U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: AUG 0 1 2008

IN RE:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant, [redacted] is a native and citizen of Armenia who was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for committing a crime involving moral turpitude. The applicant is married to [redacted] a naturalized citizen of the United States. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, which the district director denied, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated December 22, 2005.

The AAO will first address the finding of inadmissibility.

Section 212(a)(2) of the Act states that:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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 Information reflects that the applicant was charged with the following counts in the Superior Court of the State of California for the County of Los Angeles.

Count 1: Offense date: November 5, 1995; Charge: kidnapping
Count 2: Offense date: On and between August 5, 1995 and November 5, 1995; Charge: terrorist threats
Count 3: Offense date: On and between June 15, 1995 and November 5, 1995; Charge: attempted extortion
Count 4: Offense date: On and between December 1, 1995 and December 13, 1995; Charge: attempted extortion
Count 6: Offense date: On and between December 1, 1995 and December 13, 1995; Charge: terrorist threats

The record reflects that in 1996, the jury found the applicant guilty as charged in counts 2, 3, 4, and 6. The Abstract of Judgment Prison Commitment reflects that for counts 3 and 6, the applicant was sentenced to two

years and eight months in state prison. The court granted the stay of execution of any sentence as to courts 2 and 4.

The applicant was convicted of extortion and terrorist threats. Extortion was found to be a crime of moral turpitude in *Matter of F*, 3 I&N Dec. 361 (BIA 1949). In *Chanmouny v. Ashcroft*, 376 F.3d 810 (8th Cir. 2004), the court found that terrorist threats under Minn. Stat. section 609.713 was a crime of moral turpitude, where the respondent, based upon the plea transcript, acted with a purpose to terrorize and not just recklessly. Here, the AAO finds that the Information, with respect to counts 2 and 6, states that the applicant "did willfully and unlawfully threaten to commit a crime which would result in death and great bodily injury to [ ], with the specific intent that the statement be taken as a threat." It further states that the threat was made with "a gravity of purpose and an immediate prospect of execution." Thus, the Information establishes that the terrorist threats made by the applicant constitute a crime of moral turpitude.

Based on the evidence in the record, the district director was correct in finding the applicant's convictions qualify as crimes of moral turpitude, rending him inadmissible under section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i).

The AAO will now discuss a waiver of inadmissibility under section 212(h) of the Act.

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . .
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> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h) 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 applicant's qualifying relative is his naturalized citizen wife. If extreme hardship to the 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 meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists

the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

The record contains, among other documents, letters, declarations, photographs, a marriage certificate, birth certificates, income tax records, a psychological evaluation, a prescription for medication, a country report by the Bureau of Democracy, Human Rights and Labor, dated February 25, 2004, and a National Human Development Report of Armenia for 2001 by the United Nations Development Programme.

On appeal, counsel states that the district director failed to consider the hardship factors cumulatively. **Counsel states that [redacted]'s immediate family ties are in the United States. He states that she was** originally born in Azerbaijan and is of Armenian ethnicity, but is not a citizen of Armenia and will not be able to become an Armenian citizen because it requires being stateless and having lived in Armenia for the preceding three years. Counsel states that conditions in Armenia are dire, as shown by the submitted reports. According to counsel, the psychological report shows [redacted] as diagnosed with severe clinical depression and anxiety due to her husband's immigration status; counsel states that she is taking psychiatric medication to treat her condition. Counsel indicates that the applicant and his wife have sought medical assistance to have a child and that [redacted] will lose hope of having a child if separated from her husband; and if she joins her husband in Armenia, counsel states that it is unlikely fertility treatment will available. Counsel states that poverty and unemployment increased over the last decade in Armenia. According to counsel, all of the hardship factors taken together show will experience extreme hardship.

The declaration of [redacted], dated January 11, 2006, is summarized as follows. She does not speak Armenian and will not be able to communicate with others or obtain employment in Armenia. She is a pharmacy technician and will not find comparable employment in Armenia and her husband's salary will not be enough to survive on. She and her husband have a combined income, and her husband has a trucking business that is in its second year. She is a refugee from Azerbaijan. Her immediate family (mother and three brothers) and friends are in the United States. Since 2002, she has seen fertility doctors to have a baby and if she were in Armenia, she would lose any chance of getting pregnant because Armenia does not have fertility

treatment, and because she is not an Armenian citizen, she is certain the government will not help her.[1] If she remains in the United States without her husband, her marriage will be destroyed. She has a close relationship with her husband. She has sought professional counseling and is taking antidepressants because she is stressed by her husband's immigration problem. Her husband's wrongdoing occurred more than 10 years ago and since then he has changed for the better.

The declaration by dated May 8, 2002, conveyed that she has a close relationship with her husband. It stated that she was 17 years old when she arrived in the United States as a refugee.

The psychological evaluation dated January 12, 2006 by [redacted] stated that Ms. mother has asthma, essential hypertension, high cholesterol, and dizziness, and is disabled and requires constant care and monitoring. [redacted] stated that mother is unable to cook for herself and does not read or write in English and relies on her daughter for this as well as for driving. She stated that [redacted] has a mother and a sibling residing in Armenia. [redacted] stated that [redacted] has a hormonal disorder which made it impossible for her to become pregnant and is under medical care and in vitro fertilization (IVF) treatment. She stated that [redacted] has been diagnosed with depression and anxiety and is taking Klonopin 0.5 MG PRN and Lexapro 20 MG. [redacted] described some of concerns as wanting to have children with her husband, needing IVF to get pregnant, providing care for her mother, not finding employment in Armenia because she is not an Armenian citizen, and not being able to travel to see her husband if he lived in Armenia. [redacted] stated that the results of tests indicate that [redacted] is experiencing severe levels of depression and anxiety. She stated that [redacted] has confusion, excessive worries about her future, nervousness, fears, sadness, dizziness, excessive tiredness, headaches, sleeping problems, heart pounding, unable to stop worrying about her husband's future, forgetting things with ease, difficulty concentrating, dependency, inability to plan for the future, arguing, and rapid shifts between elation and depression. [redacted] stated that [redacted] has been diagnosed with depression and anxiety by [redacted] and is taking psychiatric medication.

The record contains a prescription dated January 6, 2006 for a prescription of Klonopin for the applicant's wife.

The letter dated January 9, 2006 by [redacted], conveyed that [redacted] underwent an IVF treatment cycle in October 2004 that was not successful.

The note from the pharmacy manager, [redacted] stated that [redacted] has a continued failure to improve her arrival time and that [redacted] indicated "that for personal reasons she has been under a great deal of stress." [redacted] stated that [redacted] must improve her arrival times, if not, a written warning will occur.

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[1] The letter by [redacted] ndicates that [redacted] was seen in October 2004, not in 2002.

The January 10, 2006 affidavit by the applicant's mother-in-law stated that she and her family arrived in the United States as refugees in 1992. She indicated that in 2000 her daughter married the applicant and that they are eager to start a family, but the fertility treatments have unsuccessful thus far. She conveyed that living in Armenia would be difficult for her daughter.

Letters from family members convey that the applicant and his wife have a close relationship and are trying to have a child.

The report by the United Nations Development Programme stated that in Armenia, "[d]ue to the economic crisis, the healthcare system works only at half of its capacity." The report shows the level of poverty in Armenia, as a percentage of population, was 48 percent in 1996 and 50 percent in 1998-1999.

The income tax returns for 1998, 1999, 2000, and 2001 list the applicant's mother-in-law as a dependent of the applicant and his wife.

The May 10, 2002 letter by the human resource representative of Childrens Hospital of Los Angeles reflects that [redacted] is a full-time pharmacy technician earning $31,499 annually; it stated that she has been employed there since November 2000.

In rendering this decision, the AAO has carefully considered the documentation in the record.

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant's wife must be established in the event that she remains in the United States without the applicant, and in the alternative, that she joins the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record fails to establish that the applicant's wife would endure extreme hardship if she remained in the United States without her husband.

With regard to the psychological report by [redacted], although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and [redacted] The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the depression and anxiety experienced by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview which occurred after the denial of the waiver application, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [redacted] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Furthermore, the weight given to the fact that the applicant's wife was prescribed psychiatric medication is diminished because it occurred after the denial of the waiver application. Additionally, the AAO notes that the letter by [redacted] which is dated January 9, 2006, conveyed that [redacted] underwent fertility treatment in October 2004. But the record does not indicate whether she continued to undergo fertility treatment since then.

With regard to family separation, courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, in *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS,* 96 F.3d 390, 392 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS,* 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. However, after a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's wife, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant's wife, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez,* and *Sullivan, supra.*

[redacted] makes no claim of extreme financial hardship if he were to remain in the United States without his wife.

The documentation in the record is insufficient to establish that the applicant's wife would experience extreme hardship if she were to join the applicant to live in Armenia.

The conditions in the country where the applicant's wife would live if she joined her husband are a relevant hardship consideration. "While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives." *Matter of Ige,* 20 I&N Dec. 880 (BIA 1994), citing *Matter of Anderson,* 16 I & N Dec. 596 (BIA 1978).

The record reflects that in 1998-1999, 50 percent of the population in Armenia lived in poverty and the healthcare system there worked at half of its capacity in 2000. The report, however, is not persuasive in that it is outdated and does not provide current information on conditions in Armenia, particularly its healthcare.

The record shows that the applicant and his wife financially support his mother-in-law; but the applicant's mother-in-law is not a qualifying relative under the Act.

In considering the hardship factors raised in this case, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship to the applicant's wife. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act, 8 U.S.C. § 1182(h).

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 section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.