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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAR 2 8 2013 Office: PHILADELPHIA, PA FILE:

IN RE: Applicant:

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

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 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 record reflects that the applicant is a native and citizen of the United Kingdom 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 committing crimes involving moral turpitude and pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant's spouse, child and stepchild (child) are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his family.

The field office director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 24, 2011.

On appeal, counsel asserts that the denial should be reversed and remanded as a timely, written notice of denial was not provided to the applicant, and she details hardship to the applicant's spouse and child. *Brief in Support of Appeal*, dated May 19, 2011. The AAO faxed a copy of the decision to counsel on November 28, 2012, in the event that she did not previously receive it, and she was given 30 days to submit a brief and supporting evidence. The record does not include a response to this request.

The record includes, but is not limited to, counsel's brief, statements from the applicant and his spouse, statements from friends and family, an employer letter and criminal records. The entire record was reviewed and considered in rendering a 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.

The applicant was convicted of burglary and theft on July 29, 1987; was convicted of burglary and theft on June 8, 1988; was convicted of using threatening/abusive language with intent to cause fear of provocation of violence on September 21, 1988; and was convicted of handling stolen goods on November 21, 1996. As the applicant has not contested his inadmissibility on appeal, and the record does not show that determination to be in error, we will not disturb the finding of inadmissibility

under section 212(a)(2)(A) of the Act. The applicant 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 . . . .
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> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
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> (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,
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> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
>
> (iii) the alien has been rehabilitated; or
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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.

Section 212(i) of the Act provides 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.

The record reflects that the applicant entered the United States under the Visa Waiver Program on October 7, 2008 and he answered "no" to the question of whether he had been convicted of a crime involving moral turpitude. Based on his misrepresentation, the applicant was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant has not contested this inadmissibility on appeal.

The AAO will first address whether the applicant is eligible for a section 212(i) waiver under the Act. 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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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,* 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.

Counsel states that the applicant's spouse spent the first few years of her marriage in the United Kingdom with her children; she became depressed due to separation from her family and friends; her depression decreased when she returned to the United States with the applicant; she and her children do not have family ties in the United Kingdom; her daughter has become acquainted with her biological father; she would experience extreme hardship if her daughter's father does not allow her to relocate to the United Kingdom; the applicant's daughter would be forced to choose between living with her biological father or her mother; all of the family's assets in the United Kingdom have been sold; neither the applicant or his spouse has a job in the United Kingdom as the economy is in turmoil; the applicant's spouse would not be eligible for healthcare upon her return to the United Kingdom and her depression due to separation from family would go untreated.

The applicant states that they have sold all of their belongings in the United Kingdom; that they would not have enough money to put a deposit on a rental house; that his spouse would be really unhappy as she has no family or friends in the United Kingdom; that she would not be immediately eligible for health care or employment until her visa situation is arranged; and that it would be difficult for him to find employment due to the economy in the United Kingdom.

The applicant's spouse states that she lived in England for almost five years after her marriage; that she was extremely unhappy living there; that she was unable to adapt to differences, found it impossible to make friends and had no support other than the applicant; that she was terribly

homesick and depressed while there; that she gave birth to her son there; that she had no family support and contracted a severe staph infection which took eight months of medical treatment to heal; and that she had to be hospitalized for intravenous antibiotic drugs and suffered from postpartum depression.

The applicant's spouse states that her daughter's father began to pressure her to move back to the United States so that he could see their daughter on a regular basis; that their daughter sees her father a few times a week and every other weekend; that they have built a very good relationship and their daughter would be inconsolable if she had to move back to England; that their son is starting kindergarten and has friends; that she has no family in England; and that her entire family is in the United States, her family is close-knit, and they live near each other.

The record reflects that the applicant's spouse's family ties are in the United Stated and she is close to her family. She also lacks family ties in the United Kingdom. She has previously resided in the United Kingdom and experienced emotional difficulty. She would be raising her seven and thirteen year old children in a foreign country, one of whom would be separated from her biological father who she now has a relationship with, and both of whom would experience difficulty there. The AAO notes that her medical and financial hardship claims are not supported with documentary evidence. However, considering the hardship factors presented, and the normal results of relocation, the AAO finds that the applicant's spouse would experience extreme hardship if she relocated to the United Kingdom.

Counsel states that the applicant would not be able to provide for his spouse and children from the United Kingdom and separation from the applicant would cause psychological and emotional stress to his spouse.

The applicant states that without his income his spouse would lose their home; a terrible strain would be put on their relationship from separation; his spouse and children would not have his income to help them survive; he is in the process of starting his own repair business, he works for local garages and has an internet-based company, which would all be lost; he has become very close with his stepdaughter; and he does a lot of activities with his son and his son would be devastated if he had to leave.

The applicant's spouse states that the applicant has been much more than a stepfather to her daughter; her daughter loves him and calls him dad; her daughter believes she is lucky to have two fathers who love her and whom she loves, and separation from either of them would be detrimental to her; their son is a daddy's boy who idolizes the applicant; he has had the security of both parents being together; and family duties such as arranging child care, paying bills and dealing with illness is much smoother with two parents. The applicant's spouse's parents and best friend detail the love of the applicant for his spouse and children.

The applicant's spouse states that the applicant is a certified auto mechanic; there will be two incomes if the applicant is in the United States with security in case one of them gets laid off; and

she would have to take care of the children on her own and she would not be able to manage financially. The record includes an offer of employment for the applicant.

The record reflects that the applicant has a close relationship with both of the children. The applicant's spouse would be raising both children on her own. The record reflects that he would be able to provide financial support in the United States. In addition, the applicant's spouse would experience emotional hardship without the applicant. Considering the hardship factors presented, and the normal results of separation, the AAO finds that the applicant's spouse would experience extreme hardship if she remained in the United States.

In discretionary matters, the alien 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 section 212(h)(1)(B) 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 favorable factors include the presence of the applicant's U.S. citizen spouse and children, extreme hardship to his spouse and hardship to his children. The record includes a probation officer's letter stating that the applicant completed a community order with 12 months of supervision and a requirement to attend appointments with the Community Alcohol Team.

In regard to the adverse factors, the applicant has a significant criminal record in addition to his misrepresentation of it. He was convicted of burglary and theft on July 29, 1987; was convicted of burglary and theft on June 8, 1988; was convicted of using threatening/abusive language with intent to cause fear of provocation of violence on September 21, 1988; was convicted of criminal damage

on May 26, 1989; and was convicted of handling stolen goods on November 21, 1996. In addition, he was convicted on April 23, 1998 for failing to surrender to custody and fined 25 British pounds and he was convicted of driving with excess alcohol and several other motor vehicle violations on June 24, 1998, October 5, 1999 and June 13, 2001, and he received several months of imprisonment for these crimes. He was also convicted of common assault on February 7, 2006 and received a sentence of 12 months community order and 12 months in an alcohol treatment program. He was convicted on October 17, 2007 for failure to notify of change in circumstances and sentenced to 12 months community order and 40 hours of unpaid work. He was convicted on January 28, 2008 and April 9, 2008 for breach of community order and sentenced to order to continue and 6 and 10 hours of unpaid work. We do not find the record to show genuine rehabilitation.

The AAO finds that taken together, the favorable factors in the present case do not outweigh the adverse factors, and a favorable exercise of discretion is therefore not warranted. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.