The Applicant, a native and citizen of Peru, seeks a waiver of inadmissibility for having committed a crime(s) involving moral turpitude. See Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to that of a lawful permanent resident must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Field Office Director, Hartford, Connecticut, denied the Form I-601. The Director concluded that the Applicant was 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. The Director then determined that the Applicant had not established that he has been rehabilitated nor that denial of admission would result in extreme hardship to a qualifying relative.

In the appeal, the Applicant contends that he is not inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act and, alternately, that he merits a waiver of inadmissibility as the denial of his waiver application will result in extreme hardship for his U.S. citizen son and parents.

Upon de novo review, we will dismiss the appeal.

I. LAW

Section 212(a)(2)(A)(i)(I) of the Act renders inadmissible any foreign national convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.

Section 212(h) of the Act, 8 U.S.C. § 1182(h), provides for a waiver of inadmissibility if the foreign national establishes that the activities creating the inadmissibility occurred more than 15 years in the past; admission would not be contrary to the welfare, safety or security of the United States; and he or she has been rehabilitated; or if refusal of admission would result in extreme hardship to his or her U.S. citizen or lawful permanent resident spouse, parent, son or daughter.
Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship “is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case.” Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists “only in cases of great actual and prospective injury.” Matter of Ngai, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. Id.; see also Matter of Shaughnessy, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was “no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects”). The common consequences of removal or refusal of admission, which include “economic detriment . . . [,] loss of current employment, the inability to maintain one’s standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment,” are insufficient alone to constitute extreme hardship. Matter of Pilch, 21 I&N Dec. 627 (BIA 1996) (citations omitted); but see Matter of Kao and Lin, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing Matter of Pilch 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 the qualifying relatives would relocate). Nevertheless, all “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to an applicant or others can be considered only insofar as it results in hardship to a qualifying relative. Matter of Gonzalez Recinas, 23 I&N Dec. 467, 471 (BIA 2002).

II. ANALYSIS

The issues in this matter are whether the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude and, if so, whether the record establishes his eligibility for a waiver under section 212(h) of the Act.

A. Inadmissibility

On appeal, the Applicant asserts that he is not inadmissible to the United States for having committed a crime involving moral turpitude. He contends that the Director erred in finding him inadmissible to the United States based on his 1985 conviction under New York Penal Law (NYPL) § 120.05, assault in the second degree, as it is “not categorically a crime involving moral turpitude,” but a divisible statute in which not all of the subdivisions punish offenses that constitute crimes involving moral turpitude. The Applicant asserts that as his record of conviction does not identify the subsection of NYPL § 120.05 under which he was convicted, he cannot be found to have been convicted of a crime involving moral turpitude and, therefore, is not inadmissible to the United States.

The Applicant correctly states that a general conviction under NYPL § 120.05, which is comprised of multiple subsections, does not categorically involve moral turpitude. It must, instead, be considered a divisible statute because there is a realistic probability that not all of its subsections punish crimes involving moral turpitude. See Gill v. INS, 420 F.3d 82, 90-91 (2d Cir. 2005) (holding
that NYPL § 120.05(4) is not a crime of moral turpitude because it requires only that the individual act with criminal recklessness instead of specific intent); see also Dickson v. Ashcroft, 346 F.3d 44, 48 (2d Cir. 2003) (defining a “divisible statute” as one that “encompasses diverse classes of criminal acts—some of which would categorically be grounds for removal and others of which would not).

However, we need not engage in divisibility analysis for NYPL § 120.05 generally, as the Applicant’s record of conviction identifies the subsection of NYPL § 120.05 under which he was tried and convicted. The charging document in the Applicant’s criminal case states “[O]n or about ________ 1984, [the Applicant] with intent to cause physical injury to another person, did cause such injury to such person, by means of a dangerous instrument.”

At the time of the Applicant’s 1985 conviction, NYPL § 120.05(2) stated the following:

A person is guilty of assault in the second degree when:

2. With intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument . . . .

Accordingly, the Applicant’s indictment mirrors the elements of NYPL § 120.05(2), indicating that he was charged and convicted under this section.

Therefore, we find the record to establish that in ________ 1985, the Applicant was convicted of assault in the second degree under NYPL § 120.05(2), a Class D felony, for which he was sentenced to 5 years of probation and 2 weekends of “Shock-time,” and required to pay restitution in the amount of $420 and a five percent surcharge of $21, as well as undergo psychiatric and alcohol evaluation and treatment as directed.1

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

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1 The record also reflects that the Applicant was convicted of Driving While Ability Impaired under New York Vehicle & Traffic Law (VTL) § 1192-1 in ________ 1991, and for Driving While Intoxicated (Misdemeanor) under VTL § 1192-3 in ________ 1994, neither of which constitutes a crime involving moral turpitude. “Simple DUI is ordinarily a regulatory offense that involves no culpable mental state requirement, such as intent or knowledge.” Matter of Lopez-Meza, 22 I&N Dec. 1188 (BIA 1999) (referencing Matter of Abreu-Semino, 12 I&N Dec. 775, 777 (BIA 1968)).
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.)

The Board has long held that an individual convicted of assault involving a deadly or dangerous weapon has committed a crime involving moral turpitude. The Board has reasoned that an assault aggravated by the use of a dangerous or deadly weapon is inherently base because it is contrary to accepted standards of morality in a civilized society. See Matter of O, 3 I&N Dec. 193 (BIA 1948). In Matter of Solon, 24 I&N Dec. 239 (BIA 2007), the Board found assault in the third degree in violation of NYPL section 120.00(1) to be a crime involving moral turpitude, as the conviction required both specific intent and physical injury. In that a conviction under NYPL § 120.05(2) also requires a specific intent to harm resulting in physical injury, with the aggravating factor of a dangerous weapon, we find the Applicant's conviction under NYPL § 120.05(2) to be a conviction for a crime involving moral turpitude and that his admission to the United States is, therefore, barred under section 212(a)(2)(i)(I) of the Act.

The record reflects that in 1985 the Applicant also pled guilty to harassment under NYPL § 240.25, a statute redesignated in 1992 as NYPL § 240.26, harassment in the second degree. L. 1992, c. 345.²

Although the record in this case does not indicate which subsection of NYPL § 240.26 was violated by the Applicant, we have previously found that none of the subsections of NYPL § 240.26, although they require an offender to act with intent, results in the meaningful level of harm required for a finding of moral turpitude. Consequently, the Applicant's 1985 conviction for harassment under pre-1992 NYPL § 240.25 is not a conviction for a crime involving moral turpitude.

Nevertheless, the Applicant's admission to the United States remains barred by section 212(a)(2)(A)(i)(I) of the Act based on his conviction for second degree assault in violation of NYPL § 120.05(2).

² In 1994, harassment offenses in the first and second degree were amended to exclude activities regulated by the National Labor Relations Act, as amended; the Railway Labor Act, as amended; and the Federal Employment Labor Management Act, as amended.
A waiver of a section 212(a)(2)(A)(i)(I) inadmissibility may be granted under section 212(h) of the Act if:

(1)(A) [I]t is established to the satisfaction of the Attorney General [Secretary of Homeland Security] that-

(i) [T]he 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 . . . .

The record establishes that the assault committed by the Applicant took place more than 15 years ago and does not indicate that his admission would be contrary to the welfare, safety, or security of the United States. Moreover, we note that the record contains a 2013 statement from the director of the indicating that the Applicant successfully completed the program in 1995, after 9 months of treatment. The record also contains other affirmative evidence that relates to the Applicant's rehabilitation, including statements from his son, his parents, his siblings, and the mother of his son attesting to his character; a 2014 article in the highlighting the Applicant's recovery from addiction; documentation relating to the Applicant's 1991 acknowledgement of paternity for his son, his payment of child support, and his legal efforts to remain a part of his son's life; a home improvement contractor's license, issued to the Applicant on , 2013; letters from two of the Applicant's prior employers, which describe him as a responsible, skilled craftsman; and copies of the Applicant's tax returns for the years 1983 through 2014, establishing his payment of taxes throughout his time in the United States. Accordingly, we find the Applicant to have met the waiver requirements of section 212(h)(1)(A) of the Act. However, for the reasons that follow, we will not favorably exercise our discretion in this matter and sustain the appeal.

In most waiver cases, applicants may establish eligibility for a positive exercise of discretion by showing that the mitigating factors in their cases are not outweighed by the adverse factors. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, however, eligibility for a favorable exercise of discretion cannot be established by the weighing of favorable and adverse factors as assault in the
second degree under NYPL § 120.05(2) is a violent or dangerous crime, requiring the Applicant to meet the regulatory requirements at 8 C.F.R. § 212.7(d).

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.

A favorable exercise of discretion is not warranted for applicants who have been convicted of a violent or dangerous crime, except in extraordinary circumstances. 8 C.F.R. § 212.7(d). The words “violent” and “dangerous” and the phrase “violent or dangerous crimes” are not further defined in the regulation or case law. See 67 Fed. Reg. 78675, 78677-78 (December 26, 2002) (explaining that defining and applying the “violent or dangerous crime” discretionary standard is distinct from determination that a crime is an aggravated felony). Pursuant to our discretionary authority, we understand “violent or dangerous” according to the ordinary meanings of those terms. Black’s Law Dictionary (9th ed. 2009), for example, defines violent as 1) “[o]f, relating to, or characterized by strong physical force,” 2) “[r]esulting from extreme or intense force,” or 3) “[v]ehemently or passionately threatening.” It defines dangerous as “perilous, hazardous, [or] unsafe,” or “likely to cause serious bodily harm.” In determining whether a crime is a violent or dangerous crime for purposes of discretion, we are not limited to a categorical inquiry but may consider both the statutory elements and the nature of the actual offense. See Torres-Valdivias v. Lynch, 786 F. 3d 1147, 1152 (9th Cir. 2015); Waldron v. Holder, 688 F.3d 354, 359 (8th Cir. 2012).

Although assault offenses are not necessarily violent or dangerous crimes, the offense of which the Applicant was convicted involved the use of a dangerous weapon and resulted in physical harm to another individual. Thus, the Applicant has been convicted of a violent and dangerous crime.

We must now consider whether extraordinary circumstances exist in the Applicant’s case. 8 C.F.R. § 212.7(d), which codified for purposes of section 212(h)(2) of the Act the discretionary standard first applied to section 209(c) waivers by the Attorney General in Matter of Jean, 23 I&N Dec. 373 (A.G. 2002), limits the favorable exercise of discretion with respect to those inadmissible under section 212(a)(2) of the Act on account of a violent or dangerous crime, except in extraordinary
circumstances, such as those involving national security or foreign policy considerations, or cases in which denial of the application would result in exceptional and extremely unusual hardship.

No evidence in the record demonstrates that there are national security or foreign policy issues, or any other extraordinary circumstances that the regulation indicates could warrant a favorable exercise of discretion. Therefore, we will consider the extent to which the record establishes that the denial of the waiver application would result in exceptional and extremely unusual hardship to a qualifying relative.

In Matter of Monreal-Aguinaga, 23 I&N Dec. 56, 62 (BIA 2001), the Board determined that exceptional and extremely unusual hardship “must be ‘substantially’ beyond the ordinary hardship that would be expected when a close family member leaves this country.” The Board stated that in assessing exceptional and extremely unusual hardship, the hardship factors used in determining extreme hardship should be considered and all hardship factors should be considered in the aggregate. Id. at 63-64.

Accordingly, we will first consider the Applicant’s waiver application under the extreme hardship requirement of section 212(h)(1)(B) of the Act, and the extent to which the evidence of hardship submitted by the Applicant meets this standard. Should the record demonstrate that the Applicant’s inadmissibility will result in extreme hardship to a qualifying relative, we will proceed with a consideration of whether this hardship also meets the heightened standard imposed on the Applicant by 8 C.F.R. § 212.7(d).

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 U.S. citizen son and parents. Hardship to the Applicant or other family members will be considered only insofar as it results in hardship to one of the qualifying relatives.

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, 22 I&N Dec. 560, 565 (BIA 1999), the Board identified factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

However, although hardships may not be extreme when considered abstractly or individually, the BIA has also made it clear that "[r]elative 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 the applicant was not extreme hardship due to conflicting evidence in the record and because the 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, the Applicant asserts that all three of his qualifying relatives will suffer extreme hardship if he is denied admission to the United States, whether they return with him to Peru or remain in the United States.

The Applicant contends that to relocate with him to Peru, his 25-year-old son who served a 20-month prison term on drug charges would have to violate his probation. He further maintains that, even if that were not the case, relocation would still result in extreme hardship for his son as he has
never been to Peru and cannot read or write Spanish. The Applicant also states that relocation would result in extreme hardship for his elderly parents as his father suffers from two types of cancer and his mother is also not well, and that they would not be able to afford the medical care they need in Peru, even if it were available. The Applicant also asserts that relocation would result in significant emotional hardship for his parents, as they would be separated from their other children and grandchildren, all of whom live in the United States.

Although we acknowledge the Applicant’s claims regarding the hardships his qualifying relatives would experience if they relocated to Peru, we do not, for the reasons that follow, find the record to support them.

A printout of a Criminal/Motor Vehicle Conviction Case Detail reflects that the Applicant’s son pled guilty in 2012 to violating Connecticut Statutes § 21a-277(a), felony possession of narcotics and hallucinogens with intent to sell. He was sentenced to 8 years in jail, with execution suspended after 2 years, and placed on probation for 3 years. However, the record also indicates that the Applicant’s son was released from prison in 2013. There is no indication that the Applicant’s son has not served his 3 years of probation since his release in 2013. Moreover, although the Applicant contends that the fact that his son has never been in Peru and does not read or write Spanish would result in extreme hardship, he does not specifically identify what types of hardship would result from his son’s unfamiliarity with Peru and his inability to read and write in Spanish. The Applicant’s son is currently working as a mason and no evidence has been submitted to demonstrate that he would not be able to use his existing skills to obtain employment in Peru.

Additionally, we do not find the record to support the Applicant’s claims that his elderly parents would not be able to obtain or afford whatever health care they may require in Peru. The Applicant has submitted no evidence documenting their medical conditions or the treatment they are currently receiving. Neither has he provided any country conditions information establishing the extent to which medical care for their conditions is available in Peru. The Applicant in this matter cannot meet his burden of proof in this matter simply by claiming a fact to be true. See Matter of Soffici, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg’l Comm’r 1972)); see also Matter of Chawathe, 25 I&N Dec. 369 (AAO 2010). He must support his assertions with relevant, probative, and credible evidence. Chawathe, at 369. Finally, while we acknowledge the emotional hardship created when families are separated, the record contains no statements from either of the Applicant’s parents or from the medical professionals treating them as to the specific impacts of separation on their emotional or physical health upon relocation.

In the absence of the types of evidence just noted, we cannot assess the extent of the hardship that would be faced by the Applicant’s son or parents if they were to move to Peru as a result of his inadmissibility. Accordingly, the record does not establish that the Applicant’s son or parents would experience extreme hardship if they relocated to Peru.
The Applicant also claims that his qualifying relatives would experience extreme hardship if his admission is denied and they remain in the United States.

The Applicant states that he must remain in the United States to support his son who is still struggling following his drug-related conviction and needs his help. The Applicant asserts that if he is removed from the United States, his son will experience extreme emotional and financial hardship. With regard to his parents, the Applicant asserts that he is his parents’ primary caregiver, as his sisters and brother are busy with their own families. He also contends that his parents do not read or speak English very well and that he handles most of their bills and paperwork and reads their mail. The Applicant reports that he checks in on them every 2 to 3 days. The Applicant claims that if he is removed, his parents will suffer emotional and financial hardship.

In support of these claims, the record contains an October 2015 declaration from the Applicant’s son who states that if the Applicant is removed, he will not have anyone to depend on or to support him. He maintains that he does not know where he would be without the Applicant, and that while he resides with his mother, he still depends on the Applicant and that the Applicant has stuck with him through his financial and emotional struggles.

Although we do not doubt the strong bond between the Applicant and his son, or the supportive role that the Applicant has played in his son’s life, we do not find the record to establish that, as claimed by the Applicant’s son, he would have no one to depend on or to support him if the Applicant were to be removed. In his statement, the Applicant’s son reports that he is living with his mother and no evidence has been submitted to demonstrate that she is unable or unwilling to support him emotionally and financially in the Applicant’s absence. Moreover, no evidence establishes the financial circumstances of the Applicant’s son or indicates that he continues to require his father’s financial assistance. In his October 2015, declaration, the Applicant’s son indicates that he is working as a mason for a landscaping company.

The record also contains an October 2015 letter from the Applicant’s parents who state that he is very involved in their lives, comes to their house at least twice a week, and takes care of them, including taking them grocery shopping and to their doctors’ appointments. Letters from the Applicant’s sisters, dated October 2015 and an October 2015 statement from his brother also identify the Applicant as the primary caretaker for their parents, assisting them with bill payments and doctors’ appointments.

However, the record, as previously discussed, contains no documentation establishing the medical conditions from which the Applicant’s parents suffer or that they require assistance in their daily lives. Neither does the record demonstrate that the Applicant’s siblings, one of whom lives in Connecticut, and another in Connecticut, are unwilling or unable to assist their parents in the Applicant’s absence or to pay for such assistance. We also note that, although the Applicant claims his parents will suffer financial hardship in his absence, no evidence has been submitted to establish that the Applicant’s parents are dependent on him financially.
Therefore, based on the evidence of record, we cannot conclude that any of the Applicant’s qualifying relatives will experience extreme hardship if the Applicant is returned to Peru and they remain in the United States.

As the evidence of record does not demonstrate that the Applicant’s son or parents would experience extreme hardship if the waiver application is denied, we also find that it does not satisfy the heightened standard of exceptional and extremely unusual hardship imposed on the Applicant by the regulation at 8 C.F.R. § 212.7(d). Accordingly, he has not demonstrated eligibility for a waiver under section 212(h) of the Act.

III. CONCLUSION

The record reflects that the Applicant has been convicted of a crime involving moral turpitude that bars his admission to the United States under section 212(a)(2)(A)(i)(I) of the Act. Additionally, we have found his offense to be a violent or dangerous crime, which requires him to establish exceptional or extremely unusual hardship to a qualifying relative for a favorable exercise of discretion. 8 C.F.R. § 212.7(d). However, our review of the record has found the Applicant has not demonstrated that his waiver denial would rise to the heightened standard of exceptional and extremely unusual hardship. Accordingly, the Applicant has not established that he is eligible for a waiver under section 212(h) of the Act.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. See section 291 of the Act, 8 U.S.C. § 1361. Here, the Applicant has not met that burden. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as Matter of J-L-R-M-, ID# 47081 (AAO Feb. 1, 2017)