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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 0 9 2013 Office: PHILADELPHIA FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h); and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant, a native of India and a citizen of Canada, is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), to reside in the United States with his U.S. citizen spouse. The applicant notes that he also wishes to apply for a waiver of section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (or the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States, if found inadmissible under that section of the Act. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse.

In a decision dated September 28, 2011, the Field Office Director concluded that the applicant did not establish extreme hardship to a qualifying relative and the waiver was denied accordingly.

On appeal, counsel for the applicant states that the Field Office Director did not consider all of the relevant factors in making the determination that extreme hardship was not established.

In support of the waiver application, the record includes, but is not limited to, memoranda from counsel, affidavits from the applicant's spouse, documentation of the applicant's spouse's education, documentation of the applicant's spouse's unemployment, documentation concerning the applicant and his spouse's business, biographical information for the applicant and his spouse, financial documentation for the applicant and his spouse, letters of support from family members and friends, documentation concerning the applicant's mother-in-law, photographs of the applicant and his spouse, and documentation of the applicant's criminal and immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (A)(i) Except as provided in clause (ii), any 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, or…
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> is inadmissible.

> (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 record establishes that on February 14, 2007, in the Superior Court of Justice of Ontario, Canada, the applicant pled guilty to Possession of Property Obtained by Crime, in violation of section 354(1)(a) of the Canadian Criminal Code. The judge ordered that the applicant serve his sentence of 9 months imprisonment in the community, subject to the terms and conditions set forth by the judge, in addition to restitution in the amount of $5,600.

Section 354(1)(a) of the Canadian Criminal Code, which states, in pertinent part:

> Possession of property obtained by crime
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> 354. (1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from
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> (*a*) the commission in Canada of an offence punishable by indictment; or
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> (*b*) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

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....
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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.)

For an individual to be convicted of section 354(1)(a) of the Canadian Criminal Code, a defendant "has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from the commission in Canada of an offence punishable by indictment." The BIA found that possession of property with knowledge it was obtained through a crime, in violation of a predecessor statute to section 354 of the Criminal Code of Canada constitutes a crime involving moral turpitude because knowledge that the property was obtained through commission of a crime was an element of the offense. *See Matter of Salvail,* 17 I&N Dec. 19, 20 (BIA 1979). The Field Office Director found the applicant to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a result of his conviction and the applicant does not contest this finding of inadmissibility on appeal. The AAO does not see any documentation in the record that would lead to the conclusion that this finding should be disturbed. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --
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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; or
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> . . .

The applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more. Section 212(a)(9) of the Act provides:

> (B) ALIENS UNLAWFULLY PRESENT.-
> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
> . . .
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> . . .
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> (v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record indicates that the applicant previously resided in the United States as a nonimmigrant admitted in F-1 student status. The applicant states that he stopped attending school in the United States in April 2002. The record indicates that the applicant then departed the United States at some point in June and attempted reentry on June 10, 2002. At that time, it was determined that the applicant had violated his student status. The applicant states in a sworn statement dated October 18, 2003, that he reentered the United States on June 10, 2002, shortly after he had been refused admission that same day, and remained until he departed on October 16, 2003. During that period, the applicant accrued one year or more of unlawful presence in the United States and as a result is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant did not remain outside of the United States for the requisite period of ten years. The applicant does not contest this ground of inadmissibility on appeal.

The AAO notes that the record indicates that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), which provides, in pertinent part, that:

> (i)…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 Act is inadmissible.

"It is not necessary that an 'intent to deceive' be established by proof, or that the officer believes and acts upon the false representation," but the principal elements of the willfulness and materiality of the stated misrepresentations must be established. 9 FAM 40.63 N3 (citing *Matter of S and B-C*, 9 I&N Dec. 436, 448-449 (A.G. 1961) and *Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975)).

The record indicates that on October 18, 2003, the applicant attempted to gain admission to the United States by making a material misrepresentation. More specifically, the applicant informed an immigration inspector during secondary inspection that he wished to enter to the United States to drop his brother off at the airport in Detroit, when, in fact, the applicant himself had a plane ticket from Detroit to California. The applicant also told the immigration inspector that he had not been previously refused admission to the United States, when, in fact, he had been refused admission on June 10, 2002. The applicant admitted to the true facts only after further questioning,[1] was refused admission to the United States, and was ordered removed under section

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[1] The AAO also notes that on the applicant's Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, the applicant indicates that he wished to enter the United States for vacationing purposes. The applicant was admitted to the United States on November 24, 2010 as a B2 visitor pursuant to section 212(d)(3)(A)(ii) with authorization to remain in the United States until April 15, 2011. The record

235(b)(1) of the Act.[2] Based on this information, the AAO finds that the applicant is inadmissible to the United States under section 212(a)(6)(C) of the Act for misrepresenting material facts in an attempt to procure admission to the United States.

Section 212(i) of the Act provides a waiver for section 212(a)(6)(C). That section states that:

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

Although the record does not indicate that the applicant has been formally advised of his inadmissibility under section 212(a)(6)(C), the waiver for this grounds of inadmissibility is decided by the same standard sought by the applicant under section 212(a)(9)(B)(v) and 212(h), and as such, the outcome of this decision in not impacted by the additional finding of inadmissibility.

The applicant's qualifying relative is his U.S. citizen spouse. The AAO notes that the record indicates that the applicant's mother may be a qualifying relative as well, but no documentation has been provided regarding hardship to the applicant's mother. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang,* 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative

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indicates, however, that the applicant had the intent to remain in the United States permanently at the time of his admission and applied for adjustment of status based on his marriage to a U.S. citizen on April 14, 2011.

[2] The record indicates that the applicant was again refused entry to the United States on September 1, 2008, but was allowed to withdraw his application for admission.

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).

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*, 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.

We will first consider the hardship claimed to the applicant's U.S. citizen spouse if she were to remain in the United States and be separated from the applicant, who is presently in the United States. The applicant's spouse, in her affidavit dated October 13, 2011, states that she relies on the applicant "to handle all of the 'running of the household' duties," including helping to care for the

applicant's spouse's mother. She also states that if the applicant is not able to handle the business responsibilities for the company that the couple started in 2011, she will be left in "financial ruin." The applicant's spouse adds that she is stressed and depressed as a result of the applicant's immigration situation. In regards to the applicant's spouse's financial situation, the record indicates that she was at the time of her statement taking 9 credit hours towards her graduate degree in Psychology. The record also indicates that on February 10, 2011 the applicant's spouse received notice that she was eligible for the Emergency Unemployment Compensation Program. In her affidavit, the applicant's spouse stated that she was working for no pay for a family court in order to satisfy the practicum requirements for her degree. The record also indicates that the applicant and her spouse started a home renovation/remodeling business in June 2011, but there is no indication that the business had yet provided any profit for the applicant and his spouse. The applicant's spouse also indicates that her mother is supporting her with her pension and that she presently resides with her mother.

These facts do not illustrate that the applicant would be in financial ruin if she could no longer rely on the applicant. Counsel states that the applicant's spouse was left with debt after her father passed away; however, there is no documentation of that debt in the record. The AAO also notes that bank statements in the record indicate that the applicant and her spouse have considerable savings. Moreover, there is no explanation provided for why the applicant's spouse could not assist the applicant financially from Canada. Although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel relies heavily on the applicant's spouse's educational pursuits as a basis for her financial hardship and dependence on the applicant. The AAO notes that the inability to pursue one's chosen profession has been found to be one of the common or typical results of inadmissibility and not the type of hardship that is considered extreme. *See generally Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 568; *Matter of Pilch, 21 I&N Dec. at 632-33*; *Matter of Ige, 20 I&N Dec. at 885*; *Matter of Ngai,* 19 I&N Dec. at 246-47; *Matter of Kim,* 15 I&N Dec. at 89-90; *Matter of Shaughnessy,* 12 I&N Dec. at 813.

In regards to emotional hardship, counsel states that the applicant and his spouse have psychological and emotional ties that if severed would result in extreme hardship. The AAO notes that although separation of family members can be the single most important hardship factor, the totality of the circumstances are considered when making this determination. *See*

Salcido-Salcido, 138 F.3d at 1293; *but see Matter of Ngai*, 19 I&N Dec. at 247. To state that separation of husband and wife is extreme hardship in and of itself would render the need for a waiver of inadmissibility obsolete. In this case, the applicant and his spouse were married in Canada before the applicant had permission to reside in the United States. Moreover, the applicant's spouse states that she resided in Canada for a period of time before choosing to return to the United States for family, education, and employment reasons. The AAO recognizes the applicant's spouse's difficult position; however the hardships presented, even when considered in the aggregate, do not rise to the level of extreme hardship.

We must also consider whether the applicant's U.S. citizen spouse would suffer extreme hardship should she relocate to Canada to reside with the applicant. Counsel states that the applicant's spouse cannot relocate to Canada without suffering from extreme hardship as a result of the different requirements for psychology professionals in Canada, as well as the applicant's spouse's commitment to care for her mother, who suffers from various medical conditions. The AAO notes the applicant's spouse's strong family ties in the United States, including the fact that the applicant's spouse resides with her mother. A letter in the record from Dr. MD, dated March 3, 2011, indicates that the applicant's spouse's mother suffers from "diabetes, osteoarthritis of the hips, knees, and shoulders, hyperlipidemia, blood pressure, cataracts (now status post-surgery in both eyes), and lichen planus." Dr. also states that the applicant's spouse's mother "requires assistance with housekeeping and common instrumental activities of daily living including financial management." As counsel notes, the applicant's mother-in-law is not a qualifying relative. As such, hardship to the applicant's mother in law will only be considered in regards to how it contributes to hardship to the applicant's spouse. The applicant's spouse has not indicated why her mother would be unable to relocate to Canada to reside with her and her spouse. Additionally, the record does not indicate what hardship the applicant's spouse would suffer if she were to be separated from her mother. Counsel indicates that the applicant's spouse's mother's emotional and medical problems have taken their toll" on the applicant's spouse, citing the applicant's spouse's claims that her sleep and emotional health have been affected. No medical or other documentary evidence, however, was submitted to support those claims. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In regards to the applicant's spouse's professional pursuits, she states that she cannot obtain employment in Canada due to the different requirements there to practice psychology. In support of that statement, the record contains a print out from the Association of State and Provincial Psychology Boards, titled "Typical Requirements to become licenced psychologist in U.S. & Canada" dated March 24, 2011. The information on that printout, however, does not provide details regarding the differing requirements between Canada and the United States. Furthermore, there is no documentation in the record to support the claim that the applicant and her spouse would suffer financial hardship in Canada. The record indicates that the applicant was employed in Canada at the time of his last departure and no mention was made in the record of why he would not be able to support his family. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the

applicant's spouse relocate to Canada, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in sections 212(h) and 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is not granted a waiver of inadmissibility. Although the AAO acknowledges that the applicant's U.S. citizen spouse will suffer some hardship, the record does not establish that the hardship rises to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief under sections 212(h) and 212(a)(9)(B)(v) of the Act, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.