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U.S. Citizenship
and Immigration
Services

DATE: JAN 02 2013

OFFICE: CHICAGO, IL

FILE: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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 with the field office or service center that originally decided your case by filing a 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,

A handwritten signature in black ink that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(a)(iii), for having a physical or mental disorder with associated harmful behavior and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant is the spouse and parent of U.S. citizens. He seeks a waiver of inadmissibility pursuant to sections 212(g) and (h) of the Act, 8 U.S.C. §§ 1182(g) and (h), in order to remain in the United States.

The Field Office Director found that the applicant had failed to establish that he was admissible under section 212(a)(1)(A)(iii) of the Act or that his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act would result in extreme hardship for a qualifying relative. He denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated October 26, 2010.

On appeal, counsel asserts that the applicant is not inadmissible to the United States under section 212(a)(1)(A)(iii) or section 212(a)(2)(A)(i)(I) of the Act. Alternately, he contends that the applicant has established eligibility for a waiver and that the Field Office Director failed to consider all of the relevant hardship factors in the applicant's case. *Form I-290B, Notice of Appeal or Motion*, dated November 22, 2010; *see also Counsel's Brief*, submitted December 22, 2010.

The record of evidence includes, but is not limited to: counsel's briefs; statements from the applicant, his spouse, his daughter and his stepdaughter; letters of support from family, friends, the applicant's employer and his pastor; medical documentation relating to the applicant's spouse and brother-in-law; online articles on medications; documentation of the applicant's membership in Alcoholics Anonymous and his enrollment in alcohol-treatment programs; a Supplemental Security Income statement relating to the applicant's brother-in-law; documentation of the applicant's community service; school records and certificates for the applicant's daughter; country conditions information on Mexico; and court records relating to the applicant's arrests and convictions.

Section 212(a)(1) of the Act states, in pertinent part:

(1) Health-related grounds.—

(A) In general.—Any alien-

.....
(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General [now Secretary of Homeland Security])—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed,

a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior . . . is inadmissible.

In his decision, the Field Office Director noted the applicant's multiple convictions for driving under the influence and indicated that the applicant had failed to submit a mental status examination addressing his alcohol abuse. On appeal, counsel asserts that the applicant is not inadmissible pursuant to section 212(a)(1)(A)(iii) of the Act, as established by the new Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, submitted on March 15, 2006 in response to the Field Office Director's May 27, 2005 and January 5, 2006 requests for evidence.

The AAO notes that the record on appeal contains a Form I-693, dated March 11, 2006, which indicates that a civil surgeon found that the applicant did not have any apparent defect, disease or disability. We do not, however, find the Form I-693 to be accompanied by the mental status examination requested by the Field Office Director.

In a January 16, 2004 memorandum, then Associate Director for Operations William R. Yates, United States Citizenship and Immigration Services (USCIS) noted that under interpretations prescribed by the Secretary of Health and Human Services, "alcohol abuse/dependence resulting in alcohol-impaired driving may serve as the basis for a determination that an alien has [a] mental disorder with associated harmful behavior, which in turn may be a basis for a finding of inadmissibility within the meaning of section 212(a)(1)(A)(iii) of the Act." Accordingly, he instructed USCIS officers that in cases where an applicant's criminal record reported a "significant history" of alcohol-related driving incidents and the Form I-693 did not reflect that these incidents had been considered by the civil surgeon, the applicant should be required to undergo a mental status re-examination by a civil surgeon specifically addressing the incidents revealed in the criminal record. For the purpose of this policy, a significant criminal record of alcohol-related driving incidents was to include:

- One or more arrest/conviction for alcohol-related driving (DUI/DWI) while the driver's license was suspended, revoked or restricted at the time of the arrest due to a previous alcohol-related driving incident(s).
- One or more arrest/conviction for alcohol-related driving where personal injury or death resulted from the incident(s).
- One or more conviction for alcohol-related driving where the conviction was a felony in the jurisdiction in which it occurred or where a sentence of incarceration was actually imposed.
- Two or more arrests/convictions for alcohol-related driving within the preceding two years.

- Three or more arrests/convictions for alcohol-related driving where one arrest or conviction was within the preceding two years.

Memorandum from William R. Yates, Associate Director for Operations, *Requesting Medical Re-examination: Aliens Involved in Significant Alcohol-Related Driving Incidents and Similar Scenarios*, dated January 16, 2004.

In the present case, the record reflects that the original Form I-693 submitted by the applicant was completed in 2002. It also indicates that on February 21, 2003, the applicant was arrested on a range of driving-related charges, including DUI and driving on a revoked or suspended license, resulting in a February 10, 2004 conviction for Driving on Revoked/Suspended License, 625 Illinois Compiled Statutes (ILCS) § 5/6-303(d), a Class 4 felony as it represented the applicant's second violation of the statute. On September 2, 2005, the applicant pled guilty to Aggravated Driving Under the Influence, 625 ILCS § 5/11-501(d)(1)(A), Third Offense, a Class 4 felony, for which he was sentenced to two years in prison. Therefore, the Field Office Director correctly determined that applicant had a significant history of alcohol-related driving offenses that were not considered in his 2002 medical examination and appropriately requested a new mental status examination addressing this history.

The applicant has, however, failed to submit the mental status examination requested by the Field Office Director. As a result, he has not established that his history of driving offenses involving alcohol is not the result of a physical or mental disorder with associated harmful behavior that would bar his admission to the United States under section 212(a)(1)(A)(iii) of the Act. The burden of establishing inadmissibility in waiver proceedings is the applicant's. See section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the AAO finds that the applicant is inadmissible pursuant to section 212(a)(1)(A)(iii) of the Act and that he requires a section 212(g) waiver in order to reside in the United States.

Section 212(g) of the Act states in pertinent part:

(g) The Attorney General may waive the application of—

....

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the [Secretary] after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

Filing requirements for a waiver under section 212(g)(3) of the Act are outlined in Part 4 of "Applicants Seeking a Waiver of Health-Related Grounds of Inadmissibility INA Section 212(a)(1)," on pages 3 and 4 of the instructions for the Form I-601. These instructions require that an applicant found to have a physical or mental health disorder with associated harmful behavior submit a complete medical history and report addressing the disorder, including the details of any hospitalization, institutional care or any other treatment received; the findings regarding the applicant's current physical condition and other pertinent diagnostic tests; findings regarding the current mental or physical

condition, including a detailed prognosis regarding the likelihood that the harmful behavior will recur or that other harmful behavior associated with the disorder is likely to occur; and a recommendation concerning treatment available in the United States that can be expected to reduce the likelihood that the physical or mental disorder will result in harmful behavior in the future. The submitted medical report is then referred to the U.S. Public Health Service for review, which may require further assurances from the waiver applicant.

In the present case, the Form I-601 submitted by the applicant is not accompanied by the medical documentation required in the instructions. Accordingly, it is not properly-filed application for the purposes of a section 212(g)(3) waiver and cannot overcome the applicant's inadmissibility under section 212(a)(1)(A)(iii) of the Act.

The AAO now turns to a consideration of whether the record also establishes that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, which states, in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

As previously discussed, the record reflects that, on February 10, 2004, the applicant pled guilty to a second violation of Driving on Revoked/Suspended License, 625 ILCS § 5/6-303(d) and was placed on probation for two years. On July 23, 2005, a violation of probation was filed against the applicant. He pled guilty to this charge on September 2, 2005 and was sentenced to three years in prison. On September 2, 2005, the applicant also pled guilty to a third violation of Aggravated Driving Under the Influence (DUI), 625 ILCS § 5/11-501(d)(1)(A), for which he was sentenced to two years in prison.

On appeal, counsel asserts that the Field Office Director erred in concluding that the applicant's 2004 and 2005 offenses are crimes involving moral turpitude. He contends that neither of these driving-related violations involves the culpable mental state required for a finding of moral turpitude.

The AAO notes counsel's assertions, but will not review the applicant's offenses to determine if they involve moral turpitude. We find that resolving whether or not the applicant has been convicted of crimes involving moral turpitude would serve little purpose when he is inadmissible pursuant to section 212(a)(2)(B) of the Act, which states:

(B) Multiple criminal convictions

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

On September 2, 2005, the applicant pled guilty to violating his probation in connection with his conviction for Driving on Revoked/Suspended License, 625 ILCS § 5/6-303(d), and was sentenced to three years in prison. On this same date, he was sentenced to two years in prison for his third violation of Aggravated Driving Under the Influence (DUI), 625 ILCS § 5/11-501(d)(1)(A). In that the applicant has been convicted of two offenses for which the aggregate sentences to confinement total five years, he is inadmissible pursuant to section 212(a)(2)(B) of the Act.

The AAO observes that inadmissibilities under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(B) of the Act are subject to the same waiver requirements. Therefore, if the record establishes that the applicant is eligible for a waiver of his 212(a)(2)(B) inadmissibility, that eligibility would also extend to eligibility under section 212(a)(2)(A)(i)(I) of the Act.¹

We now turn to a consideration of the record and the extent to which it establishes the applicant's eligibility for a waiver under section 212(h) of the Act, which 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 –

....

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

A waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, the U.S. citizen or lawfully resident spouse, parent or child of an applicant. The qualifying relatives in this proceeding are the applicant's spouse, his daughter and his stepchildren from his spouse's prior marriage. Accordingly, hardship to the applicant or other family members will be considered only insofar as it results in hardship to one or more of these qualifying relatives. 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 BIA 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

¹ We do note, however, that the applicant's convictions, if crimes involving moral turpitude, could be deemed dangerous crimes subjecting the applicant to the heightened discretionary standard found at 8 C.F.R. § 212.7(d).

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 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 exclusive. *Id.* at 566.

The BIA has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the BIA 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 at 1293 (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.

On appeal, counsel states that the applicant and his spouse have been married for more than 19 years (now 21 years) and that she depends on him for economic and emotional support, as well as physical assistance in dealing with her medical issues. Counsel asserts that the applicant's spouse suffers from diabetes, high blood pressure and complications related to diabetes, including poor circulation, bad vision and kidney problems, and that the applicant's removal would require his spouse to battle her chronic illness alone. He also maintains that the applicant's spouse is caring for her disabled

brother, who lives with her and the applicant as he cannot live alone. Counsel states that the applicant's spouse's brother suffers from seizures, is unable to walk on his own and receives Supplemental Security Income. He also asserts that the applicant's spouse requires the applicant's help in providing care for her brother. Counsel further contends that the applicant's spouse would experience financial hardship in the applicant's absence as she would be unlikely to find employment in the United States that would allow her to support herself and her daughter, and that the applicant would be unable to provide her with financial assistance from Mexico as a result of the country's high unemployment and low wages.

In a statement resubmitted on appeal, the applicant's spouse asserts that she is an insulin-dependent diabetic who has trouble walking because of poor circulation in her legs. She also states that, as a result of her diabetes, her kidneys are significantly damaged and her vision impaired, and that she suffers from high blood pressure and high cholesterol. The applicant's spouse further reports that she has a brother who is partially paralyzed from a stroke and has seizures. Without the applicant, she states, she would not be able to care for her brother and would have to send him away. She also asserts that, in the applicant's absence, she would have no one to help her with her own medical problems.

The applicant's spouse further maintains that the applicant's absence would negatively affect their 16-year-old (now 18-year-old) daughter's future. She states that her health does not allow her to oversee her daughter's behavior and that, without the applicant, she fears that her daughter will turn out badly. The applicant's spouse contends that she and the applicant need one another as they have been through a great deal of pain together, including the loss of four children.

In a separate statement, the applicant's daughter asserts that her father is the only family member who is employed and that he helps care for both her mother and her uncle, both of whom are sick. A November 20, 2010 statement from the applicant's sister-in-law and a December 20, 2010 statement from one of the applicant's neighbors also indicate that the applicant's brother-in-law is very sick, that he lives with the applicant and his spouse, and that the applicant is helping care for him.

In support of the preceding claims, the record contains a November 12, 2010 statement written by [REDACTED], who reports that he has known the applicant and his spouse for two years and has been impressed by their support of one another. [REDACTED] states that the applicant is a "strong support" for his spouse with regard to her chronic illness and that her health would suffer without him. He also indicates that the applicant's spouse accompanies the applicant to his visits for "acute problems" and that the applicant has been a "model patient." [REDACTED] asks that the applicant be allowed to remain in the United States so that he can continue to care for his spouse. The record also includes a prescription profile for the applicant's spouse, covering the period January 1, 2010 through December 20, 2010, which shows purchases for alcohol swabs, syringes, insulin and other medications used in the treatment of diabetes and high blood pressure.

The record further provides a medical record for the applicant's brother-in-law, which indicates that he had an appointment in the neurology department of the Loyola University Health System on December 20, 2010 and that he is taking medications for the control of seizures and muscle spasms. It also contains a copy of the first page of a November 27, 2010 notice from the Social Security Administration addressed to the applicant's brother-in-law in care of the applicant's spouse. The notice indicates that the applicant's brother-in-law's Supplemental Security Income payments for 2011 will remain the same. A copy of the applicant's brother-in-law's Illinois Identification Card

has also been submitted for the record and reflects that he lives at the same address as the applicant and his spouse.

The record also includes copies of a loan payment receipt that reflects the applicant had a \$27,300 loan balance with American General Financial Services as of December 20, 2010; an installment payment of \$420.62 on the 2009 property tax for the applicant's and his spouse's residence; an AT&T telephone bill in the amount of \$51.03; and a monthly billing statement from People's Gas in the amount of \$60.12. Also found in the record is a July 10, 2007 statement from the applicant's employer that indicates he was earning an hourly wage of \$12.95 at that time.

To establish conditions in Mexico, the applicant has submitted a printout of the online *2009 Human Rights Report: Mexico*, issued by the U.S. Department of State on March 11, 2010, and a 2009 statistical report on gross national income per capita published by the World Bank, in which Mexico ranks 78th out of 213 countries.

Having reviewed the record, the AAO concludes the applicant's spouse would experience hardship if she is separated from the applicant, but does not find the submitted evidence to establish the extent of the applicant's spouse's hardship or that it would exceed that normally created by the separation of families.

Although the record demonstrates that the applicant's spouse is an insulin-dependent diabetic and that she has been diagnosed with high blood pressure, it does not establish the severity of these conditions or that they limit the applicant's spouse's ability to live a normal life. There is no medical documentation that supports her claim that she has trouble walking because of poor circulation in her legs, that her kidneys are significantly damaged or that her vision is impaired. The November 12, 2010 statement from [REDACTED] does not identify the applicant's spouse's specific medical problems, indicating only that she suffers from an unspecified chronic illness and that her health would suffer in the applicant's absence.

The record also fails to offer documentary evidence of the status of applicant's brother-in-law's health, beyond establishing that he is subject to seizures. Although the AAO notes the assertions made by the applicant's spouse, daughter, sister-in-law and neighbor regarding his medical history, his partial paralysis and his inability to care for himself, we find no documentation in the record that supports these claims. There is no medical statement or assessment from a doctor who is treating the applicant's brother-in-law and no other medical documentation that addresses his overall physical condition or that indicates he suffers from any type of impairment. The medical record from the Loyola University Health System indicates only that the applicant's brother-in-law is being treated for seizures. It does not indicate the frequency or severity of his seizures, nor their effects. Neither does it report the extent to which the medication the applicant's brother-in-law is taking has been successful in controlling or preventing his seizures. The SSI notice issued by the Social Security Administration offers proof that the applicant's brother-in-law is receiving SSI payments but does not, by itself, establish the extent of his disability or that he is unable to care for himself.

Therefore, while the AAO acknowledges that the applicant's spouse has diabetes and high blood pressure, and that her brother is subject to seizures, we cannot determine from the record before us the severity of these conditions or the extent to which they affect their respective abilities to function independently. Accordingly, we do not find the record to establish that the applicant's spouse requires the applicant's assistance in dealing with her medical problems, that her brother is partially

paralyzed and unable to care for himself or that she is unable to provide whatever assistance her brother may require as a result of his disability. Moreover, we note that, on appeal, counsel indicates that all of the applicant's spouse's family members reside in Chicago and that she lives in close proximity to her adult children from her prior marriage. No evidence in the record demonstrates that the applicant's spouse's adult children or other members of her family would be unable or unwilling to help the applicant's spouse manage her healthcare needs or to assist her in caring for her brother.

We also find the record to provide insufficient evidence to establish the extent of the financial hardship that the applicant's spouse would suffer in the applicant's absence. While the record includes documentation of a loan payment, a property tax statement, and monthly telephone and gas bills, these financial obligations do not, by themselves, demonstrate that the applicant's spouse would suffer financial hardship in his absence.

The AAO notes that the record's most recent documentation of the applicant's spouse's income is the Form I-864, Affidavit of Support Under Section 213A of the Act, she filed in 2007. In the Form I-864, the applicant's spouse states that her annual income in 2006 was \$13,500, a total which was slightly above the 2006 federal poverty guideline of \$13,200 for a family of two. In that no evidence in the record demonstrates her income at the time the appeal was filed or establishes that her health prevents her from working, the AAO cannot determine that she would not be able to earn sufficient income to support herself in the applicant's absence. Moreover, although counsel asserts that the applicant would not be able to provide his spouse with financial assistance from Mexico, the record does not support this claim.

The applicant has submitted a U.S. Department of State report that addresses human rights concerns in Mexico and which includes a finding that the minimum wage in Mexico did not provide a living wage for a worker and his or her family in 2009. It also contains a 2009 listing of per capita income in 213 countries, in which Mexico ranks 78th. However, general information about country conditions in Mexico is not sufficient to establish that the applicant would be unable to obtain employment in Mexico that would allow him to provide his spouse with financial assistance. General economic or country conditions in an alien's native country do not establish hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. *See Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996) (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985)). Accordingly, the record does not establish the financial circumstances that would be faced by the applicant's spouse if the waiver application is denied.

The AAO notes the length of the applicant's and his spouse's marriage and does not question their devotion to one another. However, based on the evidence in the record, we cannot find the applicant to have demonstrated that separation would result in hardship for his spouse that is beyond the hardship suffered by other spouses separated as a result of exclusion or removal.

We have also considered counsel's claim that the applicant's daughter, as well as her mother, would experience financial hardship without the applicant and have taken note of the concerns expressed by the applicant's spouse regarding her daughter's ability to grow into a responsible adult in her father's absence. However, as just discussed, the record does not support a finding of financial hardship for the applicant's spouse or family. Further, we find no documentary evidence that demonstrates the applicant's daughter's emotional or moral development would be undermined by the applicant's removal. Therefore, we cannot conclude that the denial of the waiver application would result in

hardship for the applicant's daughter that exceeds the hardship normally created by the removal or exclusion of a family member.

On appeal, counsel states that relocation to Mexico would result in extreme hardship for the applicant's spouse. He contends that the applicant's spouse was born in the United States, has lived her entire life in the United States, has no family ties to Mexico, and would be separated from her adult children from her prior marriage. Counsel also states that the applicant's spouse does not speak Spanish and is unused to conditions in Mexico, where unemployment is extremely high, there are great challenges in social development, and violence is widespread. He further asserts that the applicant's spouse would be unlikely to find employment in Mexico that would allow her to support herself and her daughter, and that without financial resources, she would not have access to adequate healthcare or medication. Counsel states that the applicant's spouse would also experience hardship if she had to leave the physicians who are familiar with her conditions and her health history.

To establish conditions in Mexico, the applicant, as previously discussed, has submitted a printout of the online *2009 Human Rights Report: Mexico*, issued by the U.S. Department of State on March 11, 2010, and a 2009 statistical report on gross national income per capita published by the World Bank, in which Mexico ranks 78th out of 213 countries. The record also contains a January 5, 2009 New York Times article, "Kidnappings in Mexico Send Shivers Across Border," which describes "spiraling criminality" in Mexico.

While the record does not support all of the preceding claims, the AAO notes that the applicant's spouse was born in and has lived her entire life in the United States, that her family members all reside in the United States, that she has no ties to Mexico, and that she is an insulin-dependent diabetic who also suffers from high blood pressure. We also observe that the applicant's spouse does not speak Spanish and acknowledge the impact that her lack of Spanish would have on her ability to obtain employment and healthcare in Mexico. We further note the applicant's concerns about his spouse's safety in Mexico, concerns that are supported by the U.S. Department of State travel warning for Mexico, most recently updated on February 8, 2012. The warning, issued in response to the drug-related violence that has swept across Mexico in recent years, specifically advises U.S. citizens against travel to Jalisco, the Mexican state where the applicant was born and where he and his spouse would likely relocate. When these hardship factors and the difficulties and disruptions normally created by relocation are considered in the aggregate, the AAO finds the applicant to have established that relocation would result in significant hardship for his spouse.

Counsel also contends that the applicant's daughter would suffer extreme hardship if she joins her mother and father in Mexico. He states that she has lived her entire life in the United States and her family ties are to the United States. He further asserts that Mexico would not provide her with the same educational opportunities or the same access to healthcare and that she would not have adequate nutrition. Counsel also maintains that, like her mother, the applicant's daughter would be subject to the violence currently prevalent in Mexico.

In *Matter of Kao & Lin*, 23 I&N Dec. 45 (BIA 2001), the BIA found that a 15-year-old child who was not fluent in Chinese, had spent her formative years in the United States and was integrated into the American lifestyle would experience extreme hardship if she relocated to Taiwan with her parents. While the record does not indicate whether the applicant's daughter speaks Spanish, she, like the child in *Matter of Kao & Lin*, has spent her formative years in the United States and is integrated into the American lifestyle. We also take note of the previously discussed travel warning

for Mexico, which advises U.S. citizens of the dangers of traveling in the State of Jalisco. Therefore, when the specific hardship factors just noted and the general hardships of adjusting to an unfamiliar country are considered in the aggregate, the AAO finds that the applicant has established that relocation to Mexico would result in significant hardship for his daughter.

The AAO, however, can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case. Accordingly, the record does not establish that the applicant is eligible for relief under section 212(h) of the Act. Having found the applicant to be statutorily ineligible for relief, the AAO concludes that no purposes would be served by considering his eligibility for a favorable exercise of discretion.

The record does not establish that the applicant has submitted a properly-filed application for the purposes of seeking a waiver under section 212(g) of the Act or that a qualifying relative would experience extreme hardship as a result of his section 212(a)(2)(B) inadmissibility. The appeal will, therefore, be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(g) and (h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.