenship and Immigration Services (USCIS) erroneously discounted the submitted psychological evaluation and test results. Counsel contends that the applicant's daughter, [REDACTED] has symptoms of post-traumatic stress disorder (PTSD), which have impacted her work and personal life. Counsel maintains that [REDACTED] has anxiety, panic attacks, and agoraphobia and avoids public places. Counsel states that [REDACTED] treatment includes psychotherapy and medication. Counsel contends that [REDACTED] therapist maintains that [REDACTED] mental health will further deteriorate if the applicant, who resides with [REDACTED], is forced to leave the United States. Counsel argues that the applicant has met the requisite burden of proof by providing two evaluations from [REDACTED] therapist and psychiatrist indicating that [REDACTED] suffers from PTSD, depression, panic attacks, and agoraphobia. Counsel asserts that if the applicant leaves the United States, [REDACTED] psychological condition will worsen causing her to experience extreme emotional and psychological hardship. In addition, counsel stated in the letter dated March 16, 2012 that the applicant lost the temporary medical insurance which was provided to the applicant by [REDACTED] when the application for permanent residence was denied. Counsel stated that if the applicant returns to Peru she will be subjected to the 10-year unlawful presence bar and will have no qualifying spouse or parent in which to apply for a waiver of inadmissibility.

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 –
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

On July 9, 2002, the applicant was convicted in [REDACTED] for grand theft of the third degree, and was placed on probation for 18 months. The director determined that the applicant's conviction was for a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A) of the Act. 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) of the Act is 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 subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

...

(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 resulting from violation of section 212(a)(2)(A)(i)(I) of the Act 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. The qualifying relatives in the instant case are the applicant's U.S. citizen and lawful permanent resident daughters. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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.

In regard to the hardships of remaining in the United States without the applicant, the applicant submitted an undated mental health evaluation from Mr. [REDACTED]. Mr. [REDACTED] stated that [REDACTED] is married and has a 23-year-old daughter, who resides with her, and that [REDACTED] works as a waitress and is completing a respiratory therapist program. Mr. [REDACTED] determined that [REDACTED] has a depressive disorder and PTSD due to a childhood incident of sexual abuse, anxiety about the applicant’s diagnosis of breast cancer, and having witnessed the applicant’s stroke. Mr. [REDACTED] stated the applicant’s daughter, [REDACTED] has a 22-year-old son and works at a telemarketing company. Mr. [REDACTED] stated that [REDACTED] indicated that she divorced her husband due to his mental illness and aggressive behavior towards her. Mr. [REDACTED] indicated that the applicant’s daughters played an active role in their mother’s limited recovery from a stroke. Mr. [REDACTED] stated that [REDACTED] is concerned her mother’s medical care in Peru will not be comparable to what she now has, and that her mother will become depressed in Peru. In an addendum, Mr. [REDACTED] stated that for the past several months [REDACTED] has had panic attacks and agoraphobia. Mr. [REDACTED] stated that [REDACTED] indicated that she expected to be happy in her new job, but feels apathetic and disinterested in making friends with co-workers. Mr. [REDACTED] conveyed that the applicant has been a source of emotional and psychological support for [REDACTED] and their separation will worsen [REDACTED] condition. The applicant provided a letter dated June 14, 2010 from the senior pastor of the Christian church where she and her daughters have received spiritual counseling.

The applicant also submitted a psychiatric evaluation from Dr. [REDACTED] dated May 2, 2011, in which Dr. [REDACTED] indicated that the applicant came to visit [REDACTED] and had a major stroke. Dr. [REDACTED] stated that the applicant “had no one to take care of her in Peru. All of this is increasing the patient’s

stressors. Therefore, the symptomatology of depression and panic has really gotten totally out of hand.” Dr. [REDACTED] diagnosed [REDACTED] with PTSD, depression, and panic disorder with phobia, and placed her on medication.

In addition, the applicant provided a letter from Dr. [REDACTED] dated August 25, 2010 stating that the applicant was diagnosed with acute stroke (which occurred on January 4, 2010), hypertension, aphasia, aphasia, patent foramen ovale, and major depressive disorder. Dr. [REDACTED] stated that the applicant is permanently disabled due to the effects of her stroke and has loss of movement on the right side of her body; has verbal and cognitive deficits; and will need physical and occupational therapy. Dr. [REDACTED] stated that the applicant “requires 24-hour supervised care and is unable to make competent decisions on her own.”

The asserted hardships to the applicant’s daughters are emotional in nature. The evidence in the record clearly establishes the serious health problems of the applicant. Counsel and Dr. [REDACTED] indicate that [REDACTED] mental disorders stem partially from her concern about the applicant not having anyone to take care of her in Peru. However, the applicant has lived in Peru until 2009 and because the record shows that the applicant has a son and daughter living in Peru, there is insufficient evidence in which to demonstrate that the applicant will not have anyone in Peru to take care of her. [REDACTED] is concerned that her mother’s medical care in Peru will not be comparable to what she now receives. However, no evidence has been presented in which to show that suitable medical care for the applicant is unavailable in Peru. [REDACTED] and [REDACTED] state that they want to be actively involved in caring for their mother. The evidence reflects they are employed full time and would therefore not be available for the 24-hour supervised care which their mother requires. While we acknowledge the evidence establishes that [REDACTED] and [REDACTED] have mental health disorders, their condition has not been shown to be so debilitating as to prevent their functioning on a daily basis and ability to earn a living. We recognize that if the waiver is denied the applicant will be subject to the 10-year bar for unlawful presence and that she will not be eligible for a waiver of inadmissibility. Nonetheless, this should not prevent the applicant’s daughters from visiting their mother in Peru. We acknowledge the emotional hardship of separation on the applicant’s daughters. However, when all of the asserted hardships to the applicant’s daughters are considered together, we find they fail to establish that the hardship they will experience will be extreme and beyond the common or typical results of removal and inadmissibility.

There has been no claim made that the applicant’s daughters would experience extreme hardship if they joined the applicant to live in Peru. The applicant bears the burden of proving eligibility for the benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361.

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 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.