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



U.S. Citizenship  
and Immigration  
Services

H<sub>2</sub>

FILE:

Office: MIAMI, FL (OAKLAND PARK) Date: DEC 20 2010

IN RE:

Applicant:

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

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 by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Poland who was found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. We note, however, that review of the record indicates that the director erred in citing that ground of inadmissibility as it is clear that the director's finding was based on the applicant's criminal convictions for third degree grand theft (2 counts), owning/operating/conducting a chop shop, and possession/selling of a motor vehicle with altered vehicle identification number (3 counts). Thus, the appropriate ground of inadmissibility is 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 committing crimes involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).<sup>1</sup> The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the submitted documentation demonstrates extreme hardship to the applicant's 63-year-old lawful permanent resident father, 61-year-old U.S. citizen mother, and U.S. citizen spouse and six-year-old son if the waiver application is denied. Counsel maintains that the director failed to properly weigh and consider collectively the hardship factors. Counsel states that the applicant's father has serious health problems, speaks only Polish, and is financially dependent on the applicant as his employer. Counsel indicates that the applicant's father performs light duty work for his son, and that it is unlikely that the applicant's father would find employment in Poland. Counsel declares that the applicant's mother is not educated and would not be employable in Poland. He states that the applicant's father and mother would suffer the stress of losing their son, grandson, and daughter-in-law if the waiver is denied, and would be financially destitute. According to counsel, the applicant's wife experienced trauma in her life and the psychological evaluation by [REDACTED] indicates that separation from her husband may render her "permanently and irrevocably damaged emotionally." He contends that the applicant's wife would face financial ruin without the applicant's income. Counsel avers that the applicant's wife was diagnosed with two nodules in her lung that have been classified as "suspicious." He indicates that the applicant's wife has degenerative disease in her back disks and is in constant pain. Counsel avers that the applicant's son has a pre-asthmatic condition, does not speak Polish, and that uprooting him from his environment to relocate to Poland would have significant negative emotional and medical consequences. Lastly, counsel contends that it is unrealistic that the applicant's mother could provide adequate emotional and financial support to his father, son, and wife. Further, he maintains that the director is mistaken in finding that Medicare will pay the applicant's father's medical bills, as it covers only 80 percent.

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<sup>1</sup> In the denial letter the director incorrectly states that the waiver is sought pursuant to section 212(i) of the Act, which relates to inadmissibility for fraud or willful misrepresentation under section 212(a)(6)(C)(i) of the Act.

Counsel cites previous AAO decisions to support his contention that the appeal in the instant case should be sustained and the waiver application approved.

We will first address the finding of inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of committing crimes involving moral turpitude. Section 212(a)(2)(A) of the Act states, in pertinent parts:

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

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

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

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

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General 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.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

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. 24 I&N Dec. 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. (citation omitted). 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.

On May 7, 1996, in Florida, the applicant was arrested for and charged with grand theft auto over \$20,000 (2 counts), operating a chop shop, and possession/sell motor vehicle with altered vehicle identification number (3 counts). The applicant pled guilty to third degree grand theft (2 counts), own/operate/conduct chop shop, and possession/sell motor vehicle with altered vehicle identification number (3 counts). He was sentenced to six months community control followed by four years probation with special conditions.

Fl. Stat. § 812.014(2)(c) provides, in pertinent parts:

(1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

(2) . . .

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

(1) Valued at \$300 or more, but less than \$5,000. . . .

In the instant case, the Florida statute under which the applicant was convicted involves both temporary and permanent takings. A plain reading of Fl. Stat. § 812.014 shows that it can be violated by knowingly obtaining or using the property of another with intent to, either temporarily or permanently, deprive an individual of his or her property or appropriate the property to his or her own use. The Board has determined that to constitute a crime involving moral turpitude, a theft offense must require “an intention to intention to permanently deprive the owner of his property.”

*See In re Jurado-Delgado*, 24 I&N Dec. 29, 33 (BIA 2006). Therefore, the AAO cannot find that a violation of Fl. Stat. § 812.014 is categorically a crime involving moral turpitude.

Since the full range of conduct proscribed by the statute at hand does not constitute a crime involving moral turpitude, we will apply the modified categorical approach and engage in a second-stage inquiry by reviewing the record of conviction to determine if the conviction was based on conduct involving moral turpitude. *Silva-Trevino* 24 I&N Dec. 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.

The probable cause affidavit states that inside the applicant's place of business were two stolen vehicles which had their original vehicle identification (VIN) numbers removed, and a salvage with its original VIN missing. The affidavit indicates that all the vehicles were in the process of being stripped and having their true identification numbers removed and changed. Lastly, the affidavit conveys that the applicant was determined to be the owner and leasee of the business, that he had been documented purchasing the salvage vehicle missing the VIN, and that his actions did intentionally deprive the victim of use and possession of the said vehicles.

We find that in view of the circumstances surrounding the applicant's theft crimes, as described in the probable cause affidavit, there appears to be no question but that his theft of the vehicles and salvage had been committed with the intent of a permanent taking, which renders the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Since the applicant's theft offenses involve moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, we need not make a determination as to whether his own/operate/conduct chop shop, and possession/sell motor vehicle with altered vehicle identification number convictions involve moral turpitude.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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 section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives here are the applicant's U.S. citizen spouse and son

and his parents. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios are possible should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action to be taken is difficult, and it is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. Cf. *Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of 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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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 Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

We observe that 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., In re 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).

In rendering this decision, the AAO will consider all of the evidence in the record including birth certificates, income tax returns, the psychological evaluation, medical records, the newspaper article about Poland, letters, photographs, affidavits, and other documentation.

With regard to remaining in the United States without the applicant, [REDACTED] indicates in the letter dated February 5, 2009, that the applicant’s father had a heart attack in 1982, which eventually required him to undergo triple bypass surgery in 1994, and had his left kidney removed in 2003 due to kidney cancer. He conveys that the applicant’s father has chronic renal insufficiency and severe multi-level disk degeneration and arthritis, which prevents heavy lifting. He states that his cardiac condition limits his ability to engage in strenuous activity, and that his condition requires close monitoring. He states that the applicant employs his father. We note that [REDACTED] conveys in her psychological evaluation that the applicant’s parents are emotionally and financially dependent upon the applicant. [REDACTED] states that the applicant employs his parents to perform light duty work, and assists in repairing their home and interpreting their legal documents. [REDACTED] indicates that the applicant’s parents have a poor command of the English language. [REDACTED] notes that the applicant’s sister lives in West Palm Beach, Florida, with her husband and three children, and that the applicant’s parents and sister have been in the United States in 1993. We note that [REDACTED] states that the applicant’s wife’s 23-year-old daughter from a former marriage lives with a boyfriend. [REDACTED] indicates that the applicant has a close relationship with his wife and son, and that he earns 75 percent of his household’s income. She conveys that the applicant’s wife states that she endured child abuse from her mother, that she was sexually abused when she was 7 years old by an 18-year-old man, and that she was physically and sexually abused by a prior spouse. [REDACTED] maintains that the applicant’s wife states that she is very happy in her relationship with the applicant. In the letter dated September 30, 2009, [REDACTED] conveys that deportation of the

applicant would cause abandonment issues for the applicant's son and would jeopardize the psychological stability of his wife. Further, she indicates that the applicant's father's medical conditions could be exacerbated by stress.

Family separation has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the type of familial relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; see also *U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“[redacted] was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and otherwise establish a life together, such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of familial relationship involved, the hardship resulting from family separation is based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O*, 21 I&N Dec. at 383. Indeed, the specific facts of a case may dictate that even the separation of a spouse and children from an applicant does not constitute extreme hardship. In *Matter of Ngai*, for instance, the Board did not find extreme hardship because the claims of hardship conflicted with evidence in the record and because the applicant and his spouse had been voluntarily separated from one another for 28 years. 19 I&N Dec. at 247. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The stated hardship factor in the instant case, which has been supported by the evidence in the record, is that of the emotional impact to the applicant's wife and child if they remain in the United States without the applicant. In view of the substantial weight that is given to this type of family

separation in the hardship analysis, and in light of the significant influence that the record establishes that separation from the applicant will have on the applicant's wife and child, we find the applicant has demonstrated the hardship his wife and child will experience as a result of separation is extreme.

As an aside, we note that the record has not demonstrated that the applicant's parents would experience extreme financial and emotional hardship if they remain in the United States without their son. Current documentation of the applicant's parent's earnings are the income tax records for 2008, which reflect \$2,160 from [REDACTED] which is the company owned by the applicant. Their 2008 income tax records show that they had \$15,851 in business income, that they own rental real estate, and that the applicant's father operated a construction company that had \$27,941 in gross receipts. In the absence of documentation of all of the expenses of the applicant's parents, we cannot conclude that the applicant's parents will be unable to pay their expenses without the \$2,160 in wages from their son's company. Further, we note that income tax records for 2000 reveal that the applicant's father and mother previously owned a motel. Lastly, while we recognize that the applicant's parents will endure emotional hardship as a result of separation from their son, grandchild, and daughter-in-law, the record reflects that the applicant is an adult with his own family. Even though family separation has been found to be an extreme hardship in certain situations, we find that the type of emotional hardship in the instant case, that of the separation of a parent from an adult son and his family members, is distinguishable from the emotional hardship that often characterizes extreme hardship, which is the separation of parents from minor children who are more financially and emotionally dependent upon a parent. In consideration of the hardship factors combined, the financial and emotional hardship of the applicant's parents, and the lack of evidence demonstrating financial hardship, we cannot find that when all of the hardship factors are combined they establish extreme hardship to the applicant's parents.

With regard to joining the applicant to live in Poland, [REDACTED] asserts in the letter dated September 30, 2009, that the applicant's wife would experience exceptional hardship if she relocated to Poland because of the past trauma that she experienced there. Further, [REDACTED] indicates that the applicant's spouse would be separated from her daughter from a prior relationship. Counsel contends that the applicant's son has a pre-asthmatic condition, does not speak Polish, and that uprooting him from his environment to live in Poland would impact him emotionally and medically. Counsel submits a news article to show that Poland's economy has fallen 48 percent against the euro.

The asserted hardship factors in the instant case are having to live in the country where the applicant's spouse experienced past trauma, separation from a daughter, the health problem of the applicant's son and his living in a foreign country where he does not speak the language, and the deflation of Poland's economy. We note that the applicant's income tax records for 2008 reflect rental real estate, royalties, partnership, S corporations, trusts, etc. of \$174,612. In view of the applicant's financial resources we find that the record does not indicate that he will experience extreme hardship in relocating his family to Poland. Although we acknowledge that changing schools and the language of instruction will be difficult for the applicant's son, his transition to life in Poland will be made easier by his parent's financial resources. No documentation has been provided to establish that the applicant's son will not be able to receive medical care for his pre-asthmatic condition. While we recognize that the applicant's wife endured traumatic events while living in Poland, we also note that she expressed experiencing trauma while married to her third

husband in the United States. Tragic events have marked her life in both Poland and the United States. In consideration of the combined hardship factors, the financial and emotional hardship to the applicant's wife, and the lack of evidence demonstrating financial hardship and lack of health care, we cannot find that when all of the hardship factors are considered in the aggregate they establish extreme hardship to the applicant's wife and son if they joined the applicant to live in Poland.

Finally, we need not address whether the applicant's parents would experience extreme hardship in Poland because the applicant has not demonstrated that they would experience extreme hardship if they remain in the United States without him. Thus, the decision to relocate to Poland would be a matter of choice on their part and not the result of inadmissibility.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act.

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 under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.