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: OCT 26 2012 Office: LAWRENCE, MA FILE: [redacted]

IN RE: [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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Lawrence, Massachusetts and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States 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 committed a crime involving moral turpitude. The applicant is married to a lawful permanent resident and is the son of lawful permanent residents. He 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.

The Field Office Director concluded that the record did not establish that the bar to the applicant's admission would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision,* dated April 19, 2010.

On appeal, counsel contends that the decision reached by United States Citizenship and Immigration Services (USCIS) in the applicant's case is contrary to law and fact, and an abuse of discretion. He asserts that the applicant has met the extreme hardship standard. *Form I-290B, Notice of Appeal or Motion,* received May 14, 2010.

The evidence of record includes, but is not limited to, counsel's brief; statements from the applicant, his spouse, his father and his sister; a psychological evaluation of the applicant's spouse and parents; medical documentation relating to the applicant's spouse and his mother-in-law; documentation of the applicant's and his spouse's financial obligations; earnings statements, tax returns and W-2 Wage and Tax Statements for the applicant and his spouse; an employment termination letter for the applicant's spouse; bank statements; school records for the applicant; statements from the applicant's employers; country conditions information on Ecuador and court records relating to the applicant's conviction. The entire record was reviewed and all relevant information considered in reaching a decision on the appeal.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

> (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 record reflects that on December 20, 2001, the applicant pled guilty to Attempted Burglary, Second Degree, New York Penal Law (NYPL) § 140.25(2). On February 15, 2002, the applicant was sentenced to five years of probation and paid a surcharge of $210. As the applicant has not disputed his inadmissibility on appeal, and the record does not show the determination to be in error,

we will not disturb the finding by the Field Office Director that the applicant's conviction is crime involving moral turpitude.

As the applicant has been found inadmissible under section 212(a)(2)(A)(i)(I) of the Act, the AAO will now consider whether the record establishes his eligibility for a waiver under section 212(h) of the Act, which states 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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> (1)(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 waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, the U.S. citizen or lawfully resident spouse, parent or child of an applicant. The qualifying relatives in this proceeding are the applicant's spouse and parents. Accordingly, hardship to the applicant will be considered only insofar as it results in hardship to one or more of these qualifying relatives. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable 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 BIA 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 BIA 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 BIA 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 BIA 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.

On appeal, counsel asserts that the applicant's spouse is unemployed, facing significant debt and will be forced to turn to public assistance if the applicant is removed from the United States. He also indicates that the applicant's mother-in-law was recently hospitalized as a result of a suicide attempt and that, as her husband is unable to care for her, it is likely that she will move in with the applicant and her daughter who already suffers from anxiety and depression. Counsel maintains that if the applicant is not allowed to remain in the United States, his spouse will not have the emotional and financial support she needs to focus on her family and their problems.

In a May 2010 statement, the spouse asserts that she is experiencing panic attacks from the stress created by her mother's health problems and her fear of losing the applicant, and that she is in danger of slipping into a deep depression. She states that she has begun looking for a mental health professional to help deal with her anxiety. The applicant's spouse also reports that her mother attempted suicide on Mother's Day 2010 and is currently undergoing extensive inpatient physical and psychiatric therapy. She states that her mother's recovery will be long and involved and that the

burden of planning for her mother's long-term care has fallen on her as she is the oldest daughter and the child who has experience in healthcare planning. She asserts that her father is not capable of making medical decisions for her mother, nor of providing the safe environment she will need for her recovery as he is drinking. As a result, the applicant's spouse states, it is likely that her mother will have to move in with her and the applicant and that, as she is unemployed, she will need the applicant's income.

With regard to her current financial situation, the applicant's spouse states that she is financially dependent on the applicant as she has been unemployed since March 2010 and is $28,000 in debt. She maintains that without the applicant, she would default on what she owes and would lose her car, thereby destroying her credit, and her and the applicant's efforts to build a financially stable life.

The applicant's spouse also contends that her mental state is fragile and that, as a teenager, she was hospitalized five times in a six-month period for mental health problems, and was diagnosed with depression, suicidal ideation, generalized anxiety disorder, bi-polar disorder and borderline personality disorder. She states that she is experiencing debilitating anxiety attacks and that her depression is overwhelming. The applicant's spouse contends that, given her family history of mental illness and her own history, her mental health is at risk if she does not have the applicant's support and the stability of her current home.

In support of the hardship assertions made by counsel and the applicant's spouse regarding her mother's health, the record contains a May 18, 2010 letter from a [redacted] at the [redacted] that establishes the applicant's spouse's mother experienced some type of life-threatening event on May 10, 2010. Although [redacted] does not indicate the exact nature of the event, she states that the applicant's mother-in-law has been in the hospital's Intensive Care Unit (ICU) since May 10, 2010 and will require ICU-level care for at least another two days. She also reports that the applicant's spouse's presence has been required on a frequent basis to help with decision-making and support in her mother's case.

Also included in the record is a psychological evaluation conducted on May 21, 2010 by Licensed Clinical [redacted]. [redacted] indicates that she administered the [redacted] to the applicant's spouse, whose scores placed here in the Severe range for both depression and anxiety. She states that in response to the [redacted], the applicant's spouse reported a range of depressive symptoms, including feeling discouraged about the future, feelings of sadness, lack of enjoyment, frequent crying episodes, delayed decision-making, patterns of self-preoccupation, agitation, irritability, marked fatigue, concentration difficulties and a noticeable change in her sleeping and eating patterns. In response to the [redacted] states, the applicant's spouse admitted to numerous psycho-emotional and somatic symptoms linked to anxiety, including an inability to relax and fearing the worst will happen. [redacted] further indicates that the following descriptors apply to the applicant's spouse: "terrified or afraid," "nervous," "fear[ful] of losing control," "heart pounding and racing," "unsteadiness," "feelings of choking," and "feeling hot."

The record further demonstrates that the applicant is unemployed and has a significant amount of credit card debt. A March 6, 2010 letter addressed to the applicant's spouse and signed by [redacted] states that the business is closing and notifies the applicant's spouse that her employment will end as of March 22, 2010. A copy of an Acknowledgement Form from the Massachusetts Department of Workforce Development, Division of Unemployment Assistance, dated March 22, 2010, establishes that the applicant's spouse has filed for unemployment insurance. Copies of credit card statements, dental care bills, and student loan statements submitted for the record indicate that the applicant's spouse owes more than $30,000.

Although the evidence of record does not support all of the assertions made to demonstrate the hardships that would be created by the applicant's removal, the AAO, nevertheless, finds sufficient evidence to establish that the applicant's spouse would experience significant hardship in his absence. We take note of the applicant's spouse's emotional status, as established by her scores on the psychological tests administered by [redacted] her mother's unspecified, but critical medical condition; her involvement in directing her mother's medical care; the loss of her employment; and her $30,000 of debt. We find that when these specific hardship factors and the hardships routinely created by the separation of families are considered in the aggregate, the applicant has established that his spouse would suffer extreme hardship if the waiver application is denied and she remains in the United States.

On appeal, counsel also asserts that the applicant's spouse would suffer extreme hardship if she moved with him to Ecuador. He states that the applicant's spouse is a U.S. citizen by birth, has never been to Ecuador and has no family outside the United States. Counsel further asserts that the applicant's spouse's inability to speak, read or write Spanish will prevent her from obtaining employment. However, even if the applicant's spouse were able to find a job, counsel contends, she would not earn enough income to make the minimum payments on her U.S. debt, as Ecuador has established a basic monthly salary of only $240 for all workers.

Counsel also states that living conditions in Ecuador would result in hardship for the applicant's spouse. He contends that 35 percent of the population in Ecuador lives in poverty, the risk of contracting infectious diseases is high and crime is rampant, often targeting U.S. citizens. He further asserts that the applicant's spouse has a history of cervical dysplasia and is at risk for contracting the Human Papillomavirus (HPV), which can lead to cervical cancer. Moving to Ecuador, counsel contends, would mean the applicant's spouse's condition would not be monitored as frequently or consistently as in the United States. He also states that the applicant's spouse would not be able to afford quality medical care in Ecuador, which although available in the country's major cities, would require payment at the time of treatment.

In her May 2010 statement, the applicant's spouse maintains that she cannot move to Ecuador at this time because it is likely that her mother will have to move in with her and the applicant. She asserts that her father, an alcoholic, cannot provide the home environment her mother will need. The applicant's spouse also states that she has a history of cervical dysplasia and that her doctors have instructed her to monitor her condition closely with routine gynecological screenings. She contends

that she would not have access to quality medical health care in Ecuador and that her options would be further limited by her meager financial resources and inability to speak Spanish.

The applicant's spouse also states that moving to Ecuador would mean defaulting on her credit card debt, which would destroy her credit and all the hard work she and the applicant have put into building a financially stable life in the United States. She asserts that she would not be able to earn enough in Ecuador to continue paying off her debt or to afford to travel to the United States when necessary. She also contends that living in Ecuador is dangerous, noting that the Department of State has rated the crime threat in Ecuador's major cities as "critical" and that U.S. citizens have been the victims of homicides, armed assault, kidnapping, robbery, sexual assault and home invasion. She states that as a non-Spanish speaking woman from the United States, she would be a target for criminals. The applicant's spouse indicates that her fear of being in Ecuador and unable to communicate in Spanish has resulted in panic attacks

In support of the preceding claims, the applicant has submitted medical documentation of his spouse's abnormal pap smears during the period 2006-2008 and country conditions information on Ecuador, including the following materials issued by the Department of State: 2009 Crime and Safety Report for Ecuador, issued by the Overseas Security Advisory Counsel; a January 26, 2010 Country Specific Information on Ecuador, and the 2009 Human Rights Report: Ecuador.

In considering the consequences of relocation for the applicant's spouse, the AAO has taken note of her inability to speak, read or write Spanish, and the effect that her lack of Spanish would have not only on her employability, but on her ability to successfully function in Ecuadoran culture and society, as well as communicate with healthcare providers. We further observe that the applicant's spouse has lived her entire life in the United States and that her family ties, other than the applicant, are to the United States. In considering the applicant's ties to the United States, the AAO recognizes the applicant's mother-in-law's recent medical emergency and the obligation the applicant's spouse feels with regard to her mother's care. Having reviewed the preceding factors in combination with the difficulties and disruptions routinely created by moving to an unfamiliar country, we find the record to establish that the applicant's spouse would experience extreme hardship if she relocates to Ecuador.

In that the applicant has established that the bars to his admission would result in extreme hardship for a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and

> seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The adverse factors in the applicant's case are his conviction for a crime involving moral turpitude for which he now seeks a waiver, and his unlawful residence and employment in the United States. The mitigating factors include the applicant's U.S. citizen spouse; the extreme hardship his spouse would experience if the waiver application is denied; the absence of a criminal record since he committed the 2001 offense that bars his admission; his youth at the time of the offense and his multiple statements of remorse; his attainment of a GED and an Associate's Degree from [redacted] in New York City; the statements from his employers describing him as an outstanding member of their workforce and attesting to his character; and statements from his spouse, his father and his sister reporting his remorse for his 2001 offense and his rehabilitation.

The AAO acknowledges the negative factors in this case. However, we, nevertheless, find that when taken together, the mitigating factors in the present case outweigh the adverse factors such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained

ORDER: The appeal is sustained.