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

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: ACCRA, GHANA Date: JAN 27 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:

[redacted]

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 Rhew

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Cape Verde 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 is the son of U.S. citizen parents. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Inadmissibility, accordingly. He further concluded that the applicant was not eligible for a favorable exercise of discretion. *Decision of the Field Office Director*, dated May 8, 2008.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant's parents would not suffer extreme hardship and in determining that the applicant was not entitled to a favorable exercise of discretion. *Form I-290B, Notice of Appeal or Motion,* dated May 22, 2008.

In support of the waiver application, the record contains counsel's brief. The entire record was reviewed and all relevant evidence considered in arriving at a decision on the appeal.

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

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

The 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.)

The record reflects that during the period 1994 to 1997, the applicant was arrested for and convicted of a series of criminal offenses, including Assault and Battery With Dangerous Weapon, Knife under Massachusetts General Laws (Mass. Gen. L.) chapter 265 § 15A; multiple counts of Malicious Destruction of Property Over $250 under Mass. Gen. L. ch. 266 § 127; multiple counts of Larceny of Property over $ 250 under Mass. Gen. L. ch. 266 § 30; one count of Larceny of a Credit Card under Mass. Gen. L. ch. 266 § 37B; and multiple counts of Breaking and Entering in a Motor Vehicle under Mass. Gen. L. ch. 266 § 16.

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining inadmissibility under section 212(a)(2)(i)(I) of the Act, adopting the "realistic probability" standard used by the Supreme Court in *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183 (2007). The methodology requires an adjudicator to review the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute could be applied to reach conduct that does not involve moral turpitude. 24 I&N Dec. 687, 698 (A.G. 2008)(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 has been 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.

In the present case, however, the AAO does not find it necessary to conduct *Silva-Trevino* analysis of all the applicant's convictions in order to determine whether he is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. We note that the applicant has been convicted of Assault and Battery With Dangerous Weapon under Mass. Gen. L. ch. § 15A, an offense the BIA has found to be a crime involving moral turpitude. *Matter of J*, 4 I&N Dec. 512 (BIA 1951). Moreover, as an individual convicted under the statute may be sentenced to more than one year of imprisonment, the applicant's conviction may not be excused under the provisions of the petty offense exception found in section 212(a)(2)(A)(ii)(II) of the Act. The AAO, therefore, finds the applicant's conviction under Mass. Gen. L. ch. § 15(A) to bar his admission under section

212(a)(2)(A)(i)(I) of the Act, requiring him to seek a waiver of inadmissibility under section 212(h) of the Act in order to reside in the United States.

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 –
>
> (1)(A) [I]t is established to the satisfaction of the Attorney General that-
>
> (i) [T]he 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 notes that the event that resulted in the applicant's conviction under Mass. Gen. L. ch. 265 §15A occurred in 1995, more than 15 years ago. We do not, however, find him eligible for a waiver under section 212(h)(1)(A) of the Act as we find the record to contain insufficient evidence to demonstrate that he is rehabilitated. The record reflects that the last crimes of which the applicant was convicted, Disturbing the Peace, and Assault and Battery on a Peace Officer, took place in April 1997, and that the applicant voluntarily departed the United States in November 1997. Although counsel asserts that the applicant has committed no crimes since he left the United States, no documentary evidence in the record supports this claim, e.g., police clearances provided by relevant authorities in Cape Verde. 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 Obaigbena*, 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). As a result, the applicant must establish his eligibility for a waiver based on the hardship that would be suffered by a qualifying relative in the event his waiver application is denied.

We further find that, as the applicant's offense is a violent or dangerous crime, his eligibility for a 212(h) waiver is subject to the regulation at 8 C.F.R. § 212.7(d),[1] which provides:

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[1] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

> 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 did not 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 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. 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). 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.

Assault and battery offenses are not necessarily violent or dangerous crimes. However, in the present case, the applicant was convicted of assault and battery with a knife. The AAO notes that a conviction under Mass. Gen. L. ch. 265 § 15A requires that the elements of assault be present; that there be a touching, however slight, of the victim; that the touching be accomplished by means of a

weapon; and that the battery be accomplished by use of an inherently dangerous weapon, or by use of some other object as a weapon, with the intent to use that object in a dangerous or potentially dangerous fashion. *Com. v. Appleby*, 402 N.E.2d 1051 (Mass. 1980). Accordingly for the applicant in the present case to have been convicted of Assault and Battery With Dangerous Weapon, he was required to have brought a knife, an inherently dangerous weapon, into some type of contact with his victim. Based on the applicant's use of a weapon capable of producing serious bodily harm against another individual, the AAO finds him to have been convicted of a violent and/or dangerous crime. We also note that the assault and battery offense of which the applicant was convicted has been found to meet the definition of a crime of violence under 18 U.S.C. § 16. In *Matter of D*, 20 I&N Dec. 827 (BIA 1994), the BIA upheld the immigration judge's determination that Assault and Battery with a Dangerous Weapon under Mass. Gen. L. ch. 265 §156A(b) was a crime of violence as defined under section 101(a)(43) of the Act.[2]

As the applicant has been convicted of a violent or dangerous crime, he must show that "extraordinary circumstances" warrant the approval of his waiver request. As previously indicated, 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. In that the AAO finds no evidence of foreign policy, national security, or other extraordinary equities, the applicant must demonstrate that the denial of his waiver application would result in exceptional and extremely unusual hardship to a qualifying relative.

The concept of exceptional or unusual hardship is set forth by the BIA in *Matter of Monreal,* 23 I&N Dec 56 (BIA 2001). In *Matter of Monreal*, the BIA found that many of the factors that are considered in assessing extreme hardship should be considered in evaluating exceptional and extremely unusual hardship. The BIA held that the hardship suffered by the qualifying relative(s), however, must be "substantially beyond that which would ordinarily be expected to result from the alien's deportation," but need not show that such hardship would be "unconscionable." *Id.* at 59-63. In light of the similarities between the evaluations of extreme hardship and the heightened standard of exceptional and extremely unusual hardship, the AAO will initially consider the applicant's eligibility for a 212(h) waiver on the basis of extreme hardship. Should the extreme hardship standard be met, we will proceed with a consideration of the extent to which the record also establishes that a qualifying relative will suffer exceptional and extremely unusual hardship as a result of the applicant's inadmissibility.

An applicant seeking a waiver of inadmissibility under 212(h) of the Act on the basis of extreme hardship must establish that the claimed hardship will be imposed 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 parents are the qualifying relatives in this case. If extreme hardship to a

[2] The applicant's conviction does not, however, meet the definition of an aggravated felony. The record indicates that although the applicant in the present matter was initially sentenced to 18 months in jail, this sentence was revoked on October 16, 1997, and he was, instead, sentenced to probation. The AAO notes that had the applicant's 18-month sentence not been revoked, he would be ineligible for waiver consideration under section 212(h) of the Act as an individual admitted to the United States as a lawful permanent resident and subsequently convicted of an aggravated felony. As already discussed, section 101(a)(43)(F) of the Act defines an aggravated felony as a crime of violence for which the term of imprisonment is at least one year.

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-Moralez,* 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 (BIA) 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 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 exclusive. *Id.* at 566.

The BIA 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 BIA 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 BIA 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) ([redacted] 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.

On appeal, counsel asserts that the applicant's parents are elderly and have health problems that are being exacerbated because they are unable to see the applicant and are concerned about his well-being. He further contends that neither of the applicant's parents can relocate to Cape Verde because the care they require for their health problems is not available there. Counsel states that the applicant is not in a position to provide information on his parents' medical conditions or the stress that his inadmissibility is creating for them. Counsel suggests that USCIS interview the applicant's parents to obtain such information.

Although the AAO acknowledges counsel's assertions regarding the health of the applicant's parents and the stress they are under as a result of the applicant's inadmissibility, we do not find the record to support his claims with documentary evidence, e.g., medical statements or records relating to the applicant's parents' health problems. Neither does the record contain published country conditions materials that demonstrate the substandard nature of the healthcare system in Cape Verde, as claimed by counsel. 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 Obaigbena*, 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). Moreover, although counsel suggests that USCIS interview the applicant's parents to obtain the information it is seeking regarding the hardships they would face if the applicant's waiver application is denied, the burden of proof in section 212(h) waiver proceedings is on the applicant. It is the applicant who is responsible for providing the evidence necessary to establish his eligibility for a waiver, not USCIS. *See* section 291 of the Act, 8 U.S.C. § 1361.

Without any documentation of hardship, the AAO finds the applicant to have failed to establish his parents would experience extreme hardship as a result of his inadmissibility. In that he has not demonstrated that a qualifying relative would suffer extreme hardship as a result of his inadmissibility, he has also failed to meet the heightened standard of exceptional and extremely unusual hardship set forth at 8 C.F.R. §212.7(d) and is ineligible for a favorable exercise of discretion under section 212(h) of the Act.

In proceedings for an application for a 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.