(b)(6)

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

U.S. Citizenship and Immigration Services

[redacted]

Date: DEC 18 2014 Office: HIALEAH, FL FILE: [redacted]

IN RE: [redacted]

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

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
Chief, Administrative Appeals Office

DISCUSSION: The application for a waiver of inadmissibility was denied by the Field Office Director, Hialeah, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Bahamas 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 committed crimes involving moral turpitude and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or a material misrepresentation. The applicant is the spouse of a U.S. citizen and the father to three adopted children who are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) and 212(i) of the Act, in order to remain in the United States.

In a decision, dated May 6, 2014, the field office director found that the applicant had failed to establish extreme hardship to a qualifying relative as a result of his inadmissibility and that he did not warrant the favorable exercise of the Secretary's discretion. The application was denied accordingly.

On appeal, counsel states that the psychological evaluation in the record and the fact that the applicant has three adopted children are two significant factors indicating that the applicant's qualifying relatives would suffer extreme hardship as a result of his inadmissibility. Counsel states that the record establishes the applicant's spouse and children would suffer psychological, emotional, and economic hardship, as well as the loss of future financial benefits if the applicant were removed. Counsel states that the applicant's case warrants the favorable exercise of discretion in that his criminal conviction, although abhorrent, occurred 26 years ago, the applicant has had no criminal history since then, he has adopted three children who would suffer upon his removal, and his wife would suffer extreme hardship in his absence. Finally, counsel states that the applicant waiver should be granted in the interest of family unity.

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

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
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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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> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
> >
> > (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien

> admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (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.

The record establishes that on March 2, 1988, the applicant was charged with Attempted 2nd Degree Murder, Aggravated Assault, Attempted Armed Robbery, and Use of a Firearm in the Commission of a Felony for events which occurred on March 1, 1988. On June 20, 1988, in relation to these events, the applicant was convicted of Aggravated Battery under Florida Statutes §784.045(1)(b) and sentenced to three years imprisonment. At some time after his release from prison, the applicant returned to the Bahamas. In 1997, when applying for an immigrant visa, the applicant failed to disclose his criminal conviction. On May 24, 1997, the applicant was admitted to the United States as an immigrant.. At some point after this entry, the applicant returned to the Bahamas and his lawful permanent residence status expired. On August 18, 2009, after failing to maintain his immigrant status, the applicant submitted a Form I-407, Abandonment of Residency Status. He also submitted an application for a non-immigrant visa which was denied after the applicant failed again to disclose his criminal conviction. On November 2, 2009, the applicant presented himself at the Fort Lauderdale Port of Entry as a returning lawful permanent resident and was paroled into the United States.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

For cases arising in the Eleventh Circuit, the determination of whether a conviction is a crime involving moral turpitude begins with a categorical inquiry that "depends upon the inherent nature of the offense, as defined in the relevant statute, rather than the circumstances surrounding a defendant's particular conduct." *Itani v. Ashcroft,* 298 F.3d 1213, 1215-16 (11th Cir. 2002); *see also Vuksanovic v.*

U.S. Att'y Gen., 439 F.3d 1308, 1311 (11th Cir. 2006) (citing *Taylor v. United States*, 495 U.S. 575, 600 (1990)); *Sosa-Martinez v. U.S. Att'y Gen.*, 420 F.3d 1338, 1342 (11th Cir. 2004). However, where the statute under which an alien was convicted is "'divisible'—that is, it contains some offenses that are [crimes involving moral turpitude] and others that are not[,] . . . the fact of conviction and the statutory language alone are insufficient to establish . . . under which subpart [the alien] was convicted." *Jaggernauth v. U.S. Att'y Gen.*, 432 F.3d 1346, 1354-55 (11th Cir. 2005). Under such circumstances, "the record of conviction – i.e., the charging document, plea, verdict, and sentence – may also be considered." *Fajardo v. U.S. Att'y Gen.*, 659 F.3d 1303, 1305 (11th Cir. 2011) (citing *Jaggernauth*, *supra*, at 1354-55). The Eleventh Circuit does not permit inquiry beyond the record of conviction. *See Fajardo*, *supra*, at 1310 (11th Cir. 2011) (rejecting *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)).

At the time of the applicant's conviction, Florida Statutes §784.045(1)(b) stated:

> (1) A person commits aggravated battery who, in committing battery:
>
> . . .
>
> (b) Uses a deadly weapon.

At the time of the applicant's conviction, Florida Statutes §784.03 stated:

> (1) A person commits battery if he:
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> (a) Actually and intentionally touches or strikes another person against the will of the other; or
>
> (b) Intentionally causes bodily harm to an individual.

The Eleventh Circuit Court of Appeals has held that aggravated battery in violation of Florida Statutes § 784.045, which includes the use of a deadly weapon or the intentional infliction of serious bodily injury, is a crime involving moral turpitude. *Sosa-Martinez v. U.S. Att'y Gen.*, 420 F.3d 1338, 1342 (11th Cir. 2005). Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(2)(A)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(I), for having committed a crime involving moral turpitude.

The applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or a material misrepresentation when he failed to disclose his conviction on two different applications for an immigration benefit.

Section 212(i) of the Act provides:

> (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The applicant's only qualifying relative in regards to a section 212(i) waiver is his U.S. citizen spouse.

Section 212(h) of the Act provides, 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 -

> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --
>
> > (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> >
> > (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> >
> > (iii) the alien has been rehabilitated; or
> >
> > (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .; and
>
> (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Section 212(h)(1)(A) of the Act provides that the Secretary may, in his discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the applicant is inadmissible occurred more than 15 years before the date of the applicant's application for a visa, admission, or adjustment of status. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

Since the criminal conviction occurred more than 15 years ago, it is waivable under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) of the Act requires that the applicant's admission to the

United States not be contrary to the national welfare, safety, or security of the United States, and that the applicant be rehabilitated.

The current record does not establish that the applicant has been rehabilitated. We recognize that the applicant has not committed a crime since the incident in 1988, but he has not expressed remorse for his crime and he continually failed to disclose his conviction in order to gain an immigration benefit, most recently in 2009. Thus, we cannot find that the applicant has been rehabilitated and his admission would not be contrary to the welfare, safety, or security of the United States. In addition, the applicant's waiver application will not be granted as he has not shown extreme hardship to his U.S. citizen spouse nor is he deserving of a favorable exercise of the Secretary's discretion. Moreover, the applicant, having been convicted of a violent or dangerous crime, is subject to section 212.7(d) of the Act.[1]

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of 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).

[1] Both section 212(i) and section 212(h) waivers include a discretionary determination and once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996). In the applicant's case, he will not only have to show extreme hardship to his U.S. citizen spouse to qualify for both waivers, but will also have to show exceptional and extremely unusual hardship to his spouse and/or children to overcome his commission of a violent crime and warrant a favorable exercise of discretion.

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. I·N·S.,* 138 F.3d 1292 (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.

Furthermore, for waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996). The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The regulation at 8 C.F.R. § 212.7(d) provides:

> 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.

The judgment in the applicant's case establishes that the applicant was convicted of battery with a deadly weapon. The complaint in the applicant's case indicates that the applicant paid a prostitute to perform a sex act, was unsatisfied with the prostitute's services, and then pulled out a gun from his car, shooting her in the chest after she refused to return his money. It can therefore be concluded that the applicant has been convicted of a violent crime, and is thus subject to the heightened discretionary standard under 8 C.F.R. § 212.7(d).

Accordingly, the applicant must show that "extraordinary circumstances" warrant approval of the waiver. 8 C.F.R. § 212.7(d). 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, 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.*

In *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001), the BIA 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 BIA 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 BIA 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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *Id.*

In *Monreal*, the BIA 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 63-4.

In the precedent decision issued the following year, *Matter of Andazola-Rivas*, the BIA 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 BIA viewed the evidence of hardship in the respondent's case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The BIA 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 BIA 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 BIA found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The BIA 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. 23 I&N Dec. at 472. The BIA 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."). The AAO notes that exceptional and extremely unusual hardship to a qualifying relative must be established in the event that he or she

accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of hardship includes: a statement from the applicant, a statement from the applicant's spouse, medical documentation, a psychological evaluation for the applicant's spouse, and financial documentation.

Counsel asserts that the applicant's spouse will suffer extreme financial and emotional hardship as a result of separation from the applicant and as a result of relocating to the Bahamas. We recognize that either scenario would cause hardship for the applicant's spouse, but these hardships do not rise to the level of extreme hardship or exceptional and extremely unusual hardship.

In regards to separation, counsel states that the applicant's spouse will suffer hardship as a result of having to raise her three adopted children on her own. The record includes a psychological evaluation, conducted on July 12 and July 19, 2012. This evaluation indicates that the applicant's spouse has lived in the United States for 28 years; suffers from chronic pain, hypertension, and high cholesterol. The evaluation states that the applicant's spouse reports suffering from anxiety as a result of her husband's immigration situation and that because of her character traits of greater dependency needs she is likely to experience greater than average disruptions in her personal and family life as a result of separation. The evaluation also indicates that the applicant's children are close to the applicant and consider him the disciplinarian in the house. The record does establish, through an Individual Education Plan, that the applicant's adopted daughter, [redacted] has partial hearing loss and needs hard of hearing services at her school, but does not indicate how these needs would be a burden to the applicant's spouse.

The record also states that as a result of the chronic pain the applicant's spouse suffers, she would suffer hardship without her husband to help with physical tasks around the house and at the business she owns. Counsel states that the applicant's spouse would suffer financially as a result of not having the applicant to help with running and managing her business. The record establishes that the applicant's spouse owns a home and a business in the United States. The record shows the applicant's spouse is a nurse by profession and the applicant is a carpenter. They both currently work through the medical center owned by the applicant's spouse. Medical records establish that the applicant's spouse suffers from mild to moderate lower back pain, pain in her right hip, and a frozen right shoulder. These records indicate that eight to nine years ago the applicant's spouse was in a car accident, resulting in lower back pain, but after physical therapy the applicant felt better. The applicant states that in 2010 the pain returned and the medical records indicate that she has been having pain since February 2011, treating her symptoms with physical therapy and over the counter pain medication. The medical records are not clear as to whether there is a solution to the pain she feels nor do they indicate that she has taken all measures to cure the pain. In regards to the applicant's spouse's financial concerns, the record is not clear as to what the financial impact of separation would be on the family's finances. The record establishes that in 2013, the applicant and his spouse earned a joint income of $52,885. The record does not indicate how much the applicant's spouse's business would lose as a result of having to hire someone to perform the applicant's job duties. Moreover, the record also states that the applicant left the United States for the Bahamas in 2009 because he could earn more income in the

Bahamas. So, the record indicates that the applicant would be able to work in the Bahamas and potentially contribute to the family income. Thus, given the current record, it cannot be found that the applicant's spouse or children would suffer exceptional and extremely unusual hardship as a result of separation.

Furthermore, the record does not show that the applicant's spouse and/or children would suffer exceptional and extremely unusual hardship as a result of relocation. The record does not contain documentation regarding country conditions in the Bahamas to substantiate counsel's claims that the family would suffer medically, financially, and physically as a result of relocation. As stated above, the record indicates that the applicant would be able to find work in the Bahamas, as he left the United States in 2009 for the Bahamas because he was able to earn more income working in the Bahamas. Similarly, the record does not show that the applicant's spouse would be unable to earn a living in the Bahamas as a nurse or that their children would suffer educationally or medically as a result of relocation. Thus, the current record fails to establish that the applicant's family would suffer exceptional and extremely unusual hardship as a result of the applicant's inadmissibility.

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)). Therefore, the record does not show that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of exceptional and extremely unusual hardship. *Matter of Monreal-Aguinaga*, 23 I&N Dec. at 62.

In sum, the applicant has not demonstrated that he satisfies the section 212(h)(1)(A) waiver requirements nor has he shown that his spouse would suffer extreme hardship as a result of his inadmissibility under sections 212(h)(1)(B) and 212(i) of the Act. Finally, the applicant has failed to demonstrate that he merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d).

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.