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

U.S. Citizenship and Immigration Services

[redacted]

H2

DATE: OCT 15 2012 Office: BANGKOK, THAILAND FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h), 8 U.S.C. §1182(h), of the Immigration and Nationality Act.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 in accordance with the instructions on 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 any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Vietnam 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 a crime involving moral turpitude. The applicant is the father of a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. §1182(h), in order to live with his U.S. citizen daughter in the United States.

In a decision dated December 6, 2011 denying the Application for Waiver of Grounds of Inadmissibility, the Field Office Director concluded that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act and had failed to establish that the bar to admission would impose extreme hardship on his U.S. citizen daughter, the qualifying relative. *Field Office Director's Decision*, dated December 6, 2011.

On appeal, the applicant's daughter states that she would experience further medical hardship if separated from the applicant since she is recently divorced. She asserted that if she were to live in the United States without the applicant, she would be depressed and stressed. The applicant's daughter and sister-in-law further assert that the applicant will not become a burden on the U.S. government.

In support of the waiver application, the record contains, but is not limited to, medical records; a January 3, 2012 letter from [redacted] and hardship statements from the qualifying relative and the applicant's sister-in-law. [redacted] dated January 3, 2012. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

We will first address the finding 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.

The record contains the "Criminal Record" of the applicant issued by the Justice Department of [redacted] on September 28, 2010. The record certifies that the applicant was convicted of "Breach of trust to misappropriate other's property (Article 158)," and was sentenced on January 14, 1998 to a three-year suspended sentence and 36-month probation by the People's [redacted]. The applicant's daughter claims that her parents were the victims of others' unpaid debts in a ring of tontine and that after her mother's and father's convictions, the Vietnamese Penal Code was revised and insolvency of tontine was no longer considered a crime. *Letter of* [redacted] dated November 7, 2011. On appeal, the

applicant's daughter asserts that her parents are innocent and that they never would have been convicted under the revised law. *Letter of* [redacted] dated January 3, 2012. Inasmuch as the applicant's daughter asserts her father's innocence, we cannot look behind the applicant's conviction to reassess his guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031 (BIA 1999); *Matter of Fortis*, 14 I&N Dec. 576 (BIA 1974).

The record is also insufficient to establish that the applicant's conviction does not render him inadmissible. When an applicant relies on a foreign law to establish eligibility, the application of the foreign law is a question of fact, which must be proved by the applicant. *See Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (citing *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973)). In this case, the applicant's daughter did not submit the criminal statute under which her father was convicted, the revised law, or any evidence that the revised law would have been retroactively applied to the applicant. Without such evidence, we have no basis to withdraw the Field Office Director's inadmissibility determination.

Now we will address the evidence submitted by the applicant in support of his waiver of inadmissibility pursuant to section 212(h) of the Act, which provides, in pertinent part:

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I)(1) . . . of subsection (a)(2) . . . if -
>
> > (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --
> >
> > > (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> > >
> > > (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> > >
> > > (iii) the alien has been rehabilitated; or
> >
> > (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 . . .

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

While the date of the applicant's sentencing was January 14, 1998, it is unclear from the record that more than 15 years have passed since the activities for which the applicant was convicted. The record does not contain the date for the breach of trust. Accordingly, the applicant has not met requirement for waiver at subsection 212(h)(1)(A)(i) of the Act.

The applicant has also not established his rehabilitation. The record contain some evidence of rehabilitation including a certificate issued by [redacted] in Vietnam certifying that the applicant has completed a prison sentence of three years and probation of 36 months as required by [redacted] Province dated July 28, 1999. *Certificate of Complete Serving Sentence*, dated October 25, 2010. The record further contains a certificate issued by the Acting Chief of The Judgment Execution Sub-Agency which certifies that the applicant's property was seized and sold pursuant to court order to partially satisfy sentence terms requiring restitution to creditors. *Certificate*, dated July 28, 2010. The document also certifies that the applicant has no additional property in [redacted] to satisfy additional debts owed to satisfy required restitution. *Id.*

To show rehabilitation, the applicant's qualifying relative states that the applicant is a person of good moral character who has engaged in volunteer and charitable activities in the community since his release from prison. The applicant's daughter states that her parents were awarded the title of [redacted] in 2001, 2003 and 2005. *Letter of* [redacted] dated November 7, 2011. The record does not contain evidence of these awards beyond reference in the letter of the applicant's daughter. The applicant's daughter further states that her parents help the poor by donating to social organizations and distributing meals, which she claims is evidenced by several donation certificates and photographs. *Id.* The record does not contain those donation certificates or photographs. Although the assertions of the applicant's daughter are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Without additional evidence, the AAO cannot find that the applicant is rehabilitated or eligible for a waiver under Section 212(h)(1)(A) of the Act.

Since the applicant is not eligible for a waiver under subsection 212(h)(1)(A) of the Act, we now turn to the hardship evidence submitted by the applicant. A section 212(h)(1)(B) 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 relative here is the applicant's U.S. citizen daughter. 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 meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. 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.* at 565-566.

In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios are possible should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action to be taken is difficult, and it is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his qualifying relative(s) under both possible scenarios. In hardship statements dated November 7, 2011 and January 3, 2012, the applicant's qualifying relative offers statements of hardship if separated from the applicant. In her hardship statement dated November 7, 2011, the applicant's qualifying relative offers statements of hardship if she relocates to Vietnam.

The applicant's qualifying relative states that because she left Vietnam such a long time ago, she does not think that she would be able to adapt to life in Vietnam in the event of relocation. *Letter of* [redacted] dated November 7, 2011. She also states that life in the United States will be better for her parents and her as compared to Vietnam. *Id.* The record does not contain evidence to support the statements made by the applicant's daughter concerning hardship she would experience due to relocation abroad. Consequently, the applicant has not established extreme hardship to the qualifying relative in the event of relocation to Vietnam.

In considering the hardship evidence if the U.S. citizen daughter is separated from the applicant, the applicant's daughter states that she would experience further medical hardship since she is recently divorced. The record contains a letter from [redacted] who briefly states that she is

treating the qualifying relative for clinical depression because she has trouble sleeping, eating and concentrating. [redacted] dated January 3, 2012. The letter does not contain information regarding ongoing treatment, symptoms, duration of illness, and extent of impact on the qualifying relative. *Id.* The applicant's daughter submitted copies of two notices of appointments with the [redacted] in January 2012 and a handwritten note from [redacted] stating that she is experiencing insomnia, fatigue and seems depressed. The applicant's daughter further states that she is depressed and stressed living apart from the applicant. However, the applicant's qualifying relative has been living without the applicant since 2006 and the record indicates that she did not seek any mental health treatment until January 2012, shortly after this application was denied.

Family separation is a type of hardship that is a common result of inadmissibility. Though the applicant's daughter is suffering from depression, which she attributes in part, to her separation from the applicant, the record does not establish circumstances in the aggregate rising to the level of extreme hardship. Furthermore, the qualifying relative is not required to separate from the applicant and she has not established her inability to return to Vietnam. Accordingly, the applicant has failed to establish extreme hardship to his U.S. Citizen daughter as required for a waiver of his inadmissibility under section 212(h)(1)(B) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval 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 and the waiver application will remain denied.

ORDER: The appeal is dismissed.