U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
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U.S. Citizenship and Immigration Services

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DATE: MAY 02 2012 OFFICE: LOS ANGELES, CA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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 Shumway

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant is married to a U.S. citizen and has five U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility accordingly. *Decision of the Field Office Director,* dated October 30, 2009.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred in denying the Form I-601 and that the applicant has established that his removal would result in extreme hardship for his family. *Form I-290B, Notice of Appeal or Motion*, dated November 23, 2009.

The record of evidence includes, but is not limited to: statements from the applicant, his spouse and his children; statements of support for the applicant from associates, family and friends; documentation relating to the applicant's businesses; a medical statement concerning the applicant's mother; certificates issued to the applicant; country conditions information on Mexico; documentation relating to the applicant's and his spouse's financial and business obligations; and court records relating to the applicant's convictions. The entire record was reviewed and all relevant evidence considered in reaching 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.

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 on April 18, 1988, the applicant was found guilty of Attempted Receiving of Stolen Property, California (Cal.) Penal Code § 664 and was sentenced to 36 months in jail, with imposition of sentence suspended. On July 23, 1991, the applicant pled nolo contendere to Inflicting Corporal Injury on Spouse, Cal. Penal Code § 273.5(a), was sentenced to 20 days in jail and placed on probation for two years. On July 21, 1995, the applicant pled nolo contendere to Theft, Cal. Penal Code § 484(a), and was placed on probation for three years and sentenced to one day in jail, less credit for one day. On March 24, 2005, the applicant pled guilty to Criminal Simulation, Colorado Revised Statutes § 18-5-110, and was sentenced to one year probation and required to perform community service. The record also indicates that on October 27, 2002, the applicant was arrested for Theft, 720 Illinois Compiled Statutes (ILCS) § 5/16-1(a)(1), and on December 13, 2003, for Party to Crime of Robbery, Georgia Code § 16-8-40. It does not, however, provide dispositions for either of these arrests.

The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals, which has adopted the "realistic probability" approach, as articulated by the U.S. Supreme Court in *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183 (2007), to determine whether or not the elements of a statute categorically render the offense a crime involving moral turpitude. *See Nicanor-Romero v. Mukasey*, 523 F.3d 992, 1004-1007 (9th Cir. 2008). To determine if a crime involves moral turpitude, the Ninth Circuit Court of Appeals first applies the categorical approach. *Nunez v. Holder*, 594 F.3d 1124, 1129 (9th Cir. 2010) (citing *Nicanor-Romero v. Mukasey*, 523 F.3d 992, 999 (9th Cir.2008). This approach requires analyzing the elements of the crime to determine whether all of the proscribed conduct involves moral turpitude. *Nicanor-Romero, supra* at 999. In *Nicanor-Romero*, the Ninth Circuit states that in making this determination, there must be "a realistic probability, not a theoretical possibility, that the statute would be applied to reach conduct that did not involve moral turpitude. Id. at 1004 (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007). A realistic probability can be established by showing that, in at least one other case, which includes the alien's own case, the state courts applied the statute to conduct that did not involve moral turpitude. *Id.* at 1004-05.

If the crime does not categorically involve moral turpitude, then the modified categorical approach is applied. *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1161 (9th Cir. 2009). This approach requires looking to the "limited, specified set of documents" that comprise what has become known as the record of conviction—the charging document, a signed plea agreement, jury instructions, guilty pleas, transcripts of a plea proceeding and the judgment—to determine if the conviction entailed admission to, or proof of, the necessary elements of a crime involving moral turpitude. *Id.* at 1161 (citing *Fernando-Ruiz v. Gonzalez*, 466 F.3d 1121, 1132-33 (9th Cir. 2006)).

Of the four convictions documented by the record, three are for crimes categorically involving moral turpitude. The Ninth Circuit Court of Appeals in *Castillo-Cruz,* has determined that petty theft under Cal. Penal Code § 484(a) requires the specific intent to deprive the victim of his or her property permanently, and is therefore a crime categorically involving moral turpitude. *Id.* at 1154,

1160. The Ninth Circuit has further held that spousal abuse under Cal. Penal Code § 273.5(a) is a crime of moral turpitude as spousal abuse is an act of baseness or depravity contrary to accepted moral standards, and willfulness is one of its elements. *Grageda v. INS*, 12 F.3d 919 (9th Cir. 1993). The applicant's most recent offense, Criminal Simulation, Colorado Revised Statutes § 18-5-110, is also a crime that categorically involves moral turpitude as conviction requires the violator to have had the intent to defraud.

Colorado Revised Statutes § 18-5-110 states:

> (1) A person commits a criminal simulation, when:
>
> (a) With intent to defraud, he makes, alters, or represents any object in such fashion that it appears to have an antiquity, rarity, source or authorship, ingredient, or composition which it does not in fact have; or
>
> (b) With knowledge of its true character and with intent to use to defraud, he utters, misrepresents, or possesses any object made or altered as specified in paragraph (a) of this subsection (1).

The Board of Immigration Appeals (BIA) has long held that crimes requiring a specific intent to defraud involve moral turpitude. *See Matter of Kolchani*, 24 I&N Dec. 128, 131 (BIA 2007). In that conviction under either prong (a) or (b) of Colorado Revised Statutes § 18-5-110 requires a specific intent to defraud on the part of the violator, the AAO finds Criminal Simulation, Colorado Revised Statutes § 18-5-110, to be a crime that categorically involves moral turpitude.

In considering the applicant's remaining conviction for Attempted Receiving of Stolen Property, Cal. Penal Code § 664, the AAO notes that no distinction is made between a conviction for an attempt to commit a crime and the crime itself for purposes of determining whether that conviction is for a crime involving moral turpitude. *Matter of Awaijane*, 14 I&N Dec. 117(BIA 1972); *see also Matter of Katsanis*, 14 I&N Dec. 266 (BIA 1973)(finding that if the basic crime is one of moral turpitude so is the attempt to commit that crime, citing *U.S. ex rel. Meyer v. Day*, 54 F.2d 336, 337 (C.A. 2 1931)). Accordingly, a determination of whether Attempted Receiving of Stolen Property is a crime involving moral turpitude is dependent on whether Receiving Stolen Property, Cal. Penal Code § 496(a), is a crime involving moral turpitude.

In *Castillo-Cruz v. Holder*, the Ninth Circuit Court of Appeals found that the crime of Receiving Stolen Property under Cal. Penal Code § 496(a) was not categorically a crime of moral turpitude and employed the modified categorical approach, i.e., a review of the record of conviction, to reach its determination concerning the nature of the respondent's conviction. 581 F.3d 1154, 1161 (9th Cir. 2009). In the present case, however, the record does not contain any documentation from the applicant's record of conviction on which to base a modified categorical analysis. Therefore, although the Field Office Director's decision appears to indicate that he found the applicant's conviction under Cal. Penal Code § 664 to be for a crime involving moral turpitude, the record does not support this finding. The AAO observes, however, that a determination regarding the nature of the offense of Attempted Receiving of Stolen Property is unnecessary as the record already demonstrates that the applicant in the present case has been convicted of three crimes involving moral turpitude.

In that the record establishes that the applicant has been convicted of three crimes involving moral turpitude, he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

The AAO also finds the record to establish that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act[1]

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) In general. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

The record reflects that on May 23, 1991, the applicant filed a Form I-485, Application for Permanent Residence, pursuant to the registry provisions of section 249 of the Act. In support of his application, the applicant submitted documentation to establish that he had continuously resided in the United States from a date prior to January 1, 1972, documentation that was subsequently found to be fraudulent. On March 12, 1993, the District Director of the legacy Immigration and Naturalization Service office in Los Angeles denied the Form I-485, noting the fraudulent nature of the applicant's supporting documentation. Based on this evidence, the AAO finds the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having attempted to obtain a benefit under the Act through fraud or the willful misrepresentation of a material fact.

A waiver of a section 212(a)(2)(A)(i)(I) inadmissibility may be granted under section 212(h) of the Act 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 for a section 212(a)(6)(C)(i) inadmissibility is provided for in section 212(i) of the Act, which provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the

[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 all of the grounds for denial are not identified in the initial decision. *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).

> application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(h) or (i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, defined by section 212(h) as the U.S. citizen or lawfully resident spouse, parent or child of the applicant and by section 212(i) as the U.S. citizen or lawfully resident spouse or parent of the applicant. While the applicant's children are qualifying relatives for the purposes of a section 212(h) waiver proceeding, the fact that he must also establish eligibility for a waiver under 212(i) of the Act, the more restrictive of the two waiver provisions, makes his spouse the only qualifying relative in this matter. Hardship to the applicant or his children will, therefore, be considered only insofar as it results in hardship to the applicant's spouse. 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 BIA 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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

We now turn to a consideration of whether the record establishes that the applicant's inadmissibility under the Act would result in extreme hardship for his U.S. citizen spouse.

On appeal, counsel asserts that the denial of the waiver application would have disastrous financial effects on the applicant's spouse, while also resulting in severe and permanent psychological hardship. He states that the applicant owns two businesses, one in which he operates a single taxi cab and the other in which he provides rental jumpers, cotton candy machines sno-cone machines, tables and chairs, and which he runs with his two oldest children. Counsel also maintains that the applicant's spouse does not work, but helps the applicant with his businesses by answering the telephone. He further states that the applicant is the primary worker at both his businesses and that they would close if he is removed, thereby eliminating all of his family's income. As a result, counsel states, the applicant's spouse would have the responsibility for supporting her family, a responsibility she would be unable to assume as she has not been employed for some time and has limited work experience. He also reports that the applicant and his spouse own two homes, one of them their family home and the other a rental, and that, without the applicant, his spouse would not be able to meet their monthly mortgage obligations. Counsel indicates that the applicant and his spouse also own significant other personal and business property.

In his brief, counsel lists the applicant's and his spouse's monthly expenses. He indicates that the applicant's monthly business expenses include: [redacted] advertising; [redacted] in insurance payments; a truck payment of [redacted] in fuel for the applicant's truck, [redacted] fuel for his cab; and other business-related costs. The applicant's monthly personal expenses, as stated by counsel, include: mortgage payments of [redacted] utility payments of [redacted] for home insurance; [redacted] insurance; credit card payments of [redacted]; a cellular telephone [redacted] cable, internet and telephone [redacted] a health insurance [redacted] and other living expenses. Counsel also asserts that the applicant's spouse would have the additional expense

of maintaining two separate households, one in the United States and one in Mexico; as well as the costs of international telephone calls and travel.

The applicant, counsel maintains, would be unable to help his spouse with these expenses from Mexico. He states that the applicant has limited employment experience outside his current field of employment and would have an extremely difficult time finding and maintaining any gainful employment in Mexico. Counsel asserts that Mexican social and economic conditions are generally known, and that poverty is commonplace and unemployment is high. He also contends that even if the applicant found employment, the exchange rate between the peso and the U.S. dollar would make his earnings insignificant.

With regard to the emotional impacts of separation, counsel asserts that the emotional hardship suffered by the applicant's spouse as a result of separation would be exacerbated by the knowledge that the applicant's return to Mexico would place him at risk from drug-related violence and human rights abuses. He states that the U.S. Department of State has issued a travel warning for Mexico as a result of the increasing drug-related violence along the U.S.-Mexico border and that the human rights climate in Mexico is poor. Counsel also contends that the applicant's spouse and children would be exposed to these same risks and conditions when visiting the applicant.

Counsel further asserts that separation would result in hardship for the applicant's children. He maintains that it would have a severe detrimental impact on the three younger children's education as they would lose the support and guidance the applicant currently provides them. Counsel also contends that the applicant's younger children would have limited future educational opportunities because of the financial hardship that would be experienced by their mother in the applicant's absence. Counsel states that the applicant's two oldest children would also be affected by his removal as they remain financially dependent on him.

In a November 16, 2009 statement, the applicant's spouse asserts that she and the applicant met in 1986 and that they have been married for 15 years. She states that she would suffer immeasurable financial hardship if the applicant is not allowed to remain in the United States as she lacks the strength and time to assume his role in the family's businesses. However, the financial hardship she would experience, the applicant's spouse contends, would "pale in comparison" to the emotional hardship she and her children would suffer in the applicant's absence. She maintains that the applicant has set the standard for "clean living" in their household and that she is uncertain how her children would receive advice from her, considering her "sordid past." The applicant's spouse further contends that she would not have the time to ensure that each of her children remains on the proper course and that she is afraid that she would be "lost" as a parent.

Also contained in the record are statements from the applicant's five children, all of whom describe their closeness to their father and the emotional pain that separation would cause them. One of the applicant's now 19-year-old twin daughters writes in a November 16, 2009 statement that without her father, her mother would have to manage both of the family businesses by herself. She states that both businesses are too dangerous for her mother as her mother would have to drive her father's cab at night and, further, does not have the strength to do jumpers, which require a lot of muscle. The applicant's daughter also contends that it is likely that her mother would not be able to take care of her and her siblings, and would have to place them in foster care. In a separate November 16,

2009 statement, the applicant's now 17-year-old son also asserts that his mother is incapable of doing a jumper and that it is much too dangerous for her to drive a taxi at night.

In support of these claims, the applicant has submitted documentation relating to his and his spouse's financial obligations, both business and personal. This documentation includes copies of billing statements for their two mortgages, utility bills, insurance payments and other household bills. He has also provided documentation of his monthly business expenses, including those relating to advertising, insurance, and a truck loan.

To establish conditions in Mexico, the applicant has submitted an August 20, 2009 U.S. Department of State travel alert for Mexico, notifying U.S. citizens of the surge in drug-related violence along the U.S.-Mexico border and advising against unnecessary travel to the Mexican states of Michoacan and Chihuahua. The alert also urges U.S. citizens to be cautious wherever they travel in Mexico. The applicant has further provided a copy of the section on Mexico from the 2008 Country Reports on Human Rights Practices, published by the Department of State on February 25, 2009. The report discusses a range of human rights concerns in Mexico during 2008, including the fact that the minimum wage in Mexico did not provide a decent standard of living for a worker and his or her family, and that only a small fraction of the formal workforce received the minimum wage. Additional information on country conditions in Mexico is found in an article from *www.nationsencyclopedia.com* on poverty and wealth in Mexico, which reports that 60 percent of the Mexican population are poor and an article from *www.mexco-child-link.org*, which indicates that in 2000, the Mexican standard of living was significantly below that of Europe and the United States, and that the bottom 40 percent of the Mexican population shared only 11 percent of the country's wealth. The record also offers an article on the Mexican economy from Inter Press Service News Agency, dated September 1, 2009, which reports that Mexico is experiencing an economic depression that originated in the United States and will last at least until 2010.

Having reviewed the record, the AAO acknowledges that the applicant's removal from the United States would result in economic hardship for his spouse. We do not, however, find the applicant to have established that such hardship would be significant as the record fails to demonstrate that the applicant's income is the only source of financial support for his family.

The record contains sufficient documentation of the applicant's financial obligations to demonstrate that, at the time the appeal was filed, his monthly expenses, business and personal, [redacted] or [redacted]. However, a 2008 federal tax return, the only documentation of the applicant's income found in the record, indicates that the applicant's annual earnings from his two businesses and his rental property [redacted] that is less than half of the family's 2009 expenses. While the AAO acknowledges that the documentation of the applicant's income comes from 2008 and accepts that his income may have increased in 2009, we cannot reasonably conclude that it would have more than doubled in 2009, thereby allowing him to meet the monthly obligations claimed at the time of the appeal. Further, we note that in 2008 the applicant's income would have been exhausted simply by making his two monthly mortgage [redacted], the existence of which are documented in his 2008 tax return. As a result, we can only conclude that the applicant's and his spouse's actual income exceeds that generated by the applicant's businesses and rental property. In light of the significant disparity between the applicant's income and expenses and without any evidence that would explain this disparity, the AAO is unable to assess the financial impact of the applicant's removal on his spouse.

We also do not find the record to establish that the applicant would be unable to obtain employment in Mexico and financially assist his spouse from outside the United States, or that she would be required to support him if he lived in Mexico. Although the applicant has submitted country conditions information that indicates the economy in Mexico is poor, the majority of its people live in poverty and the minimum wage does not provide a decent standard of living for a worker and his or her family, no documentary evidence establishes how this information on economic conditions and trends across Mexico would specifically affect the applicant whose employment in the United States, including the operation of his own businesses, has provided him with skills that may enhance his employability in Mexico. Accordingly, the record does not establish that the applicant would have no employment opportunities available to him in Mexico.

The record also fails to demonstrate the nature or extent of the emotional hardship that would be experienced by the applicant's spouse and children in his absence. While the AAO acknowledges counsel's and the applicant's spouse's assertions that separation would result in emotional hardship and that the applicant's return to a country where drug-related violence is on the rise and human rights violations are common would increase that hardship, we do not find the applicant to have provided any documentary evidence, e.g., psychological or medical evaluations, that demonstrates the specific impacts or severity of the emotional hardship she or her children would suffer as a result of their separation from the applicant, including how it would affect their ability to meet their daily responsibilities. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. 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). *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). We also note that while the 2009 Department of State travel alert for Mexico submitted by the applicant has been upgraded to a travel warning, this warning, dated February 8, 2012, indicates that the two locations where the applicant is likely to reside in Mexico, the State of Oaxaca, the applicant's place of birth, and Mexico City, which the record indicates is his mother's current place of residence, are specifically exempted from the State Department's warning.

Therefore, based on the record before us, the AAO is unable to find that the claimed hardship factors, even when considered in the aggregate, would result in hardship that would exceed that which normally results when families are separated. Accordingly, the applicant has not established that his spouse would suffer extreme hardship if the waiver application is denied and he remains in the United States.

To establish that relocation to Mexico would result in extreme hardship for the applicant's spouse, counsel states that she was born and raised in the United States and that she knows no other way of life. He also contends that the applicant's spouse has no family ties to Mexico and that her entire immediate family resides in the United States, including her mother and eight U.S. citizen siblings.

Counsel also contends that relocation would result in extreme hardship for the applicant's children as they were born and raised in the United States, know no other way of life and do not fluently speak, read or write Spanish. He also notes that relocation would mean that the applicant's school age

children would be unable to attend school because of the language barrier. Counsel cites *Matter of Kao & Lin*, 23 I&N Dec. 45 (BIA 2001) in which the BIA found that a 15-year old child who was not fluent in Chinese, had spent her formative years in the United States and was integrated into the American lifestyle would experience extreme hardship if she relocated to Taiwan with her parents.

In her November 16, 2009 statement, the applicant's spouse maintains that even if she and the applicant "had the heart" to ask their children to give up the only life they've known, that the children would still face problems both as a result of their status as U.S. citizens and as a result of having to acclimate to a new country and new customs, all in another language. She also asserts that the applicant would face insurmountable odds in finding employment because of his age and that relocation would rob her children of their youth since they would be forced to find work to assist in supporting the family, condemning them to a life of poverty in a third world country.

The record establishes that the applicant has three children who are under 21 years of age and who, like the child in *Matter of Kao and Lin*, have lived their entire lives in the United States and do not fluently speak, read or write the language of the country of relocation. However, unlike the child in *Kao and Lin*, the applicant's now 19-year-old twin daughters and 17-year-old son are not qualifying relatives in 212(i) waiver proceedings and the record fails to establish how the hardships they would experience upon relocation would affect their mother, the only qualifying relative. Moreover, as previously noted, the record does not demonstrate that the applicant would be unable to obtain employment in Mexico that would allow him to support himself and his family.

While the AAO has taken note of the applicant's birth and long-term residence in the United States, as well as the emotional hardship she would suffer as a result of being separated from her U.S. family, we do not find the record to document the extent to which these factors would affect her ability to successfully relocate to Mexico. Accordingly, the AAO finds the record to contain insufficient evidence to establish that the applicant's spouse would experience extreme hardship if she relocated with him to Mexico.

The record does not establish the applicant's eligibility for a waiver of inadmissibility under section 212(h) or (i) of the Act. Having found him statutorily ineligible for relief, the AAO concludes that no purpose would be served in discussing whether he merits a waiver as a matter of discretion.[2]

In proceedings for an application for a waiver of grounds of inadmissibility under sections 212(h) or (i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[2] Although we dismiss this appeal on the basis that the applicant has not demonstrated extreme hardship to his spouse as required for a waiver of inadmissibility under section 212(i) of the Act, we note that the applicant's conviction for Inflicting Corporal Injury on Spouse appears to be a violent or dangerous crime. As such, to warrant a favorable exercise of discretion, the applicant would have to demonstrate extraordinary circumstances in accordance with 8 C.F.R. § 212.7(d), generally exceptional and extremely unusual hardship, which the applicant has not been shown.