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[REDACTED]

FILE:

[REDACTED]

Office: PHOENIX

Date:

FEB 29 2008

IN RE:

[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:

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, Phoenix, Arizona denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The District Director certified that decision to the AAO and the AAO will *sua sponte* reopen the matter. The AAO's previous decision will be withdrawn. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the spouse and father of U.S. citizens. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act in order to reside in the United States with his spouse and children.

The district director concluded 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 District Director*, dated July 2, 2003.

On June 3, 2004, the AAO withdrew the district director's decision and dismissed the applicant's appeal after it found that the applicant had not been convicted of a crime involving moral turpitude and, thus, the waiver application, pursuant to section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), was moot. On September 1, 2004, the district director certified the matter to the AAO, requesting the AAO reopen its decision.

In response to the district director's certification, counsel contends that the district director's action is procedurally barred by regulation. He asserts that the regulatory language at 8 C.F.R. § 103.4 allows certification "only for decision" or "an unusually complex or novel substantive issue of law" and that the district director's certification seeks to have the case remanded for further processing. Counsel's reasoning is not persuasive.

The regulation at 8 C.F.R. § 103.4(a) states in pertinent part:

- (1) *General.* The Commissioner [now Director] or the Commissioner's delegate may direct that any case or class of cases be certified to another Service [now CIS] official for decision .

...

Pursuant to this language, the AAO finds the district director, the Director's delegate, to have been within his authority to certify the referenced matter to the AAO and request a new decision. As the matter is within the AAO's jurisdiction, the AAO will *sua sponte* reopen its prior decision. *See* 8 C.F.R. § 103.4(a)(5).

On January 22, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. On March 19, 1997, the applicant was convicted of reckless driving in violation of Arizona Revised Statutes (ARS) section 28-692(A)(1) and was sentenced to 90 days in jail. On September 3, 1997, the applicant was convicted of driving or actual physical control while under the influence of intoxicating liquor or drugs and aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs in violation of ARS sections 28-692(A)(1), 28-697(A)(1), 28-444, 28-445, 28-448, 13-701 and 13-801. The

applicant was sentenced to four months in jail and five years of probation. The applicant appeared at CIS' Phoenix District Office on January 10, 2000. The applicant testified that he had been convicted of driving under the influence on two occasions. On the Form I-485 the applicant indicated that, in January 1997, there was an outstanding warrant for his arrest for aggravated driving under the influence, due to driving on a suspended license. On October 18, 2000, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

- (1) Criminal and related grounds. —
 - (A) Conviction of certain crimes. —
 - (i) In general. — Except as provided in clause (ii), any 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.

ARS 28-697(A)(1), now renumbered ARS 28-1383, provides, in pertinent part:

A. A person is guilty of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs if the person does any of the following:

- 1. Commits a violation of section 28-1381, section 28-1382 or this section while the person's driver license or privilege to drive is suspended, canceled, revoked or refused or while a restriction is placed on the person's driver license or privilege to drive as a result of violating section 28-1381 or 28-1382 or under section 28-1385

....

L. Aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs committed under:

- 1. Subsection A, paragraph 1 or 2 or paragraph 4, subdivision (b) of this section is a class 4 felony.

ARS 28-692(A)(1), now renumbered ARS 28-1381, provides, in pertinent part:

A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this state under any of the following circumstances:

The Board of Immigration Appeals (BIA) has held that a conviction under ARS 28-697(A)(1) is a crime of moral turpitude. *Matter of Lopez –Meza*, 22 I&N Dec. 1188 (BIA 1999). However, in *Hernandez-Martinez v.*

Ashcroft, 329 F. 3d 1117 (9th Cir. 2003), the Ninth Circuit Court of Appeals (the Ninth Circuit) held that the Arizona aggravated driving-under-the-influence statute is divisible and includes both crimes of moral turpitude and crimes that do not involve moral turpitude. *Id.* at 1118. Since this case arises in the Ninth Circuit, the decision in *Hernandez-Martinez v. Ashcroft* is applicable in this case. The Ninth Circuit noted that under ARS 28-697(A)(1), renumbered 28-1383, an individual could be convicted of (1) driving a vehicle or (2) having actual physical control of a vehicle, while under the influence of intoxicating liquor or drugs while the person's driver's license or privilege to drive is suspended, canceled, revoked or refused or while a restriction is placed on the person's driver's license or privilege to drive. *Id.* at 1118. The Ninth Circuit held that while drunken driving was despicable, having physical control of a car while drinking was not. It found a person convicted for having physical control of a car while drinking, which could include sitting in a car with the key in the ignition while stationary in your own backyard, would not be guilty of a crime involving moral turpitude. *Id.* at 1118-1119. The AAO notes that, while Judge Wardlaw's concurrence stated that a conviction for aggravated driving under the influence in violation of ARS § 28-687(A)(1) was not a crime involving moral turpitude, the Ninth Circuit did not reach this conclusion. It found only that Arizona's aggravated driving law was a divisible statute and that a conviction under it could not, therefore, be found to be a crime of moral turpitude. On September 3, 1997, the applicant was convicted under this same Arizona statute.

Where a statute is divisible (broad or multi-sectional), *see, e.g., Matter of P-*, 6 I&N Dec. 193 (BIA 1954); *Neely v. U.S.*, 300 F.2d 67 (9th Cir. 1962), the court looks to the "record of conviction" to determine if the crime involves moral turpitude. *Matter of Ajami*, 22 I&N Dec. 949, 950 (BIA 1999) (look to indictment, plea, verdict, and sentence; *Zaffarano v. Corsi*, 63 F.2d 67 757 (2d Cir. 1933); *U.S. v. Kiang*, 175 F.Supp.2d 942, 950 E.D. Mich. 2001). A narrow, specific set of documents comprises the record: "[the] charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented." *Shepard v. U.S.*, 125 S.Ct. 1254, 1257 (2005). It is also important to note that the record of conviction does not include the arrest report. *See In re Teixeira*, 21 I&N Dec. 316, 319-20 (BIA 1996).

A review of the record in this matter finds the applicant's record of conviction to be limited to the judgment issued by the Superior Court, Maricopa County, Arizona, dated September 3, 1997, which indicates that the applicant was found guilty of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs, a class 4 felony, and was sentenced to four months in prison and five years of probation. The record also contains an incident report, dated July 5, 1995; a warrant for the applicant's arrest, executed on December 13, 1996; and an April 17, 2001 order expunging the applicant's conviction. None of this evidence, however, falls within the specific set of documents deemed to comprise the record of conviction. Therefore, it may not be considered in determining whether the applicant was or was not convicted of a crime involving moral turpitude. *Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979); *Matter of Ghunaim*, 15 I&N Dec. 269 (BIA 1975); *Matter of Lopez*, 13 I&N Dec. 725 (BIA 1971); *Matter of S-*, 2 I&N Dec. 353 (BIA, A.G. 1945). In that the September 3, 1997 judgment does not specify the prong of ARS § 28-697(A)(1) under which the applicant was convicted, the record of conviction in the present matter does not indicate whether or not the applicant was found guilty of a crime involving moral turpitude.

The applicant has not indicated that he was convicted for driving while intoxicated. The record contains no sworn statement from the applicant as to the circumstances of his aggravated driving-under-the-influence conviction and the AAO finds the notes from the applicant's adjustment of status interview to be insufficient

to make this determination. Although the district director in his September 1, 2004 request to the AAO states that the applicant admitted to committing a crime involving moral turpitude on the Form I-601, the record does not support this assertion. The Form I-601 submitted by the applicant indicates only that he is filing a waiver application as a result of Citizenship and Immigration Services' (CIS) determination that he is inadmissible to the United States for having committed a crime involving moral turpitude.

Contrary to its prior conclusion regarding the nature of the applicant's crime, the AAO finds the evidence of record insufficient to determine whether, on September 3, 1997, the applicant was convicted of driving a vehicle while intoxicated, a crime involving moral turpitude, or merely of being in physical control of it. However, the record's failure to establish the applicant's conviction under ARS § 28-697(A)(1) as a crime of moral turpitude does not, by default, establish that he is admissible to the United States.

Unlike *Hernandez-Martinez v. Ashcroft*, where the burden of proof was on the legacy Immigration and Naturalization Service (now CIS) to prove that ██████████ z was removable as an alien convicted of a crime involving moral turpitude, the burden of proof in the present case is on the applicant to show that he is admissible to the United States¹ as an immigrant. Pursuant to section 291 of the Act, 8 U.S.C. § 1361:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this Act, and, if an alien, that he is entitled to the nonimmigrant; immigrant, special immigrant, immediate relative . . . status claimed

The applicant is, therefore, required to establish that his conviction under ARS § 28-967(A)(1) was not for driving a vehicle while intoxicated, which would render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, but simply for having physical control of a vehicle while intoxicated. In that, as previously discussed, the record lacks sufficient evidence to demonstrate which of these offenses is the basis of the applicant's conviction, the applicant has not established that he is admissible to the United States.

As the record does not demonstrate that the applicant's admissibility to the United States, the AAO will consider the Form I-601 filed by the applicant and whether he qualifies for the waiver of section 212(a)(2)(A)(i)(I) of the Act available in section 212(h) of the Act. Section 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if—

¹ On April 17, 2001, the applicant's conviction for aggravated driving-under-the-influence was expunged by the Superior Court of the State of Arizona in and for the County of Maricopa. The AAO notes that a state expungement does not erase a conviction for immigration purposes, except for convictions entered under state equivalents of the Federal First Offenders Act within the jurisdiction of the 9th Circuit Court of Appeals. *Matter of Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999); *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000). The exception does not apply to the present matter.

....

- (1)(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 AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deems relevant in determining whether an alien has established extreme hardship. These factors include, but are not limited to, the presence of lawful permanent resident or United States citizen family ties to 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 the unavailability of suitable medical care in the country to which the qualifying relative would relocate.

As previously indicated, the record establishes that the applicant is married to a U.S. citizen, [REDACTED] and is the father of a U.S. citizen daughter, [REDACTED]. The AAO notes that extreme hardship to one of these qualifying relatives must be established in the event that they relocate to Mexico or in the event that they remain in the United States, as they are not required to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event of relocation to Mexico. At the time of filing, counsel asserted that if [REDACTED] relocated to Mexico with the applicant, her opportunities for success and health would be dreadful. In explanation, he cited the deficits in children's health and education in Mexico; Mexico's reliance on child labor; and the high level of violence in the country. He further noted that [REDACTED] and [REDACTED] are fully-acclimated U.S. citizens and have never resided in Mexico, and that [REDACTED] would also suffer knowing the detrimental effect that losing her business, her daughter and granddaughter would have on her own mother, [REDACTED]. *Counsel's letter*, dated September 26, 2000. On appeal, counsel asserts that [REDACTED] would suffer extreme hardship for many reasons if she relocated to Mexico, including being separated from her mother, with whom she has a special relationship. *Counsel's brief*, dated July 30, 2003. In support of counsel's claims, the record offers statements from [REDACTED] dated September 21, 2000 and July 25, 2003; a letter from [REDACTED], dated July 25, 2003; a psychological evaluation of [REDACTED] dated July 20, 2003; letters from friends; and country conditions information on Mexico.

asserts that [REDACTED] is very dependent on her, both financially and emotionally. She states that it would be a terrible personal hardship for her should she relocate to Mexico and not be able to care for her mother. *Statement*, dated September 21, 2000. [REDACTED], contends would also suffer if she moved to Mexico and lost her special relationship with [REDACTED]. Id. [REDACTED] also contends that she would not be able to work if she moved to Mexico with the applicant, as her skills as a horse trainer are not needed or culturally accepted. She states that there is no demand for her skills in Mexico and that she does not have the proper documentation to work in Mexico. Relocating her family to Mexico, [REDACTED] further asserts, would mean living in poverty. *Statement*, dated July 25, 2003. [REDACTED] also contends that, were the family to move to Mexico, it would have serious financial and emotional consequences for all family members and that it would shatter her granddaughter's world. *Letter*, dated July 25, 2003. Letters from family friends note the loss of educational opportunities for [REDACTED] if she moved to Mexico and her emotional devastation if she were to be separated from her grandmother. *Letters from [REDACTED] and [REDACTED]* dated September 20, 2000 and July 18, 2003 respectively.

A statement from [REDACTED], a certified school counselor, states that [REDACTED]'s emotional, psychological and educational development would be traumatically disrupted by being separated from her country of origin. She indicates that she has known [REDACTED] family for years and that [REDACTED] has been reared since birth by her parents and grandmother. She notes that removing [REDACTED] from the only place she considers home could influence her development and life, and that such factors as safety, education, adequate income, freedom and social structure determine how a child develops. Allowing [REDACTED] to remain in the United States, [REDACTED] states, would allow her to reach her full potential. *Evaluation*, dated July 20, 2003.

The record also contains an overview of country conditions in Mexico provided by the Department of State's 1999 *Country Reports on Human Rights Practices*, Mexico, which indicates that the Mexican economy is generally still recovering from the 1994 economic crisis and that real wages continue to be lower than they were prior to 1994. It also notes that income distribution remains skewed, with the top 20 percent of the population in control of 60 percent of the country's total income. Human rights abuses, the report indicates, continue as do crime and violence, at times perpetrated by government representatives. At the time of filing, counsel specifically drew attention to the report's findings on child health and labor, noting that 1.7 million school age children were not in school because poverty required them to work. He further pointed to the finding that the minimum wage in Mexico does not provide a decent standard of living for a worker and his family. *Counsel's letter*, dated September 26, 2000.

Having considered the record before it, the AAO finds the evidence of record to establish that the applicant's daughter, [REDACTED], would suffer extreme hardship if she were to relocate to Mexico with him. The AAO has noted the concerns raised by counsel, [REDACTED] and family friends regarding the effects that a move to Mexico would have on [REDACTED]. It also notes that [REDACTED], who is nearing her 12th birthday, was born in the United States, has been reared in the United States, has no immediate family in Mexico and that her significant family ties are in the United States, including her U.S. citizen mother and grandmother. The BIA has found that a 15-year-old child who lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). Although the record is not clear as to whether [REDACTED] speaks Spanish, the AAO finds *Matter of Kao and Lin* to be

persuasive in this case as [REDACTED] has lived her entire life in the United States. Accordingly, the AAO finds the applicant to have established that his U.S. citizen daughter would suffer extreme hardship if she relocated to Mexico.

The AAO now turns to the second part of the analysis, which requires the applicant to establish extreme hardship in the event that [REDACTED] and/or [REDACTED] remain in the United States. At filing, counsel asserted that the applicant's return to Mexico would result in extreme economic hardship for the family, noting that the minimum daily wage in Mexico was \$3.99. He indicated that the horse training and breeding business run by [REDACTED] and the applicant would be bankrupted as a result of the applicant's removal and that [REDACTED] and [REDACTED] might have to go on welfare. Moreover, counsel stated that [REDACTED] would suffer severe psychological effects from the devastation of her and the applicant's business. *Counsel's letter*, dated September 26, 2000. In support of counsel's claims, the record provides statements from [REDACTED]; a letter from [REDACTED]; letters from family friends and business associates; and country conditions information on Mexico.

[REDACTED] asserts that the applicant is responsible for the day-to-day operations of their horse training and breeding business and that, without him, she would be forced to give up the business, which would result in extreme financial hardship for herself, her daughter and her mother. She also states that being separated from the applicant would be emotionally devastating and would destroy her family and her future. *Statements*, dated September 21, 2000 and July 25, 2003. [REDACTED] echoes her daughter's claim, stating that, without the applicant, their livelihood would cease and she would be dependent solely on her social security check. *Letter*, dated July 25, 2003. Letters from business associates also indicate that the applicant's removal would have an extremely devastating effect on the financial viability of [REDACTED] and the applicant's business. *Letters from [REDACTED] and [REDACTED]* dated September 16, 2000 and September 20, 2000 respectively. Letters in the record from family friends and business associates note the close bond between the applicant and his daughter, and express concern over the consequences she would suffer if the applicant were removed. *Letters from [REDACTED]*, dated July 18, 2003; [REDACTED], dated September 20, 2000 and July 25, 2003; [REDACTED], dated September 16, 2000; [REDACTED], dated September 20, 2000; and [REDACTED] dated September 16, 2000.

The statement from [REDACTED], already noted, concludes that [REDACTED]'s emotional, psychological and educational development would be traumatically disrupted if she were to be separated from her father. She finds that the psychosocial and emotional trauma of family disruption could potentially damage or destroy [REDACTED] healthy, normal development, damage or destroy her loving daughter/family relationship and break down her family unit. *Statement*, dated July 20, 2003.

Having considered the evidence, the AAO does not find the record to establish that either [REDACTED] or her daughter would suffer extreme hardship were the applicant's waiver request to be denied. While the AAO acknowledges [REDACTED]'s concerns about the loss of her business in the applicant's absence, economic loss, by itself, is not a basis for a finding of extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627, 630 (BIA 1996). Counsel's assertions that this type of economic loss would also have a severe psychological impact on [REDACTED] is not supported by any documentary evidence and, therefore, is insufficient proof that she would experience extreme emotional hardship if the applicant were removed. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of

counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record does not demonstrate that the applicant would be unable to obtain employment in Mexico that would allow him to assist [REDACTED] financially from outside the United States. As previously indicated, the 1999 Department of State *Country Reports on Human Rights Practices* offers a general overview of the Mexican economy. Although the record indicates that, in Mexico, the daily minimum wage is \$3.99 per day, it does not demonstrate that the applicant, based on his knowledge of and experience in operating a stud business, would be unable to obtain employment paying above the minimum wage. Moreover, the record includes no financial information to substantiate [REDACTED] or [REDACTED]'s conclusions regarding the precarious nature of their business' financial situation in the applicant's absence. Going on record without supporting documentary evidence will not 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)).

Although the AAO acknowledges [REDACTED]'s expertise in her field, it notes that her statement does not indicate that her opinion regarding the impact of the applicant's removal on his daughter is based on a direct evaluation of [REDACTED]'s mental/emotional health. Instead, her assessment appears to rest on her understanding of the type of impacts normally associated with the loss of a parent, indicating that such an event *could permeate* [REDACTED] development and life and *could* potentially damage or destroy her development. As [REDACTED]'s findings are speculative with regard to the hardship that would be experienced by the applicant's daughter as a result of his removal, their value to a determination of extreme hardship is significantly diminished.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of hardship experienced by the families of most individuals who are removed from the United States.

The record, when reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant's waiver application were to be denied. Rather, the record demonstrates that [REDACTED] and [REDACTED] would experience the distress and difficulties routinely created by the removal of a spouse and father from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and emotional and social interdependence. Congress, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. While the AAO acknowledges that

the separation from an immediate family member nearly always results in considerable hardship to the individuals and families involved, it finds the record to contain insufficient evidence to establish that the denial of the applicant's waiver request would result in extreme hardship to [REDACTED] or her daughter if they remain in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by a denial of the applicant's waiver application. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.

ORDER: The previous decision is withdrawn. The appeal is dismissed.