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

(b)(6)

Date: FEB 27 2013 Office: LONDON FILE:

IN RE: Applicant:

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

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 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,

Michael Shumway
for Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native of Iran and citizen of the United Kingdom who was found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation; and section 212(a)(2)(A) of 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 sections 212(i) and 212(h) of the Act, 8 U.S.C. § 1182(i), and 8 U.S.C. § 1182(h), respectively, so as to immigrate to the United States. The director determined that the applicant had failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends that the submitted evidence demonstrates the applicant's U.S. citizen wife and child will experience extreme hardship if the waiver is denied. Counsel asserts that evaluation dated March 26, 2012 states that the applicant's wife has "immense stress and anxiety," and separation from the applicant might cause traumatic stress disorder. Counsel contends that states in the letter dated April 2, 2010 that the applicant's wife has depressive and anxiety symptoms. Counsel declares that determined that the applicant's two-year-old child has speech and developmental delays and the family needs to be together. Counsel argues that the applicant's daughter's emotional and psychological wellbeing necessitates that the applicant be present in her life. Counsel contends that hardship to the applicant's wife is increased from her concern about the effect that repetitive separation from the applicant will have on her daughter. Counsel asserts that the applicant's wife needs the applicant to take care of her child so she can work in the United States. Counsel states that the applicant has a job waiting for him in the United States, which will enable him to financially support his family. Counsel declares that the applicant's wife was born in the United States, has lived here for 34 years, and has strong family ties here through her mother, brother, grandmother, and aunts and uncles. Counsel argues that in relocating to England the applicant's wife will no longer be able to take care of her 81-year-old grandmother, who has dementia and depends on the applicant's wife for errands, doctor appointments, and emotional and physical support. Counsel contends that the applicant's wife cannot work in England due to her depressive episodes, and the applicant's daughter has psoriasis from the cold weather in England. Lastly, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) failed to consider family separation is extreme hardship, and the hardship factors must be considered together.

We will first address the finding of inadmissibility.

The director found the applicant was inadmissible for having been convicted of crimes involving moral turpitude.

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.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes as:

> A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –
>
> (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
> (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The record reflects that on January 19, 1989 the applicant was convicted of four counts of theft in England and sentenced to one-month imprisonment for each offense, which was suspended for two years. On May 30, 1996, the applicant was convicted of theft in England, and had an order of conditional discharge after twelve months.

As the applicant has not disputed on appeal that his theft offenses are crimes involving moral turpitude, 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 found 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 -
>
> (1) (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 . . .

The director decided that the applicant was inadmissible for procuring admission into the United States by fraud or willful misrepresentation.

Section 212(a)(6)(C) of the Act provides:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The director found that the applicant was inadmissible for procuring admission into the United States by fraud or willful misrepresentation on May 29, 2007, September 14, 2007 and February 5, 2009. The director stated that the applicant applied for admission into the United States under the Visa Waiver Program (VWP) on these dates by stating on the Nonimmigrant Visa Waiver Arrival/Departure (Form I-94W) that he had never been arrested or convicted of an offense or crime involving moral turpitude. As the applicant has not disputed on appeal this finding of inadmissibility, the applicant is inadmissible under section 212(a)(6)(C) of the Act for procuring admission into the United States based on the willful misrepresentation of his criminal convictions and eligibility for admission into the United States.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. In that the hardship standard for the section 212(i) waiver is more difficult to meet, the AAO will apply that standard in determining hardship here. Thus, hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen wife is the only qualifying relative in this case. 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 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 1292 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, which consists of declarations, letters, medical records, a psychological evaluation, information about psoriasis, an offer of employment, and other documentation.

The applicant's wife asserts in the declarations dated April 5, 2012 and May 27, 2011 that she was diagnosed with severe depression due to separation from her husband, and needs the applicant for financial and emotional stability. She states that her daughter has speech and development delays and that she is concerned about the effect separation from the applicant will have on their daughter. The applicant's wife asserts not being able obtain a job in the United States because the applicant is needed to take care of their daughter while she is at work. The applicant's wife asserts that it would be an extreme hardship to relocate to the United Kingdom for she was born in the United States and lived here for 34 years and has no social or familial ties to the United Kingdom, but has her mother, grandmother, aunts, uncles and brother, all of whom are U.S. citizens, in the United States. The applicant's wife contends having a close bond with and taking care of her 81-year-old grandmother and having a close relationship with her mother. She states that she is concerned about separation from her grandmother because there is no one to take care of her the way she does, and is anxious about separation from her mother, who will become depressed from not seeing her. The applicant's wife asserts that the five months she lived in the United Kingdom "was the hardest 5 months of my life." She maintains that she missed seeing extended family; was not accustomed to life in the United Kingdom, including the cold weather, driving, and the cost of living; and she lacked job prospects. She asserts that she is depressed living in the United Kingdom due to separation from her extended family and had surgery to lose 50 pounds she gained from being depressed. She declares that she would not be able to visit her extended family because of the long distance and expenses involved. The applicant wife stated her daughter has psoriasis from the cold weather in the United Kingdom.

The claimed hardships to the applicant's wife in remaining in the United States while the applicant lives in England are emotional and financial in nature. The applicant's wife's assertion of being anxious and depressed due to separation from her husband is consistent with the letter from and the psychological evaluation by states that the applicant's wife has stress and anxiety due to the denial of the applicant's waiver application and is on medication for severe depression. states "I am concerned that being separated from her husband will cause a traumatic stress disorder as she is already very fragile." indicates that the applicant's two-year-old daughter has speech and development delay and will be evaluated for developmental and behavioral issues, and separation from her father would be detrimental to her development. l states in the psychological evaluation dated June 30, 2011 that the applicant's wife "has been going back and forth to England to be with her husband [a] few months at a time. . . .[and] after the birth of her daughter this back and forth got more difficult." states that the applicant's wife conveys that she "lives with her mother in order to have a support network but as a wife and mother she would like to have her independence." states that the applicant's wife has symptoms of anxiety and mood changes directly related to separation from her husband and "worries excessively about her future and how she will raise her daughter by herself and worries about their daughter and the emotional consequence of not having her father in her life." In light of the evidence of the stress, anxiety and depression of the applicant's wife due to separation from the applicant, coupled with her concern about the impact that separation

will have on the wellbeing of their daughter, we acknowledge that the applicant's wife will experience hardship in remaining in the United States while her husband lives in England.

The asserted hardships to the applicant's wife in relocation to England are family separation, lack of job prospects, adjusting to the culture and climate of England after living in the United States most of her life, the expense of living in England, and exposing her daughter to cold weather which causes psoriasis. The applicant's wife claims that she will have no job prospects in England, but has submitted no documentation, except for her husband's declaration dated August 9, 2011, consistent with that claim. The record suggests that the applicant has the means to financially support his wife and daughter in London (where they presently reside), for the applicant is selling two flats and the Biographic Information (Form G-325) indicates that he is a self-employed property manager, and prior to that was the manager of

As to separation from her grandmother, states in the letter dated April 2, 2012 that the applicant's wife's grandmother has dementia and the family member who can provide her significant care is the applicant's wife, but the record reflects that the grandmother has sufficient mental capacity to live alone and is assisted and visited by her daughter. The applicant's wife asserts that her young daughter has psoriasis from cold weather, but this is not in accord with the letter from dated January 10, 2011 stating "her psoriasiform eruption has not completely resolved. They can stop the Trimovate and just use Sudocrem as a barrier cream in the nappy area as needed."

In regards to the asserted hardships of separation from extended family and adjusting to life in London, states that the applicant's wife lives in California with her mother and brother, and has been coming regularly to London to be with the applicant. states the applicant's wife "reported that she has found [it] extremely difficult to adjust to living in the UK as she misses her mother and the rest of her family. . . she feels very alienated living in this country and that she feels extremely homesick." states the applicant's wife feels "very miserable" in London and "reported that she saw a psychiatrist in the USA once last year, who diagnosed her with depression and anxiety." states that the applicant has "some depressive and anxiety symptoms in the context of an Adjustment Disorder," which might be related to her current circumstances. states that the applicant's wife's depression is compounded by separation from extended family in the United States.

The AAO acknowledges that the applicant's wife has emotional hardship from separation from extended family members in the United States, particularly with her mother and grandmother, but the evidence in the record reflects that the applicant's wife is an independent 36-year-old woman with a life of her own for she is married and the mother of a three-year-old child. We believe that her emotional hardship of separation in this case does not go beyond the common results of inadmissibility or removal. Thus, when the asserted hardship factors –family separation, no job prospects, adjusting to England's culture and climate after living in the United States most of her life, the expense of living in England, and exposing her daughter to weather which causes psoriasis are considered together, we find they fail to establish hardship that is extreme in that it is more than the common or typical hardships of inadmissibility.

We 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. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). 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 relative in this case.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(h) of the Act, the burden of proving eligibility remains entirely 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.