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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: AUG 0 1 2013 Office: GUANGZHOU, CHINA FILE: [redacted]

IN RE: Applicant: [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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Administrative Appeals Office (AAO) previously dismissed the applicant's appeal in a decision dated November 20, 2012. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision will be affirmed.

The applicant is a native and citizen of China who was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, and section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for seeking admission within ten years of having been ordered removed from the United States. The applicant is the son of a U.S. citizen father and lawful permanent resident mother, the spouse of a U.S. citizen, and the father of U.S. citizen children. He seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his family.

The Field Office Director, Guangzhou, China, concluded that the applicant had failed to establish that a denial of his waiver application would result in extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director*, dated June 24, 2010. The applicant appealed to the AAO, asserting that his parents, spouse, and children would suffer extreme financial, physical, and emotional hardship if his waiver application were denied. In our decision on appeal, the AAO found that the applicant's conviction for robbery was a violent or dangerous crime and that he therefore must establish exceptional and extremely unusual hardship to a qualifying relative in order to meet the heightened discretionary requirement of 8 C.F.R. § 212.7(d). However, we also found that the applicant had failed to demonstrate extreme hardship to a qualifying relative, so it was unnecessary to reach the issue of exceptional and extremely unusual hardship. *See Decision of AAO*, dated November 20, 2012.

On motion, counsel for the applicant asserts that the AAO erred in finding that none of his qualifying relatives would face extreme hardship if the waiver application were denied. Counsel alleges that the AAO "overlooked certain important evidence of extreme hardship or misinterpreted the evidence . . . ." *Form I-290B*, dated December 20, 2012. Furthermore, counsel contends that the applicant has submitted new evidence on motion which establishes the necessary hardship to his qualifying relatives. *Id.*

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The applicant has submitted new evidence with his motion, so the motion will be granted. The record now includes, but is not limited to: medical records relating to the applicant's sons, spouse, parents, and brother; psychological evaluations regarding the qualifying spouse; financial and business records; a draft bill on exit and entry provisions in China; country conditions

information; statements from the applicant, his spouse, his parents, and his brother; letters of support; and documentation relating to the applicant's criminal history. The entire record was reviewed and considered in rendering this decision.

The applicant has not contested the AAO's finding that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. Also, the applicant has not disputed our finding that his conviction for robbery was a violent or dangerous crime which renders him subject to the heightened discretionary requirement of 8 C.F.R. § 212.7(d). Therefore, the only issues on motion are whether the applicant has demonstrated extreme hardship to a qualifying relative and whether he has established that he merits a favorable exercise of discretion through a showing of exceptional and extremely unusual hardship.

Section 212(h) states, in pertinent part:

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . .
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> (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 . . . .

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative.

However, once eligibility for a waiver is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996). A favorable exercise of discretion is limited in the case of an applicant who has been convicted of a violent or dangerous crime. Specifically, 8 C.F.R. § 212.7(d) states:

> 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.

In our decision on appeal, we found that the applicant's conviction for third degree robbery in violation of NYPL § 160.5 is a violent or dangerous crime because he must have used or threatened physical force against his victim. The applicant has not disputed our finding on motion. Therefore, the applicant is subject to the heightened discretionary standard under 8 C.F.R. § 212.7(d) and must show that "extraordinary circumstances" warrant approval of the waiver. Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant's admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities in this case, the AAO will consider whether the applicant has "clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship" to a qualifying relative. *Id.* We acknowledge that our decision on appeal focused on whether the applicant had demonstrated that a qualifying relative would experience extreme hardship if his waiver application were denied. However, even if the applicant demonstrates extreme hardship, his conviction for a violent crime means that he cannot establish eligibility for a waiver under section 212(h) without a showing of exceptional and extremely unusual hardship. Therefore, in this decision on motion, the AAO will begin by determining whether he has met the requirements of 8 C.F.R. § 212.7(d).

In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." However, the applicant need not show that hardship would be unconscionable. *Id.* at 61. The AAO notes that the exceptional and extremely unusual hardship standard in cancellation of removal cases is identical to the standard put forth by the Attorney General in *Matter of Jean*, *supra*, and codified at 8 C.F.R. § 212.7(d).

The Board has stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. The factors include the presence of a lawful permanent resident or United States citizen

spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. The 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 an exclusive list. *Id.*

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

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

23 I&N Dec. at 63-64.

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

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

> hardship envisioned by Congress when it enacted the significantly higher "exceptional and extremely unusual hardship" standard.

23 I&N Dec. at 324.

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

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

On motion, the qualifying spouse has submitted a new affidavit in which she states that she was shocked by the AAO's decision on appeal. She states that she cannot understand how the AAO could have found that none of the applicant's qualifying relatives "would experience any hardship as a result of continued separation" from the applicant, who is in China. Additionally, the qualifying spouse asserts that her family's situation has worsened since the appeal was filed. She states that she has been suffering severe depression due to separation from the applicant and that her symptoms have worsened such that she has required depression medication since last year. Additionally, the qualifying spouse asserts that when she and her sons visited the applicant for ten months beginning in December 2011, "the experience was so traumatic for [her] that [she has] decided not to take [her] children to China again." She explains that her younger son, was diagnosed with hand, foot, and mouth disease in China in October 2012 and that he was on an IV for four days. She also asserts that her older son, got bronchitis in August 2012. The qualifying spouse also alleges that the hospitals in China are extremely dirty, so she feared for the health and safety of her children while at the hospital. She states that her children have become sick every time they have traveled to China.

Furthermore, the qualifying spouse contends that her children would be unable to receive a "proper education" in China. She states that she enrolled in a day care in China during her last visit there but that he "cried every day because he could not adjust to the school environment and stress caused as such." She goes on to assert, "There is simply no way our sons could receive any education in China given the fact they are U.S. citizens. Even if they could, our last

trip showed us that they would not be able to adjust to life in China." The qualifying spouse also declares that she and her children would be unable to live in China permanently because they are U.S. citizens. She states that the maximum continuous period she is permitted to remain in China is 18 months, after which she must return to New York to apply for a new visa at the Chinese Consulate. She contends that applying for such visas during the applicant's absence has resulted in financial hardship for her. She also states that the AAO incorrectly found that she and her children would be able to obtain D resident visas in China, as those visas are very difficult to obtain and are only available to "those who made outstanding contributions to China."

The qualifying spouse also asserts that she is pregnant with the couple's third son and that the financial, physical, and emotional hardship to her and the applicant will increase when they must care for three children.[1] She also states that she stopped taking her depression medication due to her pregnancy, but that as a result she suffered from extreme depression and mood swings resulting in a fight with the applicant while she was visiting him in China. She contends that the fight "made [her] realize how unstable [she is] emotionally because [she is] separated" from the applicant and she does not think she can continue to tolerate such stress. She states that she has been "diagnosed with paranoia and that continued separation would have [a] devastating impact on [her] mental health." Additionally, she notes that her psychiatrist and psychotherapist have both warned her that continued separation from the applicant could eventually lead to divorce, which she fears would have a detrimental effect on her children.

A medical report regarding the qualifying spouse states that she "has been suffering from depressive symptoms including sleep disturbance and anxious/depressed mood with somewhat paranoid ideations." *Medical Report,* dated December 21, 2012. The report lists her diagnosis as "Major Depressive Disorder with Psychotic Features" and states that she should continue to receive psychotherapy. *Id.* The report also indicates that the qualifying spouse was not taking prescription depression medication due to her pregnancy. *Id.* In a psychological report based on three interviews with the qualifying spouse in December 2012, a social worker diagnoses the qualifying spouse with "Major Depressive Disorder, Severe without Psychotic Features, Recurrent." *Psychological Evaluation,* *LCSW*, dated December 18, 2012.[2] The evaluation indicates that the qualifying spouse's "depression has been significantly associated with [the applicant's] deportation to China" and that her clinical depression scores have increased slightly since 2011. *Id.* The evaluation further states that the qualifying spouse exhibits severe levels of anxiety and depression, high levels of stress and susceptibility to mental and physical illness, and moderate suicidal risk. *Id.*

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[1] The record now contains the birth certificate of the couple's third child, indicating that he was born in the United States on January 6, 2013.

[2] also issued an evaluation on April 6, 2012, based on three meetings with the qualifying spouse in September and November 2012. The AAO has considered that evaluation. However, the December 18, 2012 evaluation is most reflective of the qualifying spouse's current mental health situation so we rely more heavily on that evaluation in this decision.

Additionally, the evaluation indicates that the qualifying spouse has a "high risk of marital instability" which could lead to divorce. Also, the evaluation warns that a mother's anxiety and depression can negatively affect the "cognitive development of children over the first 7 years of life" and that one of the qualifying spouse's sons already exhibits "high risks of attention deficit and hyperactivity disorder as well as emotional, behavioral, and relational problems." *Id.* The evaluation also states that the qualifying spouse no longer has any family ties in China and that relocation would deprive her of social support, "exacerbate her clinical depression and increase her potential suicidal risks." *Id.* Furthermore, the evaluation notes that the qualifying spouse feels she would be unable to take her children to China due to the health risks and the children's inability to adjust to life there, but that she could not rely on her family in the United States to raise her children for her. *Id.* The evaluation concludes that the qualifying spouse and her children "have suffered from enormous difficulties and emotional turmoil" due to the applicant's absence and that they will experience exceptional and extremely unusual hardship if he is not permitted to return to the United States. *Id.*

Medical documentation in the record indicates that the applicant's mother has been treated for Hashimoto's disease and underwent partial amputation of a finger, a thumb, and a toe in China in April 2011. She has also been diagnosed with goiter, costochondritis, bilateral eyes ptosis, and Graves' disease. Her doctor recommends that due to her "amputations and medical conditions, it would be in her best interest if her son is here to take care of her on a daily basis." *Letter from* *MD*, dated December 5, 2012. An occupational therapist notes that the applicant's mother "depends on family for help with her daily chores and support financially as she is unable to obtain employment since her loss of prehensile digits." *Letter from* , dated December 5, 2012.

A letter regarding the applicant's brother indicates that he was diagnosed with cancer in 2000 and underwent surgery to remove a large tumor in his femur in April of that year. He has been receiving follow-up care ever since. *Letter from* *MD*, dated November 12, 2010.

Medical reports from China show that the applicant's sons were both treated for illnesses while in China. Specifically, the applicant's eldest son, had a cough and fever in August 2012 and was diagnosed with bronchitis. *See* *Clinical Records*, dated August 7, 21, and 22, 2012. His younger son, , presented with "Mouth pain, . . . Herpes simplex on hands, feet, mouth, hips and knees, fever for 2 days" and was diagnosed with hand, foot, and mouth disease in October 2012. *See* *Clinical Records*, dated October 7, 8, and 9, 2012. A news article in the record reports high rates of hand, foot, and mouth disease in China during the summer of 2012, including 34,768 reported cases in June 2012 and 112 deaths from the disease. *Channel News Asia, Hand, foot and mouth disease kills 112 in China in June*, dated July 15, 2012.

The record also contains information regarding the health risks of air pollution and food production practices in China. A scientific report states that the use of solid fuel cooking stoves in China "is responsible for approximately 420,000 premature deaths annually, more than the

approximately 300,000 attributed to urban outdoor air pollution in the country." *Junfeng (Jim) Zhang and Kirk R. Smith, Household Air Pollution from Coal and Biomass Fuels in China: Measurements, Health Impacts, and Interventions, Environmental Health Perspectives, Vol. 115*, dated June 2007. Another article notes that air pollution is worsening in China and that the incidence of lung cancer and cardiovascular diseases are also increasing. *Air pollution could become China's biggest health threat, expert warns, The Guardian*, dated March 16, 2012. Other articles report various food safety problems in China, including the use of recycled or contaminated cooking oil and the sale of contaminated food items. *Recycled Cooking Oil Found to Be Latest Hazard in China, New York Times*, dated March 31, 2010; *China Milk Recall 2008 Unearths Another 170 Tons of Melamine Milk Powder in 2010, Yahoo! Voices*, dated February 10, 2010; *A close encounter with China's sewer-oil trade, Grist*, dated October 25, 2010; *5 Food Safety Problems in China, foodrepublic.com*.

The record contains the jointly filed tax returns of the qualifying spouse and the applicant from 2010. The documentation shows that they earned $30,135 in 2010, with most income coming from their family-owned import business, [redacted] Tax returns from 2011 indicate that they earned $29,766 in that year, and again the large majority of the income came from [redacted] The applicant has also submitted documentation that his parents' businesses, [redacted] were dissolved on April 9, 2008 and March 30, 2007, respectively. *NYS Department of State, Division of Corporations, Entity Information*.

The applicant has also submitted a draft bill on exit and entry policies in China in an effort to show that his spouse and children would be unable to settle permanently in China. *See Exit and Entry Control (Draft) Bill Provisions and Instructions* (Draft Bill). The Draft Bill, which is not dated but lists a January 31, 2012 deadline for comments, describes various entry and exit requirements for citizens and non-citizens of China. However, there is no evidence in the record that the Draft Bill has become law. Therefore, the AAO does not find that the Draft Bill is a reliable source of information regarding China's immigration laws or their applicability to the applicant's spouse or children.

Additionally, the applicant has provided an article which asserts that according to a law which will take effect in Shenzhen in 2013, registered residents of Shenzhen may face financial penalties when registering a child born outside mainland China in violation of birth limits. *Shenzhen couples face penalties for overseas births over legal limits, What's On Shenzhen*, dated November 2, 2012. The AAO finds that the applicant has failed to demonstrate exceptional and extremely unusual hardship.

The qualifying spouse's claims of hardship are related to her emotional and mental health, her concerns about hardship to her children, and financial difficulties. Even when considered in the aggregate, we do not find that these factors amount to exceptional and extremely unusual hardship for the qualifying spouse. We do find that the qualifying spouse has suffered significant emotional difficulties due to separation from the applicant and that her difficulties rise

to the level of extreme hardship. The qualifying spouse has been diagnosed with severe depression and anxiety with paranoia and a moderate level of suicide risk. Her mental health issues have interfered with her ability to sleep and have had negative effects on her relationship with the applicant. Additionally, we find that the qualifying spouse would experience extreme hardship in China due to her mental health. The applicant's social worker indicates that the applicant would be deprived of her social support system in China and that her depression and risk for suicide would likely increase there. However, the applicant must meet a higher burden of showing exceptional and extremely unusual hardship to a qualifying relative. 8 C.F.R. § 212.7(d). We do not find that there is sufficient evidence to establish that the applicant's spouse's depression and anxiety rise to the level of exceptional and extremely unusual hardship. The record does not show, for example, that the applicant's spouse has been unable to work, care for her children, travel to China to visit the applicant, or carry out other responsibilities as a result of her mental health conditions. The evidence is insufficient to demonstrate that her hardship is "'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001).

Also, the record does not establish that the qualifying spouse is suffering financial hardship. In our decision on appeal, we noted that the record did not support the applicant's claim that his entire family depends on the income from his import business, that the business is failing in his absence, or that his qualifying spouse is now solely responsible for the family's finances. The applicant has failed to offer sufficient additional evidence to resolve this matter in his favor on motion. First, the record still lacks financial records to demonstrate that the applicant's parents and brother financially rely on the import business. Also, while the applicant has submitted documentation showing that his family's two were closed, the record still indicates that the family has other financial interests, including two large self-storage rental units, from which they have received income. Additionally, while we previously found that the applicant's mother is unable to assist with the business, the record still fails to show that the applicant's brother, who was treated for cancer in 2000 but appears to have been in stable health since, or the applicant's father, cannot assist the qualifying spouse with the business. The qualifying spouse's most recent tax returns also show that the import business continues to generate income for her. Furthermore, as we noted in our previous decision, the record does not show that the qualifying spouse is solely responsible for the family's mortgage payments and other financial obligations.

The record also does not support a finding that the qualifying spouse would experience exceptional and extremely unusual hardship in China. As noted above, the applicant has submitted a draft version of a Chinese immigration law which is not reliable evidence to show that his spouse and children would be unable to reside permanently in China. Similarly, the applicant has not provided reliable evidence to establish that his spouse would be subjected to penalties for violating the family planning policies in China. On motion, he has submitted a newspaper article stating that a proposed law in Shenzhen would impose penalties on residents of that city who had violated the birth limits while abroad. However, there is no indication that the

proposed law has been or will be implemented. There is no evidence that the applicant and his spouse would reside in Shenzhen or that they would become subject to the laws there.

Additionally, the evidence is insufficient to show that the applicant's children will suffer exceptional and extremely unusual hardship if his waiver application is denied. Although the children are currently separated from the applicant, they have remained in the care of their mother and have maintained close ties with their maternal and paternal grandparents and at least one uncle in the United States. While the social worker reports that one of the applicant's spouse's sons is at risk of behavioral problems which may be related to the spouse's emotional difficulties, the qualifying spouse states that her son has had no problems in school in the United States. As for hardship to the children on relocation to China, medical records do demonstrate that the applicant's two eldest sons became ill during their last visit to China. However, there is no indication that their diagnoses – bronchitis and hand, foot, and mouth disease, respectively – were serious, that they have health conditions which would put them at increased risk for illnesses in China in the future, or that they would be unable to obtain appropriate medical there. To the contrary, the medical records show that the children were promptly treated for their illnesses in China and that their symptoms resolved within a few days. While the applicant's spouse also fears that her children would be unable to adjust to life in China and that they would be unable to receive a quality education there, we find that her concerns do not reflect more than common results of inadmissibility or removal of a close family member and do not rise to the level of exceptional and extremely unusual hardship based on the evidence in the record. *See Matter of Andazola-Rivas*, 23 I&N Dec. 319, 324 (BIA 2002). Although the applicant has submitted articles about various food safety issues in China, the articles do not establish that the children would be at particular risk for food-related illnesses in China or that they experienced any such problems during their previous visits there.

Finally, the applicant has not demonstrated that his parents would experience exceptional and extremely unusual hardship in the event his waiver application was denied. As discussed above, the record does not establish that the applicant's parents rely on the applicant's import business for financial support or that the business is not generating sufficient income for them. Additionally, we previously found that the record failed to support the applicant's claim that his parents depend on him for physical and emotional support. The applicant has submitted no additional evidence regarding his father on motion. While he has submitted updated letters from his mother's doctors, those letters provide largely the same information as was submitted on appeal. The AAO acknowledges that the applicant's mother has limited dexterity due to amputation of fingers and a toe and that she has been diagnosed with other health problems, but there is no evidence in the record that someone other than the applicant – for example his brother or father – cannot provide her with the assistance she needs.

In conclusion, although the AAO finds that the qualifying spouse will suffer extreme hardship on separation from the applicant and on relocation to China, we do not find that the applicant has demonstrated exceptional and extremely unusual hardship if his waiver application were denied.

The applicant has therefore failed to meet his burden under 8 C.F.R. ˆ 212.7(d) of showing that he merits a favorable exercise of discretion, and he is ineligible for a waiver of inadmissibility.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. ˆ 1361. Here, the applicant has not met that burden. Accordingly, the motion is granted, but the prior AAO decision is affirmed.

ORDER: The prior AAO decision is affirmed.