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

(b)(6)

Date: FEB 04 2013 Office: MIAMI FILE:

IN RE: Applicant:

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:

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 Field Office Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Panama 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 crimes 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.

In a decision dated June 21, 2011, the field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that her U.S. citizen husband would experience extreme hardship as a consequence of her inadmissibility. The field office director noted that the applicant did not show that the qualifying relative's hardship was more severe than that suffered by the relatives of any individual who is refused admission into the United States. In addition, the field office director noted that the applicant did not present any evidence "as to why [her] husband could not reside in Panama to avoid physical separation."

On appeal, counsel for the applicant states the field office director erred in finding that the record evidence did not establish that the applicant's bar to admission would result in extreme hardship to his U.S. citizen husband and LPR children. Counsel avers that the evidence submitted on appeal outlining psychological and emotional difficulties to the applicant's U.S. citizen husband demonstrate extreme hardship to her qualifying relative.

The record includes, but is not limited to: counsel's brief; an affidavit by the applicant's husband; two diagnosis letters by , stating that the applicant's husband has been diagnosed with depression and anxiety; employment reference letters; tax documents and pay stubs; documentary evidence referencing the applicant's completion of her term of supervision; and documentation regarding the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

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

> (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 Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....
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> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record reflects that on June 7, 2000, the applicant was convicted in the Circuit Court of the Eleventh Judicial Circuit in and for Florida, of grand theft in the third degree in violation of Florida Statutes § 812.014(1)(c). The applicant was sentenced to a two-year term of probation. The record further reflects that on August 29, 2000, the applicant was convicted in the Circuit Court in and for Florida, of a separate offense of grand theft in the third degree in violation of Florida Statutes § 812.014(1)(c). The applicant was sentenced to a four-year term of probation. The field office director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. As the applicant has not disputed inadmissibility from these convictions on appeal, and the record does not show the determination to be erroneous, the AAO will not disturb the finding of the field office director.

Section 212(h) of the Act provides, 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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> (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 . . . .

The AAO begins its analysis by noting that a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. 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). In this case, the applicant asserts that denial of her admission will impose extreme hardship upon her U.S. citizen husband.

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 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.

In his brief on appeal, counsel states that denial of the applicant's admission to the United States would result in psychological hardship to her husband. Counsel asserts that the applicant's husband has experienced symptoms of anxiety and has been prescribed medication to combat the associated symptoms throughout his life. Counsel contends that the prospect of separation from his wife has exacerbated the applicant's husband's preexisting psychological conditions. In an affidavit dated July 13, 2011, the applicant's husband indicates that he's experienced symptoms of anxiety throughout his life and that due to hard work and perseverance, he was able to attain a college degree and hold stable employment. He asserts that the symptoms of anxiety have exacerbated because of his fear of separation from the applicant and that this fear stems from the separation he experienced from his parents when he was a child in Cuba.

The record contains two diagnosis letters prepared by Psychologist In her letter dated March 15, 2011, Dr. indicates that the applicant's husband has been under her care due to symptoms of depression and anxiety. She states that the applicant's husband has been "suffering from anxiety symptoms for several years, however, his symptoms have recently exacerbated and he has also been diagnosed with Depressive Disorder." Dr. further indicates that the applicant experiences excessive worries, insomnia, nightmares, feelings of impending doom, and generalized anxiety. According to Dr. , the exacerbation of his anxiety symptoms and presence of depressive ones is linked to current stressors and could "also be explained by the presence of severe past psychological trauma." Upon review, the AAO notes that Dr. does not specify in her letters the tests she performed to conclude that the applicant's husband is experiencing depression and anxiety. Also, the letters do not provide sufficient detail regarding the applicant's husband's treatment so as to conclude that Dr. diagnosis was derived from extensive testing or observation of the applicant's husband. In fact, though Dr. asserts that the applicant "has been under [her] care due to symptoms of depression and anxiety," the evidence is insufficient to determine the period of time that the applicant has been receiving treatment for these psychological conditions. Other than the two letters prepared by Dr. , the record contains no other medical documentation from which to determine that the applicant's husband has experienced anxiety symptoms throughout his life and that he has been prescribed medication for these symptoms in the past. Additionally, the diagnosis letters do not reference the period of time that the applicant's husband has been under the care of a psychologist. Accordingly, Dr. statement that the applicant's husband "has been under [her] care due to symptoms of depression and anxiety" is insufficient to show that the applicant's husband has experienced anxiety and depression in the past.

Though we recognize that the applicant's husband is experiencing symptoms related to depression and anxiety, the medical diagnosis letters reflect that the applicant is alert, high-functioning, and oriented. Dr. further indicates that though the applicant's husband's "attention and concentration seem to be somewhat impaired," she notes that this may be the effect of childhood trauma. In addition, Dr. indicates in her letter dated July 7, 2011, that individuals who suffer from the same types of conditions as he does may function and be able to hold high-level jobs. Here, the record reflects that the applicant is employed as an International Sales Manager for a

company in South Florida and does not indicate that his productivity or employment has suffered due to his psychological condition. The AAO recognizes the significance of anxiety resulting from the prospect of family separation as a hardship factor, but concludes that the asserted psychological difficulties, as demonstrated by the evidence in the record, are the common results of removal or inadmissibility and do not rise to the level of extreme hardship. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568.

The applicant does not assert financial hardship upon separation and the record evidence does not demonstrate that the applicant's husband would experience financial difficulties if the applicant is denied admission into the United States. The record evidence here indicates that both the applicant and her husband maintain stable employment with private companies in the South Florida Area. The applicant's husband earned an accounting degree and is currently employed as an International Sales Manager. Additionally, the record includes an employment reference letter for the applicant in which it is stated that she is employed as Director of Operations of the United States branch of Though the record indicates that the applicant's husband has a daughter from a previous relationship, the record does not contain evidence or her age, that he provides financial support as a caretaker, or that she relies upon him to such a degree that separation from the applicant would amount to him experiencing financial hardship.

Based on the foregoing, the AAO finds that when considering the emotional and psychological hardships collectively, the applicant has not fully demonstrated that the hardship her husband will experience as a result of separation is more than the common result of removal or inadmissibility.

With regards to relocation to Panama, counsel for the applicant contends that the applicant's husband "cannot simply relocate with his wife to another country to find another job that would fulfill his psychological needs." In his affidavit dated July 13, 2011, the applicant's husband reiterates counsel's contentions regarding relocation and that his employment is essential to his sense of worth and self-esteem. Upon review, the AAO finds that the applicant has failed to demonstrate the existence of extreme hardship to her qualifying relative in the event of relocation. Firstly, there is no evidence in the record indicating that the applicant will be unable to find employment in Panama. Neither is there evidence in the record indicating diminished job prospects for accountants in Panama nor an explanation of why he cannot find an emotionally fulfilling job upon relocation. Additionally, the record does not include any country conditions documentation that would have detrimental or negative effects upon the applicant's husband. Moreover, the applicant's husband's assertions regarding the importance of his employment on his psychological state are not corroborated by the psychological diagnosis letters included in the record. Accordingly, the AAO finds that the applicant has failed to demonstrate that relocation to Panama would result in extreme hardship to her qualifying relative.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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 an application for a 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.