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

U.S. Citizenship and Immigration Services

[redacted]

H2

FILE: [redacted] Office: [redacted] Date: APR 13 2011

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:

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, 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,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the Officer-in-Charge (OIC), [redacted] and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland who was found to be inadmissible 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 been convicted of a crime involving moral turpitude. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his lawful permanent resident mother.

The OIC determined that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Denial Notice*, dated August 31, 2007.

On appeal, the applicant asserts that the "inconveniences and problems" his mother would suffer as a result of his inadmissibility "are much bigger than those that present in commonly known cases of this type." *Statement on Appeal Notice (Form I-290B)*, dated October 2, 2008.

In support of the waiver application, the record includes, but is not limited to, statements from the applicant, statements from the applicant's mother, and conviction records. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
>
> (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 *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 record reflects that the applicant was convicted in the District Court in [redacted] of committing "the act of assault and battery against two policemen" in violation of Articles 223 of the Penal Code, Article 224, Paragraph 2 of the Penal Code, Article 226, Paragraph 1 of the Penal Code and Article 11, Paragraph 2 of the Penal Code. The applicant was sentenced to one year and 6 months of imprisonment, which was suspended for a period four years, and payment of fines (File No. II K 519/05).

Assault on a law enforcement officer has been found to be a crime involving moral turpitude where the perpetrator knows the victim to be a law enforcement officer performing his official duty and the assault results in bodily injury to the officer. *See Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988) (distinguishing cases in which knowledge of the police officer's status was not an element of the crime and where bodily injury or other aggravating factors were not present to elevate offense beyond "simple" assault); *see also Matter of O-*, 4 I&N Dec. 301 (BIA 1951) ([redacted] law involving an assault on a police officer was not a crime involving moral turpitude because knowledge that the person assaulted was a police officer engaged in the performance of his duties was not an element of the crime); *Matter of B-*, 5 I&N Dec. 538 (BIA 1953) (as *modified by Matter of Danesh, supra.*) (assault on prison guard not a crime involving moral turpitude because offense charged appeared to be only "simple" assault and no bodily injured was alleged); *Ciambelli ex rel. Maranci v. Johnson*, 12 F.2d 465 (D. Mass 1926) (assault on an officer was not a crime involving moral turpitude in spite of fact that defendant was armed with a razor because the razor was not used in the assault). Thus, the applicant's conviction could be in violation of a statute that proscribes conduct that involves moral turpitude and conduct that does not.

Pursuant to *Matter of Silva-Trevino*, *supra*, the AAO will therefore review the entire record, including the record of conviction and, if necessary, other relevant evidence, to determine if the applicant's conviction was for morally turpitudinous conduct. The conviction record in the instant case includes a judgment, which provides, in pertinent part:

> [redacted] and [redacted] committed the act of assault and battery against two policemen from the Police Headquarters in [redacted] Assailants used force against the policemen to avoid being detained. [redacted] caught [redacted] round the neck with his arm in order to fall him over. [redacted] and [redacted] were striking him in the head and neck. Later, they were struggling and waiving their hands to escape being detained. They were insulting policemen. [redacted] suffered from the right shank wound and detriment to health for a period of seven days.

Copy of Judgment in the Name of the Republic of [redacted] dated November 4, 2005.

The judgment reveals that the applicant used physical force against the police officers and caused bodily injury to police officer [redacted] As stated, assault on a law enforcement officer has been found to be a crime involving moral turpitude where the perpetrator knows the victim to be a law enforcement officer performing his official duty and the assault results in bodily injury to the officer. *See Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988). Accordingly, the applicant has been convicted of a crime involving moral turpitude, and is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest his inadmissibility on appeal.

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), (B), . . . of subsection (a)(2) . . . if –
>
> . . . .
>
> (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 waiver of inadmissibility under section 212(h) 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, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen mother 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.

In the present matter, however, the applicant has not only been convicted of a crime involving moral turpitude, but of a crime of violence. Therefore, even if the applicant establishes that he meets the requirements of section 212(h), the Secretary of Homeland Security will not favorably exercise discretion in the applicant's case except in an extraordinary circumstance. *See* 8 C.F.R. § 212.7(d).

The regulation at 8 C.F.R. § 212.7(d) provides:

> The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and

> extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The AAO notes that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and the AAO is aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, *or* any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in 8 C.F.R. § 212.7(d). Thus, we find that the statutory terms "violent or dangerous crimes" and "crime of violence" are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependant on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms "violent" and "dangerous". The term "dangerous" is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms "violent" and "dangerous" in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). Black's Law Dictionary, Seventh Edition (1999), defines violent as "of, relating to, or characterized by strong physical force" and dangerous as "likely to cause serious bodily harm." Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual "case-by-case basis." 67 Fed. Reg. at 78677-78.

The AAO finds that pursuant to the narrative of the applicant's conduct described in the conviction record, the applicant's conviction for assault and battery against two law enforcement officers is a violent and dangerous crime within the meaning of 8 C.F.R. § 212.7(d), and the heightened discretionary standards found in that regulation are applicable in this case.

Accordingly, the applicant must show that "extraordinary circumstances" warrant approval of the waiver. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant's admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities, the AAO will consider whether the applicant has "clearly

demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship" to a qualifying relative. *Id.*

Although 8 C.F.R. § 212.7(d) does not specifically state to whom the applicant must demonstrate exceptional and extremely unusual hardship, the AAO interprets this phrase to be limited to qualifying relatives described under the corresponding waiver provision of section 212(h)(1)(B) of the Act. A waiver of inadmissibility under section 212(h)(1)(B) 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, parent, son or daughter of the applicant. The qualifying relative in this case includes the applicant's lawful permanent resident mother.

In *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001), the BIA determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." However, the applicant need not show that hardship would be unconscionable. *Id.* at 61

The BIA stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *Id.*

In *Monreal*, the BIA provided additional examples of the hardship factors it deemed relevant for establishing exceptional and extremely unusual hardship:

> [T]he ages, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives. For example, an applicant who has elderly parents in this country who are solely dependent upon him for support might well have a strong case. Another strong applicant might have a qualifying child with very serious health issues, or compelling special needs in school. A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.

23 I&N Dec. at 63-4.

In the precedent decision issued the following year, *Matter of Andazola-Rivas*, the BIA noted that, "the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by comparing it to the hardship others might face." 23 I&N Dec. 319, 323 (BIA 2002). The issue presented in *Andazola-Rivas* was whether the Immigration Judge correctly applied the exceptional and extremely unusual hardship standard in a cancellation of removal case when he concluded that such hardship to the respondent's minor children was demonstrated by evidence that they "would suffer hardship of an emotional, academic and financial nature," and would "face complete upheaval in their lives and hardship that could conceivably ruin their lives." *Id.* at 321 (internal quotations omitted). The BIA viewed the evidence of hardship in the respondent's case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The BIA noted:

> While almost every case will present some particular hardship, the fact pattern presented here is, in fact, a common one, and the hardships the respondent has outlined are simply not substantially different from those that would normally be expected upon removal to a less developed country. Although the hardships presented here might have been adequate to meet the former "extreme hardship" standard for suspension of deportation, we find that they are not the types of hardship envisioned by Congress when it enacted the significantly higher "exceptional and extremely unusual hardship" standard.

23 I&N Dec. at 324.

However, the BIA in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as *Andazola-Rivas*, clarified that "the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief." 23 I&N Dec. 467, 470 (BIA 2002). The BIA found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The BIA noted that these factors included her heavy financial and familial burden, lack of support from her children's father, her U.S. citizen children's unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The BIA stated, "We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met." *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate. *See Gonzalez Recinas*, 23 I&N Dec. at 469 ("While any hardship case ultimately succeeds or fails on its own merits and on the particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship."). The AAO notes that exceptional and extremely unusual 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.

On appeal, the applicant asserts that his mother helps support him in [redacted] He contends that his residence in the United States will improve his mother's financial situation. He notes that he would like to help his mother because she "constantly struggles with physical and mental illnesses." He states that his mother's mental and physical condition worsened after he was found inadmissible. The applicant states that his separation from his mother has worsened her health condition and "can bring about disastrous results." The applicant states that his admission to the United States will improve his mother's mental condition. He states that his mother's arrival in [redacted] would "cause negative effects" on her and his half-brother, [redacted]. He contends that his mother's illnesses require "highly specialized treatment," not available in [redacted] or [redacted] He indicates that his mother's age and qualifications would not let her find employment in [redacted] because there is a high unemployment rate. He states that his brother, [redacted] who is a native of [redacted] does not speak [redacted] and will have difficulty adapting to an "intolerant country where racist views are common." *Statements from the Applicant*, dated October 9, 2008 and November 8, 2008.

The applicant's mother asserts that the applicant's father – her ex-husband – was abusive and abandoned their family in 1992. She states that her ex-husband has never supported the applicant. She states that she came to the United States in 1995 and found opportunity, high financial status, and a better and safer life. She contends that her mental health and physical condition worsened when she learned that the applicant was denied admission to the United States. She states that she financially supports the applicant and her younger son [redacted] She contends that [redacted] would be unable to attend school in [redacted] because he does not speak [redacted] She states that relocating to [redacted] would have a devastating impact on [redacted] who is 11 years old, and would affect his mental and emotional development. The applicant's mother indicates that [redacted] is [redacted] and could meet "dislike from inhabitants and even acts of violence" in the area of [redacted] where she would reside. The applicant's mother contends that [redacted] father – her ex-husband – would not allow him to depart the United States. She states that [redacted] mental health would be affected by a separation from his father. She notes that her financial support of the applicant and other expenses lead her "to fatal economic situation." The applicant's mother contends that the applicant's arrival in the United States will improve her financial situation and improve her mental health and physical condition. She states that she suffers from hyperlipidemia, helicobater pylon, high blood pressure, circulation, depression and diabetes. She states that her condition requires "long-term, highly specialized medical treatment, which is not available in [redacted] She states that if the applicant is unable to join his family in the United States, their "family ties would be severed" and their "dreams would be crushed." The applicant's mother asserts that she would be unable to find employment in [redacted] to support herself and the applicant. She notes that she can only make short visits to [redacted] because of her medical conditions. *Declarations of* [redacted] dated November 8, 2008, November 28, 2007 and January 11, 2007.

The AAO acknowledges that the applicant has a close relationship with his mother. The separation of family members often results in significant psychological hardship. The statements from the applicant and his mother demonstrate their strong family bond and their interests in unifying their family. As noted, 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. However, this case involves the

separation of a 28-year-old adult child from his parent. As stated, 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*, 12 I&N Dec. 810, 813 (BIA 1968), 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. Here, the applicant has been residing apart from his mother since he was 13 years old. Neither the applicant nor his mother has explained who raised the applicant while his mother was abroad. The applicant's status as an adult who has for the previous 15 years been separated from his mother will be given consideration when assessing the hardship of separation.

The applicant has not presented any evidence, such as a psychological report, to show that his mother is experiencing emotional hardship that rises to the level of extreme. The record contains a referral note from an internal medicine physician, [redacted], stating that the applicant's mother was referred to a psychiatrist for anxiety and depression. *See Prescription of* [redacted], dated November 6, 2008. However, there is no evidence in the record that the applicant's mother has been diagnosed and treated by a mental health professional. The AAO is not in a position to make an assessment of the applicant's mother's mental health without supporting documentation from a mental health professional.

The applicant's mother has indicated that she is suffering financial hardship from supporting the applicant. She submitted a copy of her mortgage statement, but has failed to provide evidence of her income and remittances to the applicant demonstrate that their separation is resulting in financial hardship to her. The applicant has not presented any other hardship factors in this case to distinguish the hardship his mother is suffering upon separation from the common hardships suffered by family members of inadmissible aliens. While the AAO gives significant weight to the emotional hardship of separation, the applicant has not shown that this hardship is atypical and rises to the level of exceptional and extremely unusual hardship. Based on the foregoing, the applicant has not shown that his mother will suffer exceptional and extremely unusual hardship should she remain separated from him.

As previously discussed, a determination of exceptional and extremely unusual hardship should include a consideration of the impacts of relocation on the applicant's qualifying relative.

The AAO acknowleges that the applicant's mother claims that she has a number of health conditions. The record contains notes from [redacted] stating that she suffers from "multiple medical problems." *See Prescrptions*, dated December 4, 2006 and January 6, 2008. However, the medical notes do not explain her treatment plans, prognosis, and whether she receives specialized treatment that is unavailable in [redacted] Nor has the applicant submitted country condition reports to establish that comparable medical treatment would be unavailable in [redacted] Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Therefore, the AAO cannot determine that the applicant's mother would experience medical hardship should she relocate to her native country of [redacted]

The AAO will give weight to the hardship the applicant's brother, [redacted] would experience only insofar as it would result in hardship to his mother. The AAO notes that the applicant's mother's assertion that [redacted] father would not allow him to depart the United States is not supported by the record. The record does not contain a child custody agreement reflecting that [redacted] father has custody over [redacted] Moreover, her assertion that [redacted] would be affected by a separation from his father is inconsistent with her assertion that [redacted] father abandoned her and she cares for [redacted] by herself. See *Declaration of* [redacted] at paragraph 8. The AAO notes further that the applicant's spouse's assertion that [redacted] is a national of [redacted] who would suffer from discrimination in [redacted] is unsubstaniated by the record. The AAO notes that the record before us does not contain a copy of [redacted] birth certificate. The immigrant petition for alien worker (Form I-140) filed on the applicant's mother's behalf reflects that [redacted] was born in [redacted] Moreover, no country condition reports or articles were submitted that reflect that minorities are targets of violence in the region in which the applicant's mother would reside with [redacted] As stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

The AAO recognizes that the [redacted] would likely experience hardship relocating to country with a language and culture that is unfamiliar to him. The applicant's mother claims that [redacted] spent the first years of his childhood with his grandmother in his homeland [redacted] where he attends school at which English was a primary language." *Declaration of* [redacted] dated November 8, 2008.

The Board of Immigration Appeals and U.S. Courts have found extreme hardship in cases where the language capabilities of the children were not sufficient for them to have an adequate transition to daily life in the applicant's country of origin. For example, *Matter of Kao and Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in [redacted] The girl had lived her entire life in the United States and was completely integrated into an American life style. The BIA found that uprooting her at this stage in her education and her social development to survive in a [redacted]-only environment would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5th Cir. 1983), the Fifth Circuit Court of Appeals stated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown. In *Prapavat v. INS*, 638 F.2d 87, 89 (9th Cir. 1980), the Ninth Circuit Court of Appeals found the BIA abused its discretion in concluding that extreme hardship had not been shown to the aliens' five-year-old citizen daughter, who was attending school, and would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her.

Accordingly, the AAO will give some weight to the hardship the applicant's mother would experience as a result of having to relocate her son to a new environment. Again, the weight of this hardship is diminished by the lack of identity documents and school records for Nader in record to support such a claim.

All claim of extreme hardship to the applicant's mother, should she relocate with the applicant to [redacted] have been considered in the aggregate. While the applicant has shown some hardship to his mother upon relocation to [redacted] based on hardship to his brother, the applicant has failed to demonstrate that this single hardship factor rises to the level of exceptional and extremely unusual.

In conclusion, the record does not reflect that the applicant's mother would suffer exceptional and extremely unusual hardship upon separation from the applicant or upon relocation to [redacted] The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(h) 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(h) 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.