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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

Date: OCT 05 2011 Office: PHILADELPHIA FILE: [redacted]

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 Shumaker

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Peru 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. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Field Office Director,* dated March 18, 2009.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible, and that the applicant's husband will suffer extreme hardship should the applicant be prohibited from residing in the United States. *Brief from Counsel*, submitted June 4, 2009.

The record contains, but is not limited to: a brief from counsel; documentation in connection with the applicant's criminal convictions; a report on the effects of United States deportation policy; statements from the applicant, as well as the applicant's husband and brother; a letter from the applicant's husband's employer; letters regarding the applicant's volunteer activities; a letter regarding mental health services that the applicant received; a letter regarding the applicant's employment activities; documentation regarding the architecture profession in the United States and Peru; reports on conditions in Peru; documentation regarding the applicant's and her husband's taxes, banking, income, and expenses; and letters from other individuals in support of the application. The entire record was reviewed and considered in rendering this decision.

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 or Board) 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 shows that the applicant pled guilty to two offenses of larceny: stealing money or goods less than $300 pursuant to the same ordinance of the municipal code of [redacted] on December 12, 1998 and February 11, 2000.

On appeal, counsel asserts that the applicant was not effectively convicted of criminal offenses as contemplated by section 101(a)(48) of the Act, as the records of her convictions do not show that she had attorney representation or a right to a trial by jury. Counsel asserts that the applicant's offenses were tried under an ordinance that allows her actions to be treated as "infractions" instead of misdemeanors, which permits a defendant to be tried without a jury. *Brief from Counsel* at 8 (citing Nebraska State Statute § 29-437). Counsel cites of the decision of the BIA in *Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004) to support his assertions.

The AAO observes that [redacted] includes separate penalty sections for misdemeanors and infractions. However, the ordinance does not indicate that prosecuting authorities may elect whether to deem an offense a misdemeanor or infraction. *See* L.M.C. 1.24.010(a) and (b). L.M.C. 1.24.010(b) states that the penalties for an infraction will be assessed upon an individual who commits an offense "for which the penalty is specifically deemed to be an infraction." The record of the applicant's conviction designates both of the applicant's offenses as misdemeanors, as observed by counsel. The

applicant has not established that this designation was an error, or that her offenses were deemed "infractions."

Counsel asserts that the lack of an indication in the conviction record that the applicant was offered a trial by jury or legal representation supports that she was not given these rights. However, the AAO is unable to conclude that the lack of affirmative evidence of a trial by jury or representation shows by a preponderance of the evidence that the applicant was denied such rights. From the documentation presented, the AAO is unable to determine what advisements she received in court. It is noted that the complaints filed against the applicant each state: "You have the right to a trial and may appear in court. If you choose to plead guilty, you may pay a fine of $____ and costs of $____ for a total of $____." In each instance, the applicant in fact pled guilty in court and paid a fine, supporting that she voluntarily elected to dispose of the offenses in an expedited manner.

The decision in *Matter of Eslamizar* is relevant. Yet, a key consideration in that decision was the fact that the applicant in question was found guilty of an offense under a "preponderance of the evidence" evidentiary standard rather than a "beyond a reasonable doubt" standard, thus the finding did not meet the standards of a criminal conviction as contemplated by U.S. law. 23 I&N Dec. at 687-88. In the present matter, the applicant has not established that a standard less than "beyond a reasonable doubt" applied to her convictions. As stated above, the applicant pled guilty to the offenses, thus her guilt is not in question. *Eslamizar* raised the issues of whether an applicant was afforded a trial by jury or legal representation, yet as discussed above, the applicant has not shown that she was prosecuted under an ordinance that did not afford these rights.

Counsel further notes that the applicant was not notified of the potential impact a guilty plea could have on her immigration status as required by Nebraska State Statutes §§ 29-1819.02 and 1819.03, yet counsel concedes that this requirement was not imposed until 2002, after both of the applicant's convictions. The applicant has not shown that her convictions were not effective based on a lack of instructions regarding the immigration consequences of her guilty pleas. Accordingly, the applicant has not shown that her offenses did not result in convictions for immigration purposes.

At the time of the applicant's convictions, L.M.C. 9.24.140 stated:

> Larceny; Defined.
>
> (a) It shall be unlawful for any person to steal any money or goods or chattels of any kind whatever, of less value than $300.00, the property of another, or to steal or maliciously destroy any money, promissory note, bill of exchange, order, draft, receipt, warrant, check, or bond given for the payment of money or receipt acknowledging the receipt of money or other property of less value than $300.00.
>
> (b) The word "money" as used in subsection (a) of this section, shall be construed to include bank bills or notes, United States treasury notes, or other bills, bonds, or notes issued by lawful authority and intended to pass in circulate as money.

The present case falls within the jurisdiction of the Third Circuit. To determine whether a crime constitutes a crime involving moral turpitude, we engage in a categorical inquiry that consists of looking "to the elements of the statutory offense . . . to ascertain that least culpable conduct hypothetically necessary to sustain a conviction under the statute." *Jean-Louis v. Holder*, 582 F.3d 462, 465-66, 2009 WL 3172753 (3rd Cir. October 6, 2009). The "inquiry concludes when we determine whether the least culpable conduct sufficient to sustain conviction under the statute "fits" within the requirements of a CIMT." *Id.* at 470.

However, if the "statute of conviction contains disjunctive elements, some of which are sufficient for conviction of [a CIMT] and other of which are not . . . [an adjudicator] examin[es] the record of conviction for the narrow purpose of determining the specific subpart under which the defendant was convicted." *Id.* at 466. This is true "even where clear sectional divisions do not delineate the statutory variations." *Id.* In so doing, an adjudicator may only look at the formal record of conviction. *Id.*

L.M.C. 9.24.140 contains two distinct portions, one which criminalizes stealing property of another, and the other which addresses the destruction of certain monetary and related instruments. The complaints, which are part of the records of conviction, each state the applicant's conduct as: "Steal money or goods the value of which is less than $300 the property of another; L.M.C. C.24.140." This language is repeated in the submitted "Lincoln Police Department Public Record Criminal History" identifying the applicant's convictions in the jurisdiction. Thus, it is evident that the applicant was convicted under the first part of L.M.C. 9.24.140, which states: "It shall be unlawful for any person to steal any money or goods or chattels of any kind whatever, of less value than $300.00, the property of another . . . ."

Counsel asserts that an offense under L.M.C. 9.24.140 does not constitute a crime involving moral turpitude because it does not involve a theft that is a permanent taking. The AAO finds no support for counsel's contention. The BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. *See Matter of Grazlev*, 14 I&N Dec. 330 (BIA 1973)("Ordinarily, a conviction for theft is considered to involve moral turpitude only one a permanent taking is intended."). The language of L.M.C. 9.24.140 does not explicitly describe temporary takings or use the word "temporary", and there is no suggestion in the ordinance that it contemplates a return of the property in question.. The applicant has not presented, and the AAO is unaware of, any published judicial or administrative decisions that directly address whether L.M.C. 9.24.140 contemplates temporary or permanent takings, or both. However, larceny or theft under Nebraska State criminal law, the likely source for Lincoln's municipal ordinances, extends only to permanent takings.

L.M.C. 9.24.140 merely uses the term "steal," but this term is defined in the Nebraska Jury Instructions as "taking without right or leave, with intent to keep wrongfully." *State v. Bridger*, 223 Neb. 250, 255 (1986) (*citing* Nebraska Jury Instructions 14.10). The Supreme Court of Nebraska has held that the word "steal" as used in the criminal code includes all elements of larceny at common law. *State v. Hauck*, 190 Neb. 534, 536-37 (1973). In *Daugherty v. State*, 48 N.W.2d 76 (Neb. 1951), the Supreme Court stated that "[l]arceny is the unlawful and felonious stealing, taking, and carrying away of the personal property of another, of some value, with a felonious intent on the part of the taker to permanently deprive the owner of his property." In *Rema v. State*, 72 N.W. 474,

475 (Neb. 1897), the Supreme Court found that an averment that a defendant "'unlawfully and feloniously did steal, take, and drive away' [a] cow" was "the usual form of the charge in an information for larceny, substantially follow[ed] the language of the statute, and disclose[d] that the animal was stolen with felonious intent of the accused to permanently deprive the owner thereof without his consent." Thus, we find that the section of L.M.C. 9.24.140 under which the applicant was convicted contemplates permanent takings, and the applicant's convictions are therefore crimes involving moral turpitude. The applicant has not presented any authority to demonstrate otherwise. .

Counsel asserts that the applicant meets the requirements of the "petty offense" exception found in section 212(a)(2)(A)(ii)(II) of the Act. Counsel suggests that USCIS conceded that the applicant was only convicted of a single offense, as the field office director did not state that the applicant is inadmissible under section 212(a)(2)(B) of the Act for commission of two crimes involving moral turpitude. The AAO is not bound by the prior determinations of the field office director. *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). Further, the applicant has clearly been convicted of two distinct offenses separated by approximately two years, as discussed above. Section 212(a)(2)(A)(ii)(II) of the Act only applies where an applicant has been convicted of a single crime involving moral turpitude, and does not apply here.

Based on the foregoing, the applicant has been convicted of two crimes involving moral turpitude, and she was correctly found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Therefore, she requires a waiver under section 212(h) of the Act.

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

> The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .
>
> (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 . . .; and
>
> (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

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 husband 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-Moralez,* 21 I&N Dec. 296, 301 (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).

On appeal, counsel asserts that the field office director applied an outdated legal standard of extreme hardship. Specifically, counsel asserts that reliance on the decision of the Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* is incorrect. Counsel bases this assertion primarily on the fact that the BIA cited prior decisions that predate the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). However, *Matter of Cervantes-Gonzalez* was decided in 1999, after the enactment of IIRIRA, and it remains binding precedent on AAO decisions. The BIA was interpreting relatively new law, and the fact that it referenced matters that predated the law in question did not undermine the value of their analysis. Further, the AAO lacks discretion to decline to follow the published decisions of the BIA that are in effect at the time of a given appeal, irrespective of counsel's observations regarding the merits of the BIA's analysis. Counsel has not cited any precedent Federal court or administrative decisions that overrule *Matter of Cervantes-Gonzalez* or present alternative interpretations of the extreme hardship standard found in section 212(a)(9)(B)(v) of the Act. As discussed above, the AAO finds that *Matter of Cervantes-Gonzalez* remains instructive regarding the proper analysis of factors when assessing extreme hardship.

The applicant's husband stated that, if he were to move to Peru, he would have to give up many years he has invested in becoming a licensed architect in United States. He noted that he requires several more years of training under a licensed architect, and that he must complete exams that are only offered in the United States, the U.S. territories, and Canada. He asserted that he would have to start over in his career should he reside in Peru with the applicant, which at the age of 42 would be difficult. He added that he does not speak Spanish or have experience with building practices in Peru. He asserted that, should he established himself as an architect in Peru, his expertise would not prepare him to return to the United States to work.

In a previous statement dated July 18, 2007, the applicant's husband stated that he and the applicant were married on September 29, 2007. He stated that he would be devastated if the applicant was removed to Peru. He noted that she provides a source of stability and helps him balance priorities between family and work. He indicated that they intend to have children together once the applicant

completes a nursing program. He asserted that a unified family, solid education, and meaningful career would not be possible for them in Peru. He noted that his first university degrees were in philosophy, focusing on English language-based analysis of the history of Greek and German moral philosophy, and he would be unable to have a related career teaching in the Peruvian Spanish-speaking culture.

In a statement dated July 18, 2007, the applicant discussed her history of attending college in United States, including her emotional struggle due to missing her family and culture in Peru. She explained that she is the youngest of 10 children, and she had been strongly attached to her family with a great appreciation for their customs, food, and anything related to Peru. She asserted that she and her husband will have their lives disturbed if she is not able to pursue her goals by his side in United States.

In a statement dated December 14, 2008, the applicant's brother asserts that Peru experienced internal conflict in the 1980s, and that it continues to have problems in parts of the country including the district where the applicant's parents reside. He states that the Peruvian government has designated the Agustino district a red zone and emergency zone. He explained that he was unjustly detained in 2000, and that this could happen again to any member of his family.

The applicant submitted a letter from her husband's employer that reflects that he was a staff architect with an annual salary of $41,750 as of December 10, 2008. The applicant submitted a letter from a company that indicated that she was an independent contractor providing interpreting services for their language agency beginning October 20, 2008.

The applicant submitted a letter from a medical doctor regarding her mental health, who stated that she came to his attention for reactive depressive symptoms secondary to family issues, and during her course of treatment she showed signs of improvement and was discharged without further intervention or medications. He indicated that in his last contact with the applicant she was in excellent spirits and discharged.

Counsel asserts that the applicant's husband is faced with a choice between relocating to an impoverished and potentially physically dangerous country and separating from the applicant who he has loved for up to 10 years.

Upon review, the applicant has not shown that her husband will suffer extreme hardship should the present waiver application be denied. The applicant's husband placed significant emphasis on the impact that relocation to Peru would have on his career, either as an architect or potential teacher. The AAO has examined the documentation provided regarding the architecture profession, both in the United States and Peru, and appreciates that the applicant's husband's current professional activities would be impacted should he now relocate to Peru. However, the provided documentation supports that the field of architecture is practiced in Peru, and the applicant has not shown that her husband would lack the opportunity to use his expertise. According to documentation provided by the applicant, no license is required to practice architecture in Peru; thus, the applicant's husband would not face difficulties based on a lack of proper credentials. It is understood that a lack of Spanish language skill could impact the applicant's husband's access to employment, yet the record

does not established that he would be eliminated from all opportunities in the field of architecture. The AAO is not persuaded that the applicant's husband would suffer significant detriment due to the inability to work as a teacher in the field of philosophy, as his most recent statement clearly shows that his professional efforts are directed at the field of architecture. The AAO appreciates that the applicant's husband may incur additional expense should he travel between United States and Peru to complete his necessary professional testing, yet the applicant has not shown that her husband would be unable to do so, or that he would be unable to continue his training under an AIA-certified architect in Peru.

While the applicant's husband is a U.S. citizen, the applicant has not submitted sufficient explanation to indicate the ties he has to the United States such as the presence of family members, financial ties, or community involvement. In the absence of clear assertions from the applicant, the AAO may not speculate regarding circumstances the applicant's husband may face. In proceedings regarding a waiver of grounds of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361.

Though the applicant's husband would experience a disruption in his professional activities and employment, the applicant has not shown that he would suffer financial hardship in Peru that rises to an extreme level. She has not asserted or shown that she and her husband have unusual expenses or that they would have unmet need in Peru.

Counsel asserts that Peru poses potential physical risks to the applicant's husband, and the applicant's brother stated that he was detained by Peruvian authorities in 2000. The AAO has carefully examined the provided reports on conditions in Peru, and acknowledges that the country experiences crime and economic challenges. However, the applicant has not shown that all individuals who reside in Peru face sufficiently poor conditions that rise to extreme hardship. The applicant has not discussed the particular circumstances her husband would face should they reside in Peru such to show how he would be impacted by certain conditions there. The applicant stated that she has nine siblings and her brother stated that their parents reside in Peru. The applicant expressed that she has a close identity with her family and Peruvian culture and customs. The records suggest that the applicant and her spouse would have significant support should they reside in Peru.

The applicant has not shown that her husband depends on her economic support to meet his needs in the United States, thus it does not appear he would face financial difficulty should she depart and he remain. The applicant's wife indicated that she and the applicant wish to have children, yet as the applicant's husband may join her in Peru, denial of the present waiver application does not thwart this goal.

The applicant's husband expressed that he shares a close relationship with the applicant and she offers support for him. The AAO has examined the submitted report on the effects of immigration enforcement and family separation. The AAO acknowledges that family separation and relocation often involve significant challenges. Yet each case must be assessed individually to determine whether the particular circumstances faced by the applicant's qualifying relatives can be

distinguished from the common results of separation or relocation. In the present matter, the record lacks sufficient evidence to show that the applicant's husband's emotional challenges can be distinguished from the common consequences faced when individuals are separated due to inadmissibility.

Counsel further contends that the USCIS Philadelphia Field Office has a policy and practice of denying waivers of the types submitted by the applicant, which constitutes a violation of due process. However, counsel provides no factual or legal support for this statement, and the AAO is unable to conclude that this assertion has a bearing on the present matter. The field office director's decision was very detailed, specific to the facts of the applicant's case, and well-reasoned based on applicable legal standards. The AAO finds no support in the record that the applicant was prejudiced by a pre-determined conclusion in these proceedings.

All stated elements of hardship have been considered in aggregate. Based on the foregoing, the applicant has not shown that denial of her waiver application under section 212(h) of the Act "would result in extreme hardship" to her husband. Accordingly, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

As noted above, in proceedings regarding a waiver of grounds of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.