

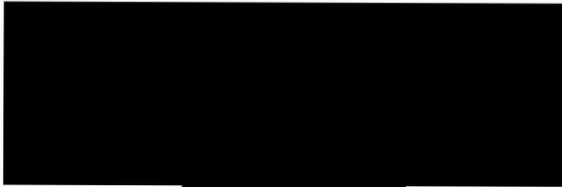
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H₂

FILE:

Office: LONDON, ENGLAND

Date:

JUL 24 2009

IN RE:



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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, London, England. The matter is now before the Administrative Appeals Office (AAO) on appeal.

The record reflects that the applicant is a native and citizen of the United Kingdom 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 a crime involving moral turpitude, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States or obtain an immigration benefit by fraud or willful misrepresentation of a material fact. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated May 29, 2008.

On appeal, counsel contends that the field office director erred in failing to address counsel's assertion that the applicant's 1971 conviction was not a crime involving moral turpitude and therefore, the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Counsel further contends that even if the applicant did commit a crime involving moral turpitude, because the conviction occurred over fifteen years ago, the field office director should have evaluated the waiver application under section 212(h)(1)(A) of the Act instead of for extreme hardship under section 212(h)(1)(B) of the Act. In addition, counsel contends the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act as his failure to list his conviction on his visa application was neither material nor willful or intentional. Counsel alternatively argues that the applicant's wife would suffer extreme hardship if the applicant's waiver application were denied.

The record contains, *inter alia*: documentation indicating the applicant was convicted in 1971 of assault occasioning actual bodily harm; a copy of the Permanent Resident Card of the applicant's wife, [REDACTED] indicating she became a resident in September 2007; a copy of a contract to purchase land in Culpeper, Virginia, dated July 19, 2005, and a copy of the deed; numerous letters of support, including a letter from a law enforcement officer, a retired U.S. Secret Service Supervisor who "selected and vetted" the applicant and his wife for a special visit to the West Wing of the White House, and a letter from a Deputy Assistant Director of the U.S. Secret Service; copies of printouts addressing the crime of assault occasioning actual bodily harm, the U.K.'s Rehabilitation of Offenders Act 1974, and the U.K.'s Firearms Act 1968; a copy of the applicant's Shot Gun Certificate; and copies of e-mails and letters from counsel to members of Congress and Secretary Napolitano.

Section 212(a)(2)(A) of the Act 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.

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

(h) The Attorney General [now, Secretary, Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General 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.

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

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional

conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

In the recently decided *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question 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.” *Id.* 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.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. *Id.* at 699-704, 708-709. However, this “does not mean that the parties would be free to present ‘any and all evidence bearing on an alien’s conduct leading to the conviction.’ The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703 (internal citation omitted). Finally, in all such inquiries, the burden is on the alien to establish “clearly and beyond doubt” that he is “not inadmissible.” *Id.* at 709 (citing *Kirong v. Mukasey*, 529 F.3d 800 (8th Cir. 2008)).

In the instant case, the record shows that on May 13, 1971, the applicant was convicted of “assault occasioning actual bodily harm” in violation of section 47 of the Offenses Against The Person Act 1861 in the Crown Court in England, and sentenced to six months imprisonment. Assault occasioning actual bodily harm under section 47 of the Offenses Against The Person Act 1861 includes any assault that results in “any hurt or injury calculated to interfere with the health or

comfort of the [victim]. Such hurt or injury need not be permanent, but must, no doubt, be more than merely transient and trifling.”¹ *Rex v. Donovan*, 2 K.B. 498, 509 (1934).

In accordance with *Silva-Trevino*, the AAO must determine if an actual case exists in which the criminal statute under which the applicant was convicted did not involve moral turpitude. The AAO is unaware of such a case. Nevertheless, in accordance with the language of *Silva-Trevino*, the AAO will review the record as part of its categorical inquiry to determine if the statute was applied to conduct not involving moral turpitude in the applicant’s own criminal case. The AAO must therefore review the entire record, including the record of conviction and, if necessary, other relevant evidence, to determine if the applicant’s conviction involved moral turpitude. The AAO notes that the record does not contain conviction documents and, therefore, on May 7, 2009, the AAO sent a Request for Evidence requesting additional evidence in order to accurately determine whether the applicant’s conviction was based on conduct involving moral turpitude. The AAO gave the applicant “an opportunity to submit further evidence addressing whether or not the conduct for which the applicant was convicted involved moral turpitude, including a sworn statement from the applicant detailing the circumstances of the assault, whether a weapon was used, the resulting injuries sustained, and whether or not the applicant was arrested for the crime.” *Request for Evidence*, dated May 7, 2009. The applicant’s response to the Request for Evidence did not contain a sworn statement from the applicant as requested. Rather, the applicant’s response included a lengthy response from counsel, copies of e-mails from individuals who do not have personal knowledge of the circumstances surrounding the assault, a copy of an internet printout, and a copy of a letter to U.S. Department of Homeland Security Secretary, Janet Napolitano. As stated in the Request for Evidence, “submission of only some of the requested evidence will be considered a request for a decision based on the record.” *Id.* (citing 8 C.F.R. § 103.2(b)(11)).

The record contains an undated “Personal Affidavit” from the applicant. According to the applicant, he “came to the aid of a friend who was being accosted by a male [and t]he perpetrator pressed charges with regards to [the applicant’s] intervention.” *Personal Affidavit of* [REDACTED] undated. The applicant claims the perpetrator was charged by the police for causing bodily harm and “was known to both the police and the legal community.” *Id.* The applicant states he “appeared before the Crown Court and had a jury trial in anticipation of having the charges dismissed[, but u]nfortunately, this did not occur.” The applicant further states that the “entire situation was unfortunate” and that he “deeply regret[s] that it ever happened.” *Id.*

¹ Section 47 of the Offences Against The Person Act 1861 states:

47. Assault occasioning bodily harm. Common assault.

Whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm shall be liable . . . to be kept in penal servitude

Based on the record evidence, the AAO finds that the applicant has not met his burden in showing “clearly and beyond doubt” that he is not inadmissible. *Matter of Silva-Trevino*, 24 I&N Dec. at 709.

The AAO notes that to the extent counsel asserts that the applicant “us[ed] only his fists and no weapon . . . expend[ing] only enough energy to free his friend from that attack,” and “presented no behavior to show that his conduct was debased in character, depraved, perverted, wicked, or evil,” *Letter from [REDACTED]* at 2, 4, dated June 22, 2009, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, counsel’s contention that “in [REDACTED] professional and expert opinion as an officer of the court for over 30 years[,] . . . had the full circumstances been put before the Crown Court, the case would have been discharged with a Not Guilty verdict,” *Letter from [REDACTED]* at 3, *supra*, is irrelevant. Similarly, whether or not Worcestershire is a “conservative jurisdiction [which] imposes more severe sentences than neighboring courts,” *id.*, is also irrelevant. As clearly stated in *Silva-Trevino* and quoted in the Request for Evidence, “[t]he sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Matter of Silva-Trevino*, 24 I&N Dec. at 703. In any event, according to the applicant’s own statement, he “appeared before the Crown Court and had a jury trial.” *Personal Affidavit of [REDACTED]* *supra*.

Therefore, the AAO finds that the applicant is inadmissible under 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.

Although counsel is correct in asserting that the applicant is eligible for consideration of a waiver under section 212(h)(1)(A) of the Act because the activities which render him inadmissible occurred more than 15 years ago, as explained below, the AAO finds that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for

permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien.

The record shows that the applicant submitted a visa application at the American Embassy in London, England. He stated on his application that he intended on staying in the United States for “two weeks” and indicated that he did not intend to work in the United States. *Nonimmigrant Visa Application*, signed by the applicant on April 2, 2002. Most significantly, the applicant responded “no” to the question, “Have you ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty or other similar legal action?” The applicant contends that he “fully and honestly believed that [his] 1971 conviction no longer had to be disclosed in any circumstances as [he] no longer was deemed to have been convicted. Since 1981, it was [the applicant’s] honest belief that [he] had a fresh and new beginning to [his] life, without any convictions.” *Personal Affidavit of [REDACTED] supra*. The applicant’s wife contends that “[i]t was a genuine misunderstanding.” *Affidavit of [REDACTED] undated*. However, counsel contends that “prior to completing the subject I-94 on June 12, 2001 and again on November 3, 2001, [the applicant] specifically asked his Barrister whether he needed to admit that he had ever been arrested and charged with a crime . . . [and t]he Barrister gave an unequivocal ‘no’ . . .” *Letter from [REDACTED] at 5, supra*. Notably, neither the applicant nor his wife mentioned discussing the applicant’s prior conviction with counsel, but rather, the applicant’s affidavit suggests that since 1981, he believed he had no convictions. Despite this apparent discrepancy, in any event, any foreign expungement, pardon, or, as counsel describes, “spent” conviction, remains a conviction for immigration purposes. “[F]oreign amnesties, like foreign pardons, do not obliterate a foreign conviction or remove, the disabilities which result from such a ‘conviction’ for purposes of the Act.” *Marino v. INS*, 537 F.2d 686, 691 (2nd Cir. 1976) (citations omitted) (“For purposes of U.S. immigration laws, a foreign pardon, in itself, does not wipe out an alien’s foreign conviction or relieve him from the disabilities which flow therefrom.”); *see also Mercer v. Lence*, 96 F.2d 122 124-25 (10th Cir. 1938) (upholding deportation despite a foreign pardon from Canada); *United States ex rel. Palermo v. Smith*, 17 F.2d 534, 535 (2nd Cir. 1927) (“It may well be that Congress took into consideration the difficulty of obtaining accurate information of those who were pardoned by a foreign government.”).

Furthermore, counsel’s assertion that the applicant’s conviction was not material as it did not shut off a line of inquiry, is unpersuasive as it relies on counsel’s contention that the applicant’s conviction is not a crime involving moral turpitude. *Appeal to the Administrative Appeals Office at 8-10*, dated July 11, 2008. As explained above, the AAO concludes that the applicant’s conviction is a crime involving moral turpitude.

Next, counsel’s contention that the applicant did not knowingly or intentionally make a false statement, *Appeal to the Administrative Appeals Office at 10-11, supra*, is also unpersuasive. The visa application question clearly asked whether the applicant had “ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty or other similar legal action?”

Nonimmigrant Visa Application, supra. [emphasis added] In this case, the record shows that the applicant had been convicted after a jury trial and that he was incarcerated for four months as a result of his conviction. In addition, the applicant's claim that he believed since 1981 that he had a "new beginning to [his] life, without any convictions," *Personal Affidavit of [REDACTED] supra*, is contradicted by counsel's assertion that the applicant specifically sought legal advice regarding whether or not he needed to disclose his prior conviction. *Letter from [REDACTED] at 5, supra.* Moreover, it is unclear how *Kirong v. Mukasey*, 529 F.3d 800 (8th Cir. 2008), supports the proposition that the applicant did not intentionally, materially, or willfully misrepresent the truth. *Letter from [REDACTED] at 5, supra.* In *Kirong*, the Eighth Circuit Court of Appeals upheld the Board of Immigration Appeals' decision concluding that the applicant did not prove clearly and beyond doubt that he was admissible. *Kirong*, 529 F.3d at 805. In that case, the applicant checked the box on a Form I-9 that he was a "citizen or national of the United States" when, in fact, he was not. *Id.* at 801. The Court rejected the applicant's contention that he checked the box for employment purposes only, that he purportedly "did not know what a national was," and that "he did not mean to claim anything by that action." *Id.* at 804-05. The Court agreed with the Board of Immigration Appeals that "the evidence in this case, at best, is equivocal as to whether his attestation involved a claim of citizenship or nationality," and held that the applicant failed to satisfy his burden of proving clearly and beyond doubt that he was admissible. *Id.* at 805. Likewise, in the instant case, the applicant's contention that he thought he had no convictions is, at best, equivocal, and does not satisfy his burden of showing clearly and beyond doubt that he is not inadmissible.

Therefore, the AAO finds that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to enter the United States through willful misrepresentation of a material fact.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. *See* Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These 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.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

In this case, the applicant's wife, [REDACTED], states that the applicant is her only living relative in the United Kingdom. She states that she and her husband have been together for thirty years, and married for eighteen years. She states that during their thirty years together, they have only been apart for a minimal amount of time. [REDACTED] contends she cannot manage without him. She explains that her job as a funeral director is "stressful and emotionally charged," and that she needs her husband's "constant presence of normalcy and support during the trying times at work." [REDACTED] contends that without her husband, "[she] would feel lost." In addition, [REDACTED] states that if she were to remain in the United States without her husband, she would suffer extreme hardship because she would be unable to sustain two households in the United Kingdom and the United States. She states that they took out a mortgage on their home in the United Kingdom of approximately \$357,000 in order to build their dream house in Culpeper, Virginia, for which they have already paid a builder \$764,000. She further states that the couple has also paid a down payment of \$1,000 for ten acres of land next to their Culpeper property. She states that although her husband "works as a builder occasionally, he is officially retired," and, therefore, she is the primary income earner. She claims she would be unable to maintain both the house in Culpeper and in the United Kingdom. She states that even if the couple sold the Culpeper house, she would nonetheless need to maintain a household in the U.S. and that "maintaining two households on two different continents . . . would cause extreme hardship." Moreover, [REDACTED] contends her professional career would suffer extreme hardship if she remained in the United Kingdom with her husband. [REDACTED] claims she "was due to meet with the sheriff of Culpeper, . . . would [need to] halt [her] progress in working with Disaster Mortuary Operations Response Team, . . . [and] was invited . . . to discuss projected job prospects." Furthermore, [REDACTED] contends that her colleagues at FEMA would be negatively affected if she did not come to the United States and that "the U.S. itself [would] suffer extreme hardship . . . at not being able to fully benefit from [her] extensive experience concerning mass fatalities." [REDACTED] also contends that her health is suffering as she has a "skeletal misalignment on the base of [her] spine due to the lifting of deceased persons over the years." She states that this condition is kept under control as a result of regular treatment by a chiropractor; however, she states that the stress of her husband's immigration status has "not only caused physical problems in [her] lower back, but [her] general health and well-being is suffering greatly." She contends she has visited her physician regarding her rising levels of anxiety as well as problems with insomnia and muscle tension. [REDACTED] states that her doctor ordered a two-week absence from work because of her declining health and rising level of stress. *Affidavit of [REDACTED] supra.*

A letter from [REDACTED] doctor in the record states that [REDACTED] "is developing anxiety and stress symptoms, which are having an effect on her health." [REDACTED] doctor states that her sleep is affected, "giving her initial insomnia and early morning wakening and muscle tension and overeating symptoms." The doctor further states that [REDACTED] "is not clinically depressed," but that suffering these symptoms long-term "would be detrimental to her health." *Letter from [REDACTED] dated September 21, 2007.*

A letter from [REDACTED] chiropractor states that, "[r]ecently . . . a marked difference in muscular tension and subsequently skeletal misalignment has been noted with no apparent physical cause only

recent stress levels changes [sic].” The letter states that weekly chiropractic treatments are necessary. Letter from [REDACTED] dated August 21, 2007.

Upon a complete review of the record evidence, the AAO finds that there is insufficient evidence to show that the applicant’s wife will experience extreme hardship if the applicant’s waiver application were denied.

The AAO recognizes that [REDACTED] will endure hardship as a result of the denial of her husband’s waiver application and is sympathetic to the couple’s circumstances. However, if [REDACTED] decides to live in the United States without her husband, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. See also *Perez v. INS, supra* (holding that the common results of deportation are insufficient to prove extreme hardship); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported).

Regarding [REDACTED] claim that she would suffer extreme financial hardship in maintaining two households on two different continents, there is insufficient evidence in the record to support her claim. There are no tax or financial documents in the record, and no evidence from employers verifying either the applicant’s or [REDACTED] previous or current employment or wages. Instead of financial hardship, the record suggests the applicant and [REDACTED] have significant assets and are building their dream house on more than ten acres of land, property the couple purchased more three years after the applicant’s visa application was denied. *Affidavit of [REDACTED] supra*; Letter of [REDACTED] dated October 8, 2007 (describing the couple’s house in Culpeper as “a beautiful South Carolina style colonial on 20 plus acres of land in Culpeper with a great fishing pond on it.”). As such, the couple bought the property in Virginia with knowledge that the applicant may not be permitted to enter the United States. As the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. See also *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

In addition, if [REDACTED] remains in the United Kingdom with her husband to avoid the hardship of separation, there is insufficient evidence in the record to show that the level of hardship rises to the level of extreme hardship. Although [REDACTED] claims she will suffer extreme hardship to her professional career, significantly, she does not contend she could not continue working in the United Kingdom, where she has worked for the past thirty years. Although the record contains ample evidence of her expertise as a funeral director and experience working on mass casualties, [REDACTED] does not address why she must work in the United States. To the extent [REDACTED] contends the United

States itself would suffer extreme hardship by not benefiting from her expertise, the statute considers only hardship to the applicant's lawful permanent resident or U.S. citizen spouse or parent. *See* section 212(i) of the Act, 8 U.S.C. § 1182(i).

Finally, to the extent the record contains letters from health care professionals documenting anxiety, insomnia, muscle tension, overeating symptoms, and weekly chiropractic treatments, the evidence does not show these symptoms rise to the level of extreme hardship. The letter from [REDACTED] physician does not discuss the severity or prognosis for [REDACTED] conditions, nor does it discuss the need for any treatment or medication. *Letter from [REDACTED] supra*. Furthermore, the letter in no way indicates that [REDACTED] requires any assistance of any kind. *Id.* Indeed, the doctor's letter states that [REDACTED] is *not* clinically depressed and merely asks that the applicant's waiver application "be speeded up so they can be together as this is obviously a far healthier scenario for both of them." *Id.*; *see also Affidavit of [REDACTED] supra* ([REDACTED] has noted that my insomnia, muscle tension, and anxiety *could* be detrimental to my health.") (emphasis added). Similarly, the letter from [REDACTED] chiropractor states that [REDACTED] needs weekly treatments, but does not discuss the severity or prognosis of [REDACTED] skeletal misalignment, nor does it indicate that [REDACTED] requires any assistance of any kind. *Letter from [REDACTED]*, dated August 21, 2007. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition, or the treatment and assistance needed.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.