U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
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Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: AUG 23 2013 Office: SAN DIEGO [redacted]

IN RE: Applicant: [redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act (the 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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Administrative Appeals Office (AAO) previously denied the applicant's appeal in a decision dated November 21, 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 Mexico who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the son of lawful permanent residents and the father of four U.S. citizens. He seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The District Director, San Diego, California, concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of District Director*, dated March 22, 2010. The applicant filed a timely appeal. In our decision on appeal, the AAO found that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of two crimes involving moral turpitude. Additionally, we found that the applicant's conviction for assault with a deadly weapon was a violent or dangerous crime and that he therefore was subject to the heightened discretionary standard under 8 C.F.R. § 212.7(d). However, prior to considering whether the applicant had met the discretionary requirement, we analyzed whether he had demonstrated extreme hardship to a qualifying relative. Although we found that the applicant's eldest child would experience extreme hardship if he were to relocate to Mexico, we concluded that the applicant had failed to demonstrate that any of his qualifying relatives would face extreme hardship if separated from the applicant. Therefore, we noted that the applicant had failed to meet his burden of showing extreme hardship and that it was unnecessary to address whether he merited a waiver in the exercise of discretion.

On motion, counsel for the applicant alleges that the AAO erred in finding the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Counsel contends that neither of the applicant's convictions is for a crime involving moral turpitude. Additionally, counsel asserts that even if the applicant's conviction for assault with a deadly weapon is a crime involving moral turpitude, his misdemeanor conviction for spousal battery is not, so he qualifies for the petty offense exception under section 212(a)(2)(A)(ii) of the Act. Furthermore, counsel alleges that the AAO incorrectly applied the exceptional and extremely unusual hardship standard to the applicant's case when the extreme hardship standard should have been applied. Counsel also contends that the AAO erred in finding that the applicant had failed to demonstrate the requisite hardship after concluding that the applicant's son would suffer exceptional and extremely unusual hardship on relocation. Finally, counsel declares that the applicant has submitted sufficient evidence to establish both extreme hardship and exceptional and extremely unusual hardship to his qualifying relatives.

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).

On motion, the applicant has submitted an affidavit from his girlfriend, ; tax returns for 2008, 2009, and 2010; a copy of his residential lease agreement; rent receipts; utility bills; pay stubs; country conditions information; a letter from a coworker; and baptism and education records for his children. He has also submitted two letters from his employer—one dated June 2, 2008 and the other undated—and a copy of an April 2010 letter from his doctor, which he also submitted on appeal.

In our decision on appeal, we noted that the applicant had not submitted country conditions information in support of his claim that he would be unable to obtain employment or medical care in Mexico. We also found that the applicant had failed to submit documentation to establish his family's financial situation. The evidence the applicant has submitted on motion is an attempt to address those concerns and the AAO will grant the motion to reopen. However, we find that the evidence is insufficient to meet the applicant's burden of demonstrating eligibility for a waiver of inadmissibility, so the prior AAO decision will be affirmed.

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

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
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> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if –
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> . . .
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> (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 (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 . . . .
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> 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 September 16, 1996, the applicant was convicted of misdemeanor Assault Deadly Weapon Not Firearm Great Bodily Harm Likely, in violation of Cal. Penal Code § 245(a)(1). He was sentenced to three years of probation. On April 16, 1999, the applicant was convicted of misdemeanor Driving Under the Influence Alcohol/Drugs in violation of Cal. Penal Code § 23152(a). He was sentenced to five years of probation, 180 days in jail, a $1,100 fine, and $200 in restitution. Also on April 16, 1999, the applicant pled guilty to Disorderly Conduct in violation of Cal. Penal Code § 647(f). He was sentenced to three years of probation and 30 days of public service work. He received credit for two days served and his driver's license was suspended for six months. On December 13, 2001, the applicant pled no contest to Driving Without a License in violation of Cal. Vehicle Code § 12500(a). He was placed on probation for three years and was fined $100. On May 1, 2002, he was again convicted under Cal. Vehicle Code § 12500(a). He was placed on probation for three years, fined $200, and ordered to pay $200 in restitution. On November 3, 2003, the applicant pled guilty to Inflicting Corporal Injury on Spouse/Cohabitant in violation of Cal. Penal Code §§ 242 and 243(e)(1). He was sentenced to three years of probation and was ordered to attend a 52-week Domestic Violence Recovery Program and to pay fees.

To determine if a crime involves moral turpitude, the Ninth Circuit Court of Appeals employs the categorical approach set forth in *Taylor v. United States*, 495 U.S. 575 (1990). *See Nicanor-Romero v. Mukasey*, 523 F.3d 999, 1004 (9th Cir. 2008), *overruled on other grounds by Marmolejo-Campos v. Holder*, 58 F.3d 903, 911 (9th Cir. 2009). The purpose of the categorical approach is to determine whether the full range of conduct encompassed by the statute constitutes a crime of moral turpitude. *Cuevas-Gaspar v. Gonzalez*, 430 F.3d 1013, 1017 (9th Cir. 2005), *abrogation on other grounds recognized by Holder v. Martinez-Gutierrez*, 132 S.Ct. 2011, 2020-21 (2012). If the statute "criminalizes both conduct that does involve moral turpitude and other conduct that does not, the modified categorical approach is applied." *Marmolejo-Campos*, 558 F.3d at 912 (citing *Fernando-Ruiz v. Gonzalez*, 466 F.3d 1121, 1163

(9th Cir. 2006)); *see also Castillo-Cruz v. Holder*, 581 F.3d 1154, 1161 (9th Cir. 2009). However, 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." *Nicanor-Romero*, 523 F.3d at 1004 (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007). To demonstrate a "realistic probability," the applicant must point to his or her own case or other cases in which the state courts in fact did apply the statute to conduct not involving moral turpitude. 523 F.3d at 1004-05. A realistic probably also exists where the statute expressly punishes conduct not involving moral turpitude. *See U.S. v. Vidal*, 504 F.3d 1072, 1082 (9th Cir. 2007).

Once a realistic probability is established, the modified categorical approach is applied, which requires looking to the "limited, specified set of documents" that comprise what is 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 elements of a crime involving moral turpitude. *Castillo-Cruz*, 581 F.3d at 1161 (citing *Fernando-Ruiz,* 466 F.3d at 1132-33); *see also Marmolejo-Campos*, 558 F.3d at 912 (citing *Cuevas-Gaspar*, 430 F.3d at 1020). The Ninth Circuit has reaffirmed that courts may not examine evidence outside the record of conviction in determining whether a conviction was for a crime involving moral turpitude. *See Olivas-Motta v. Holder*, 716 F.3d 1199, 1200 (9th Cir. 2013) (rejecting *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)). Where the burden of proof is on the applicant, as in the present case, the applicant cannot sustain that burden where the record of conviction is inconclusive. *Young v. Holder*, 697 F.3d 976, 989 (9th Cir. 2012).

In our decision on appeal, we found that the applicant's convictions for assault with a deadly weapon, in violation of Cal. Penal Code § 245(a)(1), and corporal injury on a spouse/cohabitant, in violation of Cal. Penal Code §§ 242 and 243(e)(1), were crimes involving moral turpitude. Counsel asserts that neither crime is a crime involving moral turpitude. Additionally, counsel notes that the AAO found that although the applicant's conviction for corporal injury on a spouse/cohabitant was not categorically a crime involving moral turpitude, the record was inconclusive and the applicant had therefore failed to meet his burden of proving that the conviction was not for a crime involving moral turpitude. Counsel now contends that the applicant has submitted on motion a statement from his girlfriend, the victim of his corporal injury on a spouse/cohabitant crime, which establishes that the applicant's conduct was "not so violent or heinous as to constitute" a crime involving moral turpitude. Accordingly, counsel asserts that even if the applicant's conviction for assault with a deadly weapon is a crime involving moral turpitude, it falls within the petty offense exception under section 212(a)(2)(A)(ii) of the Act.

With regard to the applicant's conviction for corporal injury on a spouse/cohabitant in violation of Cal. Penal Code §§ 242 and 243(e)(1), the applicant has failed to meet his burden of showing that it is not a crime involving moral turpitude which renders him inadmissible. In our decision on appeal, we noted that the applicant's conviction was not categorically a crime involving moral turpitude but that the record did not contain any relevant evidence to clarify whether the

applicant had been convicted for conduct involving moral turpitude. On motion, the applicant submits a statement from his girlfriend and mother of his children, , who was the victim of the applicant's crime. states that in October 2003, she and the applicant had an argument and the applicant "reached out and grabbed [her] hand." asserts that she "called the police to try and get help to calm him down" and that she was surprised when the applicant was arrested. She states that the applicant did not commit a crime but that he pled guilty "to resolve the case." *Declaration of Adriana Salas*, dated December 19, 2012.

As noted above, the Ninth Circuit recently held in *Olivas-Motta* that courts may not examine evidence outside the record of conviction in determining whether a conviction was for a crime involving moral turpitude. 716 F.3d at 1200. Therefore, the AAO is restricted to the formal record of conviction and cannot consider outside evidence, such as Ms. Salas' statement, to determine whether the applicant's conviction was for a crime involving moral turpitude. *Id.* We previously noted that the record of conviction in this case is inconclusive. The applicant bears the burden of proof and he cannot sustain that burden where the record of conviction is inconclusive. *Young*, 697 F.3d at 989. Accordingly, the AAO finds that the applicant's conviction for corporal injury on a spouse/cohabitant in violation of Cal. Penal Code §§ 242 and 243(e)(1) is for a crime involving moral turpitude.

The applicant has also failed to show that our decision finding his conviction for assault with a deadly weapon to be a crime involving moral turpitude was in error. In his brief, counsel states, "For the reasons previously stated, [the applicant] contends neither" of his convictions are crimes involving moral turpitude. *Counsel's Brief.* However, it is unclear what previously stated reasons counsel is referencing. Counsel did not represent the applicant on appeal and has not filed any documentation in this case prior to the present motion. To prevail on motion, a party must establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). The AAO conducted a detailed analysis of the applicant's assault conviction on appeal and counsel has not contested any particular portion of our finding, nor has he provided any legal argument or supporting case law to establish that our decision was in error.

As both of the applicant's convictions are for crimes involving moral turpitude, he does not qualify for the petty offense exception at section 212(a)(2)(A)(ii) of the Act. Therefore, he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act and is eligible to apply for a waiver of inadmissibility under section 212(h) of the Act.

Section 212(h) states, in pertinent part:

> (h) 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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> . . .

> (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 under section 212(h) is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. The applicant's lawful permanent resident parents and his U.S. citizen children are the qualifying relatives 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).

In his brief on motion, counsel incorrectly states that the AAO found that the applicant's son would suffer exceptional and extremely unusual hardship on relocation to Mexico. Instead, the AAO found that the applicant's son would suffer *extreme* hardship if he were to relocate. *AAO Decision*, dated November 21, 2012, at 12. We did find that the applicant's conviction for assault with a deadly weapon is a violent or dangerous crime and that 8 C.F.R. § 212.7(d) therefore requires him to show exceptional and extremely unusual hardship in order to demonstrate that he merits a waiver in the exercise of discretion. However, we noted:

> [I]n assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. Accordingly, the AAO will first consider the applicant's waiver application under the extreme hardship requirement of section 212(h) of the Act. Should the record establish that the hardship resulting from the applicant's inadmissibility satisfies section 212(h) of the Act, we will proceed with a consideration of whether such hardship also meets the heightened standard imposed by 8 C.F.R. § 212.7(d).

AAO Decision at 7. Because we found that the applicant had failed to demonstrate that a qualifying relative would face extreme hardship if separated from the applicant, we found that he necessarily failed to meet the higher discretionary burden under 8 C.F.R. § 212.7(d). *Id.* at 12.

In our decision on motion, we will not disturb our previous finding that the applicant's son would experience extreme hardship on relocation. Counsel asserts that "[t]his finding alone means the burden was met and the Form I-601 waiver should have been approved." However, we have long held that we can find hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994).

Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in such hardship, is a matter of choice and not the result of inadmissibility. *Id.*; *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). Therefore, we will begin with a determination of whether the applicant has shown extreme hardship to a qualifying relative in the scenario of separation. If he has made such a showing, we will then proceed to an analysis of whether he has met the exceptional and extremely unusual hardship standard required for a favorable exercise of discretion.

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 U.S. 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 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 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.*

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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel claims that the applicant has submitted sufficient evidence to meet both the extreme hardship and the exceptional and extremely unusual hardship standards. Counsel states that the record contains evidence of "long residence, strong family ties, medical issues, emotional distress, psychological trauma, family separation, economic hardship, and safety issues" which demonstrate that the applicant's qualifying relatives would face extreme hardship if separated from the applicant. *Counsel's Brief.* Counsel also contends that the record on motion contains additional information regarding country conditions in Mexico which establishes that the applicant's qualifying relatives would face extreme emotional distress due to their fear that the applicant "may be kidnapped and killed by criminals." *Id.* He also alleges that "[t]he hardship inflicted upon the children from a family separation would be immensely greater than the hardship experienced from dread future in Mexico." *Id.*

In a statement on motion, Adriana Salas, who is the mother of the applicant's four children and with whom the applicant lives, states that the applicant is a good father, son, and husband. She asserts that her children would miss the applicant and would be depressed if he were removed. Additionally, she states that the applicant supports her and the children financially and that she does not know what would happen to them without his assistance. She states that the applicant's removal would "severely disrupt the children's lives and put our future in jeopardy." *Statement of Adriana Salas*, dated December 19, 2012.

On motion, the applicant has provided tax returns from 2008, 2009, and 2010. Those documents show that the applicant earned $21,545 in 2010 and that he supported three of his children as dependents during that year. The 2009 tax returns show that he earned $16,598 that year and supported two children as dependents. The 2008 tax returns indicate that he earned $18,807 and

supported two dependent children. He has also submitted an undated letter from his employer which states that he has been working at since June 24, 2006.

The applicant has also submitted a lease agreement showing that he resides with and their children, as well as rent receipts documenting monthly payments of $700. Additionally, he has submitted four gas and electric bills from 2008 and 2009 showing that he made payments ranging from $35 to $108. He has also submitted a but that bill is in Spanish and cannot be considered because it is not accompanied by a certified English translation as required by 8 C.F.R. § 103.2(b)(3).

The AAO finds that the applicant has failed to establish that any of his qualifying relatives would suffer extreme hardship if his waiver application were denied. First, although the applicant's qualifying relatives claim that the entire family depends fully on him for financial support, the evidence remains insufficient to support that assertion. On appeal, we noted that the record lacked evidence regarding his family's financial circumstances, including his parents' alleged dependency on him and the ability of to support his children. Although the applicant has submitted tax returns and utility bills, those documents are from 2008 through 2010 and do not reflect the current financial situation of the applicant and his family. Furthermore, the documents provide no evidence regarding the ability of to work and support the family or the extent to which the applicant supports his parents. Therefore, it is not clear that the loss of the applicant's financial contributions to the family, even if he were unable to find equivalent employment in Mexico, would result in financial hardship for them.

We also found on appeal that the applicant had failed to provide supporting evidence for the assertion that his qualifying relatives would suffer extreme emotional hardship if he were removed. The record still lacks evidence to support the claim of the applicant's stepfather that his stress about the applicant's immigration situation has negatively impacted his health and employment. Similarly, aside from letter indicating that the children would be "depressed" if the applicant were removed, there is no documentation regarding the severity or potential impact of any emotional hardship the applicant's children would face if separated from him. We note that the children would remain in the care of their mother, and would continue to have the support of other close relatives, including but not limited to their grandparents. While family separation can be an important hardship factor, in this case the evidence does not demonstrate that the effects of separation on the applicant's qualifying relatives would be extreme. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998). Although the applicant's relatives claim that they would fear for his safety and health if he were in Mexico, the country conditions information in the record does not establish that the applicant would be in such danger that concern for him would cause extreme hardship to his family. The record indicates that the applicant is originally from Mexico, so we might conclude that he would reside there if removed. While the U.S. Department of State warns U.S. citizens to defer non-essential travel to certain portions of the state of Guerrero, it explicitly states that the warning does not apply to the city of Instead, the Department of State recommends that travelers in "exercise caution and stay within tourist areas."

U.S. Department of State, Travel Warning: Mexico, dated November 20, 2012. While the applicant has submitted additional documentation of violence in various regions of Mexico, those generalized reports do not establish a specific risk to the applicant.

With regard to the applicant's health, the record does not establish that the applicant would be unable to receive necessary medical care in Mexico. The record shows that the applicant has diabetes and high cholesterol for which he must visit the doctor four times per year. The Department of State reports that "[a]dequate medical care can be found in major cities." *U.S. Department of State, Country Specific Information: Mexico*, dated February 15, 2013. There is no evidence that the applicant would be unable to access care, that his health would be at risk in Mexico, or that his relatives' concern about his health would create extreme hardship for them.

Even when considered in the aggregate, the evidence the applicant has submitted is insufficient to establish that a qualifying relative would face extreme hardship if separated from him due to his removal. *See Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). As noted above, the applicant can only meet his burden of demonstrating eligibility for a waiver of inadmissibility by showing that a qualifying relative would experience extreme hardship upon relocation abroad *and* upon separation from the applicant. The applicant has not demonstrated that any of his qualifying relatives would face extreme hardship if separated from him, so we cannot find that refusal of admission would result in the requisite hardship to the qualifying relatives in this case. Because we have found that the applicant has not established extreme hardship to a qualifying relative, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, although we grant the applicant's motion, the prior AAO decision is affirmed.

ORDER: The prior AAO decision is affirmed.