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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: JAN 04 2013 OFFICE: PHILADELPHIA, PA 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 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 with the field office or service center that originally decided your case by filing a 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Peru 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 in order to remain in the United States with his U.S. citizen spouse and child and his lawful permanent resident mother.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director,* dated May 11, 2011.

On appeal counsel asserts that the applicant meets and exceeds the extreme hardship standard as the evidence demonstrates extreme hardship to his qualifying relative spouse, children and mother. *See Counsel's Appeal Brief*, dated June 9, 2011.

The record contains, but is not limited to: Form I-290B and counsel's appeal brief and motion to reopen and reconsider; various immigration applications and petitions; hardship letters from the applicant's spouse and mother; letters from the applicant's spouse's father and sister; a letter from a Department of Veteran's Affairs Staff Psychiatrist concerning the applicant's spouse's father, and related medical records; a letter from the applicant; news articles related to the applicant's conviction; internet printouts concerning emotional effects of family separation and related topics, and post-traumatic stress syndrome; an employment verification letter; wage and tax records; a lease and billing statements; and documents related to the applicant's criminal conviction. The entire record was reviewed and considered in rendering this decision on the appeal.

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.
>
> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-
>
> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other

> documentation and the date of application for admission to the United States, or
>
> (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) 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....
>
> 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.)

In determining whether a crime involves moral turpitude, the Third Circuit Court of Appeals, per *Jean-Louis v. Holder*, 582 F.3d 462 (3rd Cir. 2009), makes a categorical inquiry, which consists of looking "to the elements of the statutory offense . . . to ascertain that least culpable conduct hypothetically necessary to sustain a conviction under the statute." *Id.* at 465-66. The "inquiry concludes when we determine whether the least culpable conduct sufficient to sustain conviction under the statute "fits" within the requirements of a CIMT." *Id.* at 470.

However, if the "statute of conviction contains disjunctive elements, some of which are sufficient for conviction of [a CIMT] and other of which are not . . . [an adjudicator] examin[es] the record of conviction for the narrow purpose of determining the specific subpart under which the defendant was convicted." *Id.* at 466. This is true "even where clear sectional divisions do not delineate the statutory variations." *Id.* In so doing, an adjudicator may only look at the formal record of conviction. *Id.*

The record reflects that on May 2, 2001 the applicant pled guilty in the United States District Court for the District of Pennsylvania to one count of Bribery in Sporting Contests in violation of 18 U.S.C. § 224. The applicant was sentenced to one year of probation, and ordered to pay a fine and assessment totaling $800 (Case No.). The guideline range determined by

the Court shows that the applicant could have been imprisoned for from 0 to 6 months, placed on supervised release from 2 to 3 years and fined from $500 to $5,000.

The applicant does not contest whether he has been convicted of a crime involving moral turpitude, or whether he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The AAO finds sufficient support that the applicant's conviction under 18 U.S.C. § 224 constitutes a conviction for a crime involving moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. He requires a waiver under section 212(h) of the Act.

Section 212(h) of the Act provides, in pertinent part, that:

> The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .
>
> (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 . . .; and
>
> (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

A waiver of inadmissibility under section 212(h) 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, parent or child of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the

applicant's U.S. citizen spouse, his two U.S. citizen children, and his lawful permanent resident mother are all 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 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 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.

The applicant's spouse is a 25-year-old native and citizen of the United States who has been married to the applicant since October 2009. They have a three-year-old daughter, [redacted] together. She states that she loves the applicant very much, he is an incredible husband, the best father to their daughter, and he takes care of them as well as his lawful permanent resident mother who lives with them. Counsel writes that [redacted] is very attached to her mother and the applicant and internet articles discussing child development and the effects of single-parenting have been submitted for the record. Addressing separation, the applicant's spouse maintains that her husband is the family's provider and she would be unable to support herself and their daughter without him. The couple's joint 2009 income tax return shows that of their combined $40,604 gross income, the applicant's spouse earned only $2,814. The applicant's spouse writes in a June 2010 letter, and a letter from [redacted] confirms, that in August 2010 she would begin a four-year course of study to become a radiology technician. She explains that she will be unable to afford the program without the applicant's financial support and will also be unable to afford the horse they recently adopted or the $30,000 truck they recently financed for six years. Counsel contends that while the applicant's mother can now care for her granddaughter while the applicant's spouse is working or attending school, she may relocate to Peru in the event of the applicant's removal and thus his spouse will incur the additional expense of child care. Counsel also asserts that it is expensive to travel to Peru, the applicant's spouse would need to pay for her own travel and that of her daughter, and she would have a loss of income during such travels. The record contains no corroborating documentary evidence showing that paid leave is unavailable to the applicant's spouse or showing that she would be unable to secure funds for airfare to Peru. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

The AAO acknowledges that the applicant's spouse and daughter love the applicant and would experience emotional and physical challenges in his absence. The evidence does not, however, distinguish these challenges from those ordinarily associated with a loved one's removal or inadmissibility. The AAO further recognizes that the applicant's spouse would experience a reduction in overall income in the event of the applicant's removal. However, the evidence in the record does not establish that she has no other financial resources or childcare options in the United States where her entire family resides or that she would be unable to secure additional or alternative employment or support herself and her daughter in the applicant's absence.

The applicant has a six-year-old daughter, [redacted], from a prior relationship. Counsel asserts, without corroboration, that [redacted] mother has absconded with her, the applicant has been searching for her, and if he is removed [redacted] will never know that her father loved her and searched for her.

The AAO acknowledges that separation from the applicant would cause various difficulties for the applicant's spouse, younger child, and possibly his elder child. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relatives, when considered cumulatively, meet the extreme hardship standard.

The applicant's mother is a 58-year-old citizen of Peru and lawful permanent resident of the United States. She explains that while it was her elder son, [redacted] who filed an alien relative petition on her behalf, she had difficulties living with [redacted] wife and subsequently returned to Peru until her green card was granted. She indicates that since entering the United States as a resident in June 2006, she has resided with the applicant. The applicant's mother states that the applicant helped her secure a factory job in Delaware but that the factory closed in June 2009 and she has been unemployed since. She maintains that the applicant is the only financial support she has, that he used to drive her to work because she does not drive, and that he enrolled her in English classes which she has been taking for years and have helped her a lot, but that she could never live by herself in the United States. The record contains no corroborating documentary evidence showing that the applicant's mother has no source of income beyond the applicant, that she would be unable to secure employment in the United States or support herself financially, or that she would be unable to reside again with her elder son in the event of the applicant's removal if needed.

The AAO acknowledges that separation from the applicant would cause various difficulties for the applicant's mother. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's mother states only that: "I no longer have anything in Peru." No further details are provided and she makes no specific assertions concerning any relocation-related hardship. Counsel contends without corroboration or foundation that if the applicant's mother were to return to Peru "she would suffer the same conditions that brought her to the U.S. in the first place," having "left due to the economic depression and harsh condition." Counsel asserts similarly that the applicant's U.S. citizen daughters would suffer extreme hardship "by living in a country with poor living conditions and poor education," and where their parents "may not have jobs." The record contains no country conditions reports for Peru and no documentary evidence addressing conditions in the country of any kind. It is noted that apart from this single contention by counsel, the possibility of the applicant's elder daughter, [redacted] relocating to Peru has not been addressed in the record, her custodial status has not been documented, and the AAO is unable to speculate in this regard. It is further noted that the applicant's mother voluntarily returned to Peru in 2005 citing difficulties getting along with her elder son's wife with whom she had been living in Maryland. She writes that after spending a short time in Peru she "decided to come back to the states when I got my green card" in June 2006. The applicant's spouse states that she would have

no way to give her daughter a better life in Peru, but provides no further details. The AAO finds the evidence insufficient to demonstrate that the applicant's lawful permanent resident mother or his U.S. citizen daughters would suffer extreme hardship were they to relocate to Peru to be with the applicant.

Concerning the applicant's spouse, she states that she was born in and has resided her entire life in the United States, has no ties to Peru, does not speak Spanish and would be unable to communicate or secure employment therein. She explains that she has never been outside of the United States, moving to a third-world country would cause her significant stress, and she would have no way to further educate herself in Peru or provide a better life for her daughter. Counsel contends that the applicant's spouse has a wonderful career working with horses which she would have to give up in Peru where counsel contends there is no such career. Counsel submits no corroborating country conditions evidence for Peru and does not address the applicant's spouse's current career goal of becoming a radiology technician. The applicant's spouse writes that she is extremely close to her father, a highly decorated Vietnam War veteran who suffers from post-traumatic stress disorder (PTSD) and depression, is extremely dependent upon her emotionally and physically, and she would be deeply saddened by the terrible effect that her absence would have upon his health. The applicant's spouse's father states that he has depended on the applicant's spouse for many years to help him get through very hard times including his PTSD which never goes away, and his battle with cancer. MD, Staff Psychiatrist with the Department of Veteran's Affairs confirms that the applicant's spouse's father is quite alarmed at the possibility of being separated from the applicant's spouse on whom he depends. Dr. explains that the applicant's spouse's father has been receiving treatment for PTSD and depression since returning from Vietnam in the 1970s and has also received counseling or psychotherapy from the local Veteran's Center in Wilmington. Dr. notes that he has personally been treating the applicant's spouse's father since October 2003 and has become familiar with his personal life and family. Dr. explains that the applicant's spouse's father was diagnosed with liver cancer in early 2010 after having major surgery in December 2009. He states that the applicant's spouse has been assisting her father with his care and getting him to his appointments. Dr. writes that the applicant's spouse's father is extremely close to his two daughters as their mother abandoned them when the applicant's spouse was only nine-years-old. Dr. expresses great concern for the applicant's spouse's father whom he reports cannot stop worrying about the applicant's spouse and their potential separation, that PTSD is a condition which can be exacerbated by increased life stressors and life-changing events such as potential separation and a diagnosis of cancer, and that these are already aggravating his condition and contributing to his depression.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including her adjustment to a country and culture so different from the only one she has ever known; that she has resided her entire life in the United States and has never visited another country; that she has no ties to Peru, does not speak or understand Spanish and would thus have reduced access to employment therein; her extremely close family ties to the United States – particularly to her father, a highly decorated Vietnam War veteran who suffers from a number of serious health and psychiatric conditions and who is dependent upon her emotionally and physically for his well-being; her close community ties over a lifetime; her employment in the

United States and current educational endeavors; and stated economic, employment, educational, and quality of life-related concerns for herself and her three-year-old daughter. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Peru to be with the applicant.

Although the applicant has demonstrated that his qualifying relative spouse would experience extreme hardship if she were to relocate to Peru to join him, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to a qualifying relative in this case. Accordingly, the applicant has not established that he is statutorily eligible for a waiver under section 212(h) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.