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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 2 6 2014 Office: INDIANAPOLIS, IN FILE:

IN RE: Applicant:

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

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 law was inappropriately applied by us 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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Guatemala 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 (CIMT). The applicant is the spouse of a lawful permanent resident and father of a United States citizen and is the derivative beneficiary of an approved Petition for Alien Relative. 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 his wife and daughter.

The Field Office director concluded that the applicant had not established extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel asserts that the CIS Adjudication Officer failed to properly assess the weight of the evidence submitted in support of hardship, and that the record contains sufficient evidence to establish that the applicant's LPR spouse will experience hardships beyond the normal consequences of removal when considered in the aggregate.

The record includes, but is not limited to, the following documents: a brief from counsel for the applicant; statements from the applicant and his spouse; background materials on asthma; background materials on Guatemala's air pollution, human rights, education and security; school records for the applicant's child; a copy of one energy bill; a residential lease; photographs of the applicant, his spouse and their family; and statements from family and friends of the applicant.

Section 212(a)(2)(A)(i)(I) 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 record reflects that on February 28, 2007, the applicant was convicted of Section 35-44-3(a)(1) of the Indiana Criminal Code, Resisting Law Enforcement, a Class A misdemeanor, and sentenced to one year of state incarceration, suspended, and fines.

Resisting a law enforcement officer, akin to resisting arrest, has been examined by the Board of Immigration Appeals (BIA) which determined that such a crime may constitute a CIMT if the statute in question involves knowledge that someone is a law enforcement officer and the officer suffers a bodily injury or assault. *See In the Matter of O-----*, 4 I. & N. Dec. 301, Interim Decision 366, 1951 WL 7004, (BIA), March 15, 1951 (citing Matter of S--, A7476137 (BIA 1950) and

examining whether a German law for "resisting an official" involved moral turpitude and determining that there must be knowledge that someone is a law enforcement officer and that there must be an assault or bodily injury of some sort); *see also Matter of Danesh* 19 I. & N. Dec. 669 June 20, 1988 (relying on the inference acknowledged in Matter of O----, that an assault by force or violence on an arresting officer, as distinguished from a passive resistance to arrest, would involve moral turpitude.); *People v. Miller*, 199 Ill.App.3d 603, 557 N.E.2d 500 (1990)(noting that resistance must be physical and holding the conduct to violate.)

The record establishes that the applicant has been convicted of a crime involving moral turpitude which renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not dispute his inadmissibility.

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
> > >
> > > (ii) 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 . . .

A section 212(h)(1)(B) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives here are the

applicant's U.S. citizen daughter and lawful permanent resident spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (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 record contains a brief submitted with the Form I-601 in which former counsel for the applicant asserts that the applicant's spouse will experience emotional hardship due to separation if the applicant is removed, and that she would experience emotional stress over the applicant's ability to procure employment and support himself and whether or not she could provide assistance to him after he relocates to Guatemala. Counsel asserts that the applicant is the sole source of income for the family and that the applicant's spouse would not be able to meet her financial obligations if the applicant is removed. Counsel further asserts that there will be emotional hardship to the applicant's daughter if he is removed, and that it would impact her academically and emotionally.

The applicant's spouse has submitted a letter in which she asks that USCIS allow the applicant to remain in the United States, and describes the emotional hardship she is experiencing at the prospect he will be removed. The record also contains letters attesting to the applicant's support of his family. This evidence establishes that the applicant's spouse will experience some emotional hardship due to his removal, but it is not sufficiently probative to distinguish any emotional hardship to the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens.

The record contains several documents discussing the conditions in Guatemala, including reports on human rights, education and crime. This evidence supports counsel's assertion that the conditions in Guatemala are more difficult than what exists in the United States and that crime and corruption can be random and are present throughout the country. However, the evidence submitted does not articulate how or why the applicant himself would specifically be at risk for falling into one of the categories discussed in the report. Other documents in the record indicate that the applicant has family members in Guatemala who could provide assistance upon relocation. The record indicates that the conditions in Guatemala are not the same as those in the United States, and we recognize that crime and corruption are a problem. However, while the evidence may establish some emotional hardship to the applicant's spouse based on the conditions the applicant would experience upon relocation, the record does not demonstrate that any such emotional hardship would rise to the level of extreme.

Counsel has asserted that the applicant's spouse will experience financial hardship if the applicant is removed, and refers to "self-employment reports" in the record. The self-employment reports are simple logs and cover a short period of time. This evidence does not demonstrate that the applicant is the sole income earner for the family or that he has been assuming the financial obligations of

their family in the United States. There is insufficient documentation to support counsel's assertion that the applicant has been supporting his spouse and daughter financially. In her statement the applicant's spouse states that, thanks to her "status being fixed" she can "now look for a better job and take care of her daughters and husband." The record is inconclusive with regard to the extent and nature of the financial hardship to the applicant's spouse if he were removed to Guatemala.

With regard to counsel's assertion that the applicant's daughter will experience emotional and academic hardship related to his removal, the record does not contain any documentation to corroborate counsel's assertion. There are school records that have been submitted to establish that the applicant's daughter is enrolled in school, but they are not probative of any specific or potential psychological impacts on the applicant's daughter. Without evidence which demonstrates that the applicant's daughter will experience social or psychological hardship above what is commonly experienced by the relatives of inadmissible aliens, the evidence in the record is not sufficient to meet the applicant's burden on this issue.

The record indicates that the applicant's spouse and daughter will experience some emotional hardship due to the applicant's removal. However, even when considered in the aggregate, the evidence of hardship related to separation is not sufficient to demonstrate that either the applicant's spouse or daughter will experience hardship which rises to the level of extreme hardship.

Counsel asserts that the applicant's spouse would have to sever family and community ties in the United States, and would have no property or assets in Guatemala to support them if she relocated with him to Guatemala. Counsel states that the applicant's young daughter has asthma, and that the poor air quality conditions in Guatemala, including the prevalence of wood-burning fires for cooking, would exacerbate her symptoms. In addition, counsel asserts the poor medical facilities in Guatemala would make it difficult for her to get medicine. Counsel notes that the applicant's youngest daughter has never been to Guatemala, and that the applicant's spouse has not been in many years. Finally, counsel asserts that the applicant's spouse and daughter would experience financial hardship because his spouse would have to take care of their daughter while the applicant worked, and that he may have difficulty finding employment as a self-employed mechanic, his occupation in the United States.

The record contains medical evidence related to the applicant's daughter. Several background articles on asthma and a visitation report indicating the applicant's daughter has been diagnosed with Asthma with Acute Exacerbation are sufficient to establish that the applicant's daughter suffers from a medical condition. As noted in the background materials in Guatemala, the air conditions are poor and the availability of medical care and resources in Guatemala are not the same as what is available in the United States. Having to sever her ties with the doctors and medical resources available to her in the United States would result in extreme hardship to the applicant's daughter. In addition, the background materials submitted into the record regarding the air quality and conditions in Guatemala establish that she would suffer from aggravated symptoms and struggle to obtain proper medical relief.

The record contains country conditions materials discussing human rights, crime and educational conditions in Guatemala. However, it is not clear from these surveys of national statistics that the applicant and his spouse would be unable to find employment or would fall into the demographics discussed in these reports. The record indicates that the applicant's parents reside in Guatemala and that the applicant's spouse's 16 year old daughter also resides in Guatemala with cousins. As noted by the applicant's spouse, her daughter in Guatemala is attending school and doing well. The record is inconclusive with regard to any uncommon financial or economic hardship to the applicant's spouse upon relocation. When viewed in the aggregate, the record does not establish extreme hardship to the applicant's if she were to relocate to Guatemala with the applicant.

Based on the presence of a medical condition, the environmental conditions in Guatemala and their tendency to exacerbate her medical condition, and the disruption in the continuity of her medical care in the United States, the record establishes the applicant's daughter will experience extreme hardship upon relocation to Guatemala.

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). While the record demonstrates that the applicant's daughter would experience extreme hardship upon relocation, the record does not establish that either the applicant's spouse or daughter would experience hardships rising to the level of extreme due to separation from the applicant if they remained in the United States. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.