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]

H2

Date: NOV 29 2012 Office: LOS ANGELES 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 District Director, Los Angeles, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The applicant is a native and citizen of Mexico 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 child.

In a decision dated March 2, 2007, the district director found the applicant inadmissible for having been convicted of theft. The district director concluded that the applicant failed to demonstrate that her U.S. citizen spouse and child would suffer extreme hardship as a result of her inadmissibility to the United States and denied the waiver application accordingly. In a decision dated July 15, 2009, the AAO found that the applicant's husband would not experience extreme hardship upon relocation to Mexico or remaining in the United States. The AAO dismissed the appeal accordingly.

On motion, counsel for the applicant submits new evidence which he contends overcomes the reasons for dismissal of the applicant's appeal. Counsel contends that the evidence outlining financial and emotional hardship to the applicant's husband and child demonstrate extreme hardship to her qualifying relatives.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The record includes the following new or additional evidence: a copy of the birth certificate of the applicant's U.S. citizen son; a hardship statement from the applicant's husband; bank statements for the applicant and her husband; pay stubs and utility bills; evidence of the applicant's husband's employment history; a declaration from a marriage counselor; a letter from [redacted] country conditions evidence; and copies of news articles regarding the crime rate in the city of Culiacan, Sinaloa, in Mexico.

The record shows that on or about October 2, 2002, the applicant was convicted of petty theft under California Penal Code section 484(A). The record further shows that on or about July 31, 2002, the applicant was convicted of "petty theft with a prior" under California Penal Code section 666-484(A). The applicant did not contest inadmissibility under section 212(a)(2)(A)(i)(I) on appeal, and she has not contested her inadmissibility on motion. Accordingly, the AAO will not disturb the previous finding that the applicant is inadmissible to the United States for having been convicted of a crime involving moral turpitude.

As discussed in the AAO's dismissal of the applicant's appeal, her eligibility for a waiver under section 212(h) is dependent first upon a showing that the bar to her inadmissibility would impose

extreme hardship on her U.S. citizen husband or child. Hardships that the applicant's spouse's parents or other family members would experience as a result of her inadmissibility are not considered in section 212(h), except to the extent that they would affect the applicant's qualifying relatives. 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).

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 (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.

The AAO turns first to a consideration of the additional evidence submitted to establish that the applicant's husband and child would suffer extreme hardship if her waiver application is denied.

Counsel submits an August 7, 2009, statement prepared by who conducted an evaluation of the applicant's husband. indicated that he interviewed the applicant's husband regarding the "possible deportation of his wife." stated that the applicant's possible removal has caused stress to the applicant's husband. asserted that, in his opinion, family separation would result in traumatic loss for the applicant's husband and their son and irreparable psychological damage to his family members. The statement reflects that interviewed the applicant on two occasions: July 29, 2009, and August 7, 2009. As such, it appears that the interviews were scheduled in response to the AAO's dismissal of the applicant's appeal. does not indicate in his statement the tests he performed to conclude that the applicant's husband is experiencing stress as a result of his wife's possible removal from the United States. That is, the statement does not indicate the methodology he used to reach his findings. The conclusions rendered by therefore do not reflect the insight derived from any extensive testing or observation of the applicant. Additionally, there is no evidence in the record indicating that the applicant's husband has any history of mental health disorders such as anxiety or depression, or any tendencies toward such disorders, or that he underwent any psychological treatment before his visits to in July and August 2009. Accordingly, the AAO finds the statement from does not demonstrate more than the common emotional hardship associated with inadmissibility or removal.

Counsel submits on motion medical records for the applicant's husband's grandmother. The records are dated September 29, 2004, January 16, 1996, and earlier. The documents show that his grandmother has experienced cardiovascular problems in the past. The record contains a letter from the applicant's husband, dated August 10, 2009, in which he explains that he takes care of his grandmother and that her conditions require constant care. The applicant's husband states that he translates documents for her, schedules her medical appointments, and takes her to the doctor. However, the most recent description of his grandmother's health status was prepared by a medical professional over eight years ago. The AAO has carefully examined the medical records for the husband's grandmother, yet we are unable to determine the severity of her conditions, or the impact her health has on her ability to perform common functions at the time the motion to reopen and reconsider was filed. Though the AAO recognizes that the letter from the applicant's husband constitutes some evidence that he takes care of her, the record does not contain sufficient detail

explaining that the applicant's husband is her only caretaker and that there are no viable alternatives to ensure her well-being.

Counsel again asserts that the applicant's husband's parents will continue to endure economic difficulty in the event of relocation. In its dismissal of the applicant's appeal, the AAO found the record to lack sufficient evidence to demonstrate that the applicant's husband's parents require his support such that he will experience extreme hardship should he relocate. The AAO now finds this deficiency to have been corrected on motion. The statements provided by the applicant's husband, as well as the documentary evidence showing his monetary contributions to his parent's household, establish the financial assistance he provides them. The documentary evidence also establishes the income earned by the applicant's husband's father is insufficient to maintain his household. However, the record also demonstrates that the applicant's husband has consistently asserted that he will remain in the United States with their son and his parents in the event of the applicant's removal from the United States. In his undated statement submitted on appeal, the applicant's husband stated that he would not leave his parents, but that he does not wish to be separated from the applicant. Additionally, in a report dated August 10, 2009, a licensed family therapist, indicated that both the applicant and her husband stated that if the applicant is removed from the United States, her husband and child will remain in the United States. While the applicant has established on motion that her husband will experience significant emotional hardship should he live in Mexico away from his parents, as he would be unable to contribute financially to their household, the record demonstrates that he does not intend to relocate to Mexico should the applicant be removed to that country. The AAO 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. *Cf. Matter of Ige*, 20 I&N Dec. 880 (BIA 1994). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

Counsel notes that the news articles submitted on motion demonstrate conditions of a heightened risk of violence in the state of Sinaloa, Mexico, where the applicant is from. The news articles, dated May, July, and November 2008, address the increase in narcotics-related violence in Sinaloa. Yet, the applicant has not shown that her husband and child, as qualifying relatives, would reside in an area with safety concerns for U.S. citizens. Moreover, the applicant has not stated whether there would be any travel limitations imposed upon her husband and child resulting from the current country conditions in Mexico. As such, the applicant has not demonstrated how the level of increased violence in the state of Sinaloa would result in extreme hardship to her qualifying relatives.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's husband and child caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, it is unnecessary to discuss whether she merits a waiver as a matter of discretion.

In proceedings for an application for 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.