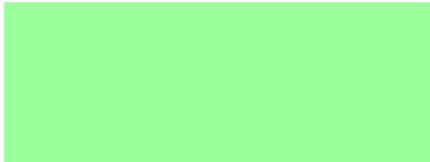


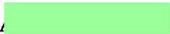


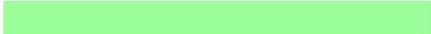
U.S. Citizenship
and Immigration
Services



Date: **OCT 03 2013**

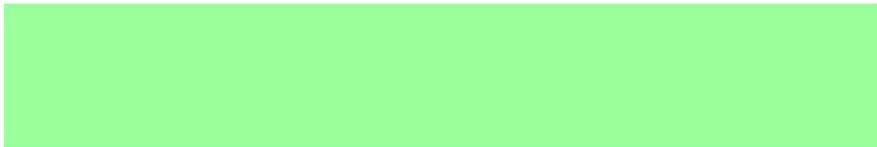
Office: NEW DELHI

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and (a)(9)(B)(v), respectively, and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:



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,

A handwritten signature in cursive script that reads "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, New Delhi, India, was before the Administrative Appeals Office (AAO) on appeal, and was remanded to the Field Office Director for a new decision. The Field Office Director certified for review the new decision to the AAO. The Field Office Director's decision will be affirmed.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The record shows that the applicant was also found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking readmission within 10 years of his last departure from the United States. The applicant was further found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered removed and seeking admission within 10 years of the date of his departure or removal. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212). The applicant seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h), (a)(9)(B)(v), and permission to reapply for admission to the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his U.S. citizen wife and children.

In a decision dated August 10, 2012, the Field Office Director denied the Form I-601 application for a waiver, finding the applicant statutorily ineligible for a section 212(h) waiver as an aggravated felon. In the same decision, the Field Office Director denied the applicant's Form I-212 in the exercise of discretion. The applicant appealed that decision. On appeal, the AAO found that the applicant was inadmissible to the United States, but because the applicant was not previously admitted as a lawful permanent resident of the United States, he was eligible to apply for a waiver of inadmissibility. The AAO remanded the case to the Field Office Director for a new decision on the on the applicant's applications. The Field Office Director denied the applications and the case is again before the AAO on certification.

Counsel states that the applicant does not require a waiver of inadmissibility, arguing that the applicant's convictions are not in fact convictions and that he has not been convicted of an aggravated felony.¹

The record contains, but is not limited to: briefs from counsel for the applicant; a statement by the applicant's wife; character reference letters; country conditions documentation; financial documentation; documentation regarding the applicant's administrative removal order; and documentation regarding the applicant's criminal history.

¹ As set forth below, counsel's argument that the applicant's conviction is not an aggravated felony is not directly relevant to the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, regarding the commission of a crime involving moral turpitude.

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 has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

The record shows that the applicant entered the United States as a nonimmigrant visitor on or about June 29, 1979, and remained in the United States beyond the authorized period of stay without permission. Though the applicant submitted applications to adjust his status to that of a lawful permanent resident in 1981 and 1986, the record reflects that such status was never accorded to him. On June 7, 2004, the applicant was ordered removed from the United States by a Final Administrative Removal Order Under Section 238(b) of the Act (Form I-851A). On August 25, 2004, the applicant was removed from the United States to Pakistan. The AAO finds that the applicant thus accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions, until his removal in 2004. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his August 2004 departure, he remains inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility under section 212(a)(9)(B)(i)(II) on appeal.

A discretionary waiver of 212(a)(9)(B)(i)(II) inadmissibility is available under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which provides that:

Waiver.-The Attorney General [Secretary of Homeland Security] 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 [Secretary of Homeland Security] 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 [Secretary of Homeland Security] regarding a waiver under this clause.

The applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. Section 212(a)(2)(A) of the Act provides, in pertinent part, that:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible

The record reflects that on December 14, 1987, the applicant was convicted in the Court of County, Texas of aggravated sexual assault on a child, a first degree felony in violation of Texas Penal Code § 22.021(a)(1)(B)(i). For this offense, the applicant was sentenced to probation for nine years and was fined \$2,000.00. The record further reflects that on that same date, the applicant was convicted of indecency with a child, a second degree felony. For this offense, the applicant was placed on probation for a period of three years and was fined \$500.00. The Field Office Director found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act as a result of his convictions. In counsel's latest brief dated August 15, 2013, counsel does not directly address the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, but rather argues that the applicant's conviction is not a conviction for immigration purposes. He also argues that the applicant has not been convicted of an aggravated felony.

The Board of Immigration Appeals (the 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....

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.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General set forth a new framework for determining whether a conviction is a crime involving moral turpitude where the language of a criminal statute encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an

adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

We will first look to the applicant’s conviction under Texas Penal Code § 21.021, which at the time of the applicant’s conviction stated:

Aggravated Sexual Assault

(a) A person commits an offense if the person commits sexual assault as defined in Section 22.011 of this code and:

- (1) the person causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;
- (2) by acts or words the person places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;
- (3) by acts or words occurring in the presence of the victim the person threatens to cause the death, serious bodily injury, or kidnapping of any person;
- (4) the person uses or exhibits a deadly weapon in the course of the same criminal episode; or
- (5) the victim is younger than 14 years of age.

(b) The defense provided by Section 22.011(d)(1) of this code and the affirmative defense provided by Section 22.011(e) of this code do not apply to this section. The defense provided by Section 22.011(d)(2) of this section does apply to this section.

(c) An offense under this section is a felony of the first degree.

Counsel does not argue directly that the applicant's conviction for aggravated assault of a minor does not involve moral turpitude, but instead he makes two arguments relying on *Vartelas v. Holder*, 132 S.Ct. 1479 (2012), both of which are misplaced. The Court's decision in *Vartelas*, held that a lawful permanent resident ("LPR") with a criminal conviction that predated the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") was not seeking "admission" after brief travel abroad. 132 S.Ct. at 1483-84. This decision does not apply to the determination whether the applicant, who the record does not indicate was ever admitted to the United States as a lawful permanent resident, has a conviction that makes him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Additionally, counsel has not provided any valid argument that the applicant's 1987 conviction in Texas does not constitute a valid conviction for immigration purposes. We are not persuaded by counsel's argument that *Vartelas* calls into question well-established law finding that a deferred adjudication under Texas law qualifies as "conviction" under the Act, post IIRIRA. See section 101(a)(48)(A) of the Act; see also *Madriz-Alvarado v. Ashcroft*, 383 F.3d 321, 334-35 (5th Cir. 2004); *Matter of Punu*, 22 I&N Dec. 224, 228 (BIA 1998) (holding that the Texas deferred adjudication was a conviction for immigration purposes rendering the alien removable because it met the definition of "conviction" under section 101(a)(48)(A) of the Act). As the applicant has not contested that the statute under which he was convicted involved moral turpitude, and the record does not show the Field Office Director's determination to be in error, we will not disturb the finding that the applicant is inadmissible under section 212(a)(2)(A) of the Act.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . 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; or

No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been

convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

As 15 years have passed since the activities that led to the applicant's conviction, and the record does not indicate that the applicant was ever admitted as a lawful permanent resident of the United States, the applicant would be eligible to apply for a waiver of inadmissibility under section 212(h)(1)(A) of the Act, based on a determination of whether his admission to the United States would not be contrary to the national welfare, safety, or security of the United States and whether he has been rehabilitated. However, we must first determine whether the applicant has established extreme hardship to his U.S. citizen spouse as required for the waiver under section 212(a)(9)(B)(v) of the Act. We will not reach a determination regarding the applicant's eligibility for a waiver under either subsection of 212(h) of the Act, before first determining whether the applicant merits a waiver under section 212(a)(9)(B)(v) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent. In this case, the applicant's qualifying relative is his U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 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.

Counsel has not addressed the issue of extreme hardship, however, the applicant’s U.S. citizen spouse states that she has suffered from extreme hardship as a result of separation from the applicant. More specifically, she states that she is financially, emotionally, and physically limited without his physical presence and support and must rely on government assistance. The AAO notes that the applicant’s spouse has four children, ages 18, 16, 12 and 11. The applicant’s spouse states that after the applicant was removed in 2004 she moved from [REDACTED], Texas where she had resided with her husband and where he provided for her and her children to [REDACTED] North Carolina where she initially resided with her parents and then obtained an apartment with government assistance, as well as assistance from her three brothers and other relatives. In a letter dated March 10, 2012, the applicant’s spouse’s three brothers, all whom list their addresses in North Carolina, continue to pledge to provide support to the applicant’s spouse and her children. The applicant’s spouse states that she feels like she is letting down her children because they would have a better life the applicant were in the United States. The record indicates that as of January 2012, the applicant’s spouse received Medicaid. The record also indicates that the applicant’s spouse received low income energy assistance on February 1, 2011. The record also indicates that in 2009 and before, the applicant’s spouse applied for food stamps. There is no current information in the record, however, on the applicant’s spouse’s need for food stamps. The record does not contain any additional evidence of financial hardship to the applicant’s spouse, such as federal income tax returns, bills, etc.

Moreover, there is no additional evidence of the emotional and physical hardship claimed by the applicant's spouse, aside from her own statements. 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 Obaighena*, 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).

Moreover, the AAO notes again that the applicant's spouse is the only qualifying relative for the applicant in regards to the waiver of inadmissibility that he requires under section 212(a)(9)(B)(v) of the Act -- hardship to the applicant and his children is only relevant insofar as it is shown to affect the hardship to the applicant's spouse. The most recent letters from the applicant's spouse and her family member comment on the applicant's character and the hardship that he has suffered and provide little information on the hardship to the applicant's spouse, beyond stating in general terms the difficulties that the applicant's spouse faces in raising her children without their father and that the applicant's departure necessitated her move to North Carolina to reside near her family members who have offered assistance. The AAO recognizes that the applicant's spouse is suffering hardship as a result of her long-term separation from the applicant, but the documentation of record, considered in the aggregate, do not rise to the level of extreme hardship.

In regards to the hardship that the applicant's spouse would suffer if she were to relocate to her native Pakistan, the applicant's spouse states that she has attempted on several occasions to move to Pakistan with her four children, but the safety, education, health, and general living conditions imposed extreme hardship. The applicant's spouse also stated that lack of hygiene, harsh disciplinary methods, as well as the difficulty in learning Urdu and Arabic posed difficulties for her children in the Pakistani educational system. She also states that her children were sick on average twice per month because of the food and water in Pakistan. Although the record contains country conditions information on Pakistan and the AAO takes note of conditions there, the applicant did not submit any direct evidence in support of his spouse's statements of the hardship she suffered there or would continue to suffer there were she to relocate. In fact, the record does not contain documentation of the applicant's spouse's travels to Pakistan or the circumstances she states that she and her children faced there. 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. 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 Pakistan, 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 212(a)(9)(B)(v), of the Act, be above and beyond the normal, expected hardship involved in such cases.

Considered in the aggregate, the hardship to the applicant's spouse does not rise to the level of extreme beyond the common results of removal. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative under 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver under section 212(h)(1)(A) of the Act or as a matter of discretion.

Even were the applicant to meet the statutory requirements for a waiver under 212(h) and 212(a)(9)(B)(v) of the Act, the applicant's conviction for aggravated sexual assault is a violent or dangerous crime, necessitating that the applicant meet the requirements of 8 C.F.R. § 212.7(d) before a favorable exercise of discretion could be granted in his case. 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.

We do not need to reach this issue at this time, as the applicant has not met the statutory requirement for a waiver under section 212(a)(9)(B)(v) of the Act.

The AAO also notes that the Field Office Director denied the applicant's Form I-212 in the same decision as the denial of the Form I-601, Application for a Waiver of Grounds of Inadmissibility. Where an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, no purpose would be served in granting the application. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964). As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and has failed to meet his burden of proof that his inadmissibility results in extreme hardship to his U.S. citizen spouse, no purpose would be served in granting the applicant's Form I-212.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The Field Office Director's decision is affirmed.