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**U.S. Citizenship
and Immigration
Services**

H2



FILE:



Office: LONDON, ENGLAND

Date: APR 07 2011

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) and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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. The fee for a Form I-290B is currently \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

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

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 having been convicted of crimes involving moral turpitude. The applicant was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and has a lawful permanent resident son. He seeks a waiver of inadmissibility pursuant to section 212(h) and section 212(i) of the Act in order to reside in the United States.

In a decision, dated September 22, 2008, the Field Office Director finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for not disclosing his criminal convictions when entering the United States on the visa waiver program and when applying for his nonimmigrant visa. He also finds the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for convictions occurring in 1969 and 1976. The field office director states that he acknowledges that the applicant's inadmissibility would have an adverse effect on the applicant's spouse, but that the hardship she would face does not rise to the level of extreme hardship. The waiver application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated October 23, 2008, the applicant states that the field office director's decision states a number of erroneous facts and statements. He states that he meets the rehabilitation requirements, so should not have to show extreme hardship.

The record indicates that on May 2, 1969, in Stratford Upon Avon Magistrates Court, United Kingdom, the applicant was convicted of three counts of offenses against property and fined ten pounds sterling. The applicant, born on January 27, 1952, was seventeen years old at the time of these convictions.

The record also indicates that on May 3, 1976, in Hereford Crown Court, United Kingdom, the applicant was convicted of one count of theft and kindred offenses and two counts of fraud and kindred offenses. He was sentenced to either pay a fine of 250 pounds sterling or serve six months in prison. The applicant was twenty-four at the time of these convictions.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

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

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

In the recently decided *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an "actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, "the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude." 24 I&N Dec. at 697 (citing *Duenas-*

Alvarez, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The AAO notes that the applicant’s convictions in 1969 may not be considered convictions under immigration law if they were considered acts of juvenile delinquency. In its decision, *In re Miguel Devison-Charles*, 22 I&N Dec. 1362 (BIA 2000), the Board of Immigration Appeals (Board) stated, “[w]e have consistently held that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes.” *Devison-Charles* at 1365; *see also Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981) and *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981). Importantly, the Board added, “[w]e have also held that the standards established by Congress, as embodied in the FJDA (Federal Juvenile Delinquency Act), govern whether an offense is to be considered an act of delinquency or a crime.” *Devison-Charles* at 1365.

The FJDA defines a ‘juvenile’ as ‘a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday,’ and ‘juvenile delinquency’ as ‘the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult.

Ramirez-Rivero at 137 (citing 18 U.S.C. § 5031).

The AAO finds that although the applicant’s crimes in 1969 were not in violation of U.S. law, the applicant was under the age of eighteen when he committed the acts and would have met the juvenile definition making these convictions acts of juvenile delinquency and hence not convictions for immigration purposes.

However, the applicant’s convictions for two counts of fraud in 1976 are for crimes involving moral turpitude. The AAO finds that courts have consistently held that any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), *cert denied*, 383 U.S. 915 (1966).

The AAO notes that the applicant presents evidence that his crimes are “spent” pursuant to the Rehabilitation of Offenders Act 1974 in the United Kingdom. The AAO finds that the Rehabilitation of Offenders Act 1974 is very much like state rehabilitative statutes in the United States, which provide expungements for certain criminal convictions after a period of time. The

AAO notes that no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Any subsequent, rehabilitative action that overturns a state conviction, other than on the merits or for a violation of constitutional or statutory rights in the underlying criminal proceedings, is ineffective to expunge a conviction for immigration purposes. *Id.* at 523, 528. In *Matter of Pickering*, the Board of Immigration Appeals reiterated that if a court vacates a conviction for reasons unrelated to a procedural or substantive defect in the underlying criminal proceedings, the alien remains “convicted” for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003). There is nothing in the record to show that the applicant’s convictions were “spent” based on a defect in the convictions or in the proceedings underlying the convictions. Thus, the applicant remains “convicted” for immigration purposes.¹

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 -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien’s application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The AAO finds that the crimes involving moral turpitude for which the applicant was found inadmissible occurred more than 15 years prior to the applicant’s application for a visa, so the applicant is eligible to apply for a waiver under section 212(h)(1)(A) of the Act. However, because the applicant has also been found inadmissible under section 212(a)(6)(C)(i) of the Act, no purpose

¹ The AAO notes that the applicant has provided articles from the internet detailing how members of the [REDACTED] where the applicant was convicted of his crimes in 1976, were to blame for numerous wrongful convictions. However, without court action specific to the applicant’s convictions, the AAO cannot use these articles as a basis for finding that the applicant was not guilty of the crimes of which he was convicted.

would be served in discussing whether he meets the requirements necessary for a section 212(h)(1)(A) waiver.

The record also indicates that from 1999 to 2007 the applicant entered the United States on various occasions under the Visa Waiver Program and, despite his criminal record, on the required Nonimmigrant Visa Waiver/Departure Form (Form I-94) the applicant continually answered "no" to the question, "have you ever been arrested or convicted for an offense or crime involving moral turpitude or a violation related to a controlled substance; or been arrested or convicted for two or more offenses for which the aggregate sentence to confinement was five years."

In addition, the record also indicates that on October 25, 2007 the applicant, on his Nonimmigrant Visa Application (DS-156), answered "no" to the question, "have you ever been arrested or convicted for any offenses or crimes, even though subject to a pardon, amnesty, or other similar legal action."

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.

In his statement on appeal, the applicant states that he did not disclose his criminal record because his convictions were "spent" under the Rehabilitations Act of 1974. The applicant also asserts that his submission of a police clearance is evidence that he was not trying to misrepresent himself.

The AAO cannot find that the applicant's failure to disclose his criminal convictions on his Form I-94 were willful misrepresentations under 212(a)(6)(C)(i) of the Act because it is reasonable to conclude that a lay person may not be able to judge whether his convictions are crimes involving moral turpitude, as that term is used in U.S. immigration law.

However, the AAO does find that the applicant's failure to disclose his criminal record on his DS-156 was a willful misrepresentation. The question on the DS-156 specifically states that convictions for crimes that have been subject to a pardon, amnesty, or other legal action must be disclosed. The applicant claims that this misrepresentation was not willful as he followed the directions and submitted a police clearance. However, the AAO notes that the directions also state that court

records for any convictions should be submitted, even if the applicant had subsequently benefited from an amnesty, pardon, or other act of clemency or Rehabilitation of Offenders Act. As stated above, no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Similarly, for the purposes of U.S. immigration law, foreign pardons, in themselves, do not wipe out an alien's foreign conviction or relieve him from the disabilities which flow there from. *Marino v. INS*, 537 F.2d 686, 691 (2nd Cir. 1976) (citations omitted); *see also, Mercer v. Lence*, 96 F.2d 122 (10th Cir. 1938); *United States ex rel. Palermo v. Smith*, 17 F.2d 534 (2nd Cir. 1927).

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. *See also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme

hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The AAO notes that the record of hardship includes: two statement from the applicant, a statement from the applicant’s spouse, a police report concerning the applicant’s spouse as the victim of a brutal stabbing, a letter from a [REDACTED] concerning the applicant’s spouse, a letter from an attorney in the United Kingdom advising the applicant as to his wife’s ability to obtain an immigrant visa to settle in the United Kingdom, receipts showing that the applicant was exporting antiques to the his spouse in Florida to sell in her antique shop, bank statements, mortgage statements, and articles regarding conditions in the United Kingdom.

In his statement on appeal the applicant asserts that if his wife were to relocate to the United Kingdom they would have no means of generating income as they are owners of an antique business where sales are only generated in the United States. The record indicates that the applicant has been an antiques dealer since the 1970’s and that for the last fifteen years he has been buying antiques in Europe and sending them to his wife in Florida to sell in the United States. In support of these statements the applicant submits wire transfer receipts and bill of ladens for his antique business.

The AAO recognizes that the applicant may not be currently generating an income in the United Kingdom, but as an individual with over thirty years of experience as an antiques dealer and experience as a Post Master in the United Kingdom, the AAO finds that the record does not

demonstrate that the applicant and/or his spouse would not be able to earn income in the United Kingdom. Furthermore, the record fails to demonstrate that individuals with the education and work experience of the applicant and/or his spouse would be unable to find other employment in the United Kingdom. We acknowledge that the loss of the current business would result in some hardship, but without evidence also demonstrating a lack or paucity of economic opportunities in the United Kingdom, we cannot ascertain whether and to what extent this would result in economic hardship to the applicant's spouse.

In his statement on appeal the applicant also asserts that his wife is in danger of losing her home as she has not been able to keep up their business without his help. He states that she is two months behind on her mortgage.

The applicant also states that it is erroneous for the field office director to state that his spouse has the choice of relocating to the United Kingdom. He states that he sought the advice of an attorney in the United Kingdom regarding his wife's ability to obtain immigrant status in the United Kingdom and now realizes that it is not a certainty that she would be granted immigrant status and be able to relocate.

The AAO notes that the record includes a letter from an attorney in the United Kingdom, dated October 15, 2008, which advises the applicant as to the requirements he and his spouse would have to meet for his spouse to obtain an immigrant visa to relocate to the United Kingdom. The attorney expresses concern over the applicant's ability to meet the income requirement given that all of his income is generated in the United States. The AAO notes that the attorney's advice is based on information provided by the applicant. In particular the applicant stated that if he and his spouse sold all their assets in the United States they would have a total of about 5,000 pounds and that neither he or his spouse have the skills or qualifications to find suitable work in the United Kingdom to support themselves. The AAO recognizes that the issuance of an immigrant visa to the applicant's spouse is not guaranteed, but the current record does not indicate that the applicant's spouse applied for an immigrant visa and was denied neither does it indicate that the information provided to the attorney in the United Kingdom was accurate or complete.

In a statement submitted with the initial waiver application, the applicant states that as a result of his inadmissibility his spouse is suffering financially and emotionally. He states that she is seeking help for her stress and as a victim of a violent crime she is fearful of being alone. He also states that relocating to the United Kingdom would be an extreme hardship because of the standard of living, knife culture, health services, and general decline of English society.

In her statement, the applicant's spouse states that she was a victim of a horrible violent crime in 1983 where she was stabbed numerous times and left for dead. The applicant's spouse submits the police report from this incident to support these statements. She states that her mental health has been continually affected by this incident, especially because the perpetrator has never been found. She states that she lived with her parents until she turned thirty, met the applicant, and married. She states that the applicant became her protector and he would not leave her for long periods of time. She states that the last year without the applicant has been hard for her and that she sleeps on her downstairs couch with a gun, knife, and flashlight. The applicant's spouse states that she has never sought the help of a psychiatrist because of the stigma associated with people who seek psychiatric care and the costs. She states that she is attending therapy with a family therapist. The AAO notes

that the record includes a letter from a [REDACTED], which states that for the past twelve months he has been engaged in family therapy with the applicant.

The applicant's spouse also expresses concern over her standard of living if she were to relocate to the United Kingdom. She states that in the United States she owns a 3,800 square foot Victorian home on an acre of land, a 2006 Hummer, and a 30 foot motor home. She also states that she does not believe in socialized medicine and does not want her right to own a gun infringed upon. She also states that stabbings are on the increase in the United Kingdom and there are surveillance cameras everywhere. The applicant's spouse states further that she has many ties to the United States including being very active in civic organizations, political and religious life, and charitable works.

Finally, the AAO notes that the record includes a mortgage statement showing that the applicant's spouse owes over \$300,000 on her home and articles regarding country conditions and police corruption in the United Kingdom.

The AAO finds that the applicant has established that his wife is suffering extreme hardship as a result of separation, but has not established that she would suffer extreme hardship upon relocation. Given the applicant's spouse's history as a victim of violent crime, her current struggles with fear and anxiety, and her reliance on the applicant for emotional support, the AAO finds that she is suffering extreme emotional hardship as a result of separation.

However, the current record does not indicate that the applicant's spouse would suffer hardship that rises to the level of extreme as a result of relocating to the United Kingdom. The record does not indicate that the applicant's spouse would not be able to find employment or be self-employed in her field in the United Kingdom. Moreover, the AAO finds that despite the articles submitted regarding an increase in crime in the United Kingdom and families leaving the United Kingdom for other countries, any residents of the United Kingdom enjoy a standard of living comparable to that in the United States. Again, the AAO recognizes that the applicant's spouse will experience hardship as a result of relocating to the United Kingdom, but the current record does not indicate that this hardship rises to the level of extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. 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(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *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.