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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H₂

FILE:

Office: SEATTLE, WA

Date:

DEC 29 2010

IN RE:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the 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, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Seattle, Washington and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen. The motion will be granted, but the previous decision of the AAO will be affirmed.

The applicant is a native and citizen of Mali 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 committed crimes involving moral turpitude. The applicant is the spouse of a U.S. citizen and the stepfather of four U.S. citizens. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 3, 2007. The AAO made this same determination and dismissed the applicant's appeal. *Decision of the Chief, AAO*, dated June 22, 2010.

On motion, the applicant submits new evidence to demonstrate that his spouse and stepchildren would suffer extreme hardship if he is removed from the United States. *Form I-290B*, dated July 15, 2010.

In support of the motion, the record contains, but is not limited to, statements from the applicant and his spouse; medical documentation relating to the applicant's spouse, mother-in-law and brother-in-law; Individualized Educational Program (IEP) reports for three of the applicant's stepchildren; a 2010 earnings statement for the applicant's spouse; a 2007 tax return for the applicant and his spouse; country conditions materials on Mali; support letters from the applicant's mother-in-law and one of his friends; and additional court records relating to the applicant's convictions. The entire record was reviewed and all relevant evidence considered in arriving at a decision on the appeal.

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.

....

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

....

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not

sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The AAO has previously found the applicant's April 10, 2007 conviction for Second Degree Assault (DV) under Washington Revised Code § 9A.36.021(1)(c) to be a conviction for a crime involving moral turpitude and to bar his admission to the United States under section 212(a)(2)(i)(I) of the Act. On motion, the applicant does not contest this finding. The AAO will, therefore, confine our consideration of the record to the applicant's hardship claim.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if—

. . . .

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

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and children are the qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (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 exist 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 that will be taken 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 of Immigration Appeals (BIA) 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*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The BIA has also held that the common or typical results of 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 BIA has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

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).

Family separation, for instance, 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 nature of family relationship considered. For example, in *Matter of Shaughnessy*, the BIA 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) (“Mr. Arrieta 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 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 family relationship involved, the hardship resulting from family separation is determined 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. 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 AAO now turns to a consideration of whether the record in the present matter establishes that any of the applicant’s qualifying relatives would experience extreme hardship if his waiver application is denied

On motion, counsel for the applicant contends that relocation to Mali would result in hardship for the applicant’s spouse and stepchildren as they have no ties to Mali and do not speak French, its official language. Counsel also asserts that all of the applicant’s stepchildren have learning disabilities and are already struggling in school. He notes that Mali has only a few, poorly-equipped schools and that they would not be able to meet the children’s special educational needs. Counsel states that the only world the applicant’s stepchildren know is the United States and, further, that they fear harassment in Mali as they have been raised as Christians.

Counsel also claims that, in Mali, the applicant’s spouse would have great difficulty obtaining employment as she is unfamiliar with the culture and does not speak the language. He reports that the applicant’s spouse suffers from hypertension and a severe knee injury, neither of which could be

adequately treated in Mali. Counsel further notes that the applicant's spouse is worried about her and her children's safety in Mali.

In a July 19, 2010 statement, the applicant's spouse asserts that she is afraid to move to Mali as she has medical problems, including hypertension and a knee injury for which she takes medication on a daily basis. She contends that she would not be able to obtain the type of care that she receives in the United States, nor could she and the applicant afford such medical care. She also states that she does not speak the language and, therefore, would be unable to work to support the family. Relocation, the applicant's spouse contends, would result in the loss of her life and medical insurance, the family home, her possessions, and her friends and family. She further asserts that her children's educational needs would not be met in Mali and that her [REDACTED] has Attention Deficit Hyperactivity Disorder (ADHD) and would not be able to receive treatment for this condition in Mali.

In a separate July 19, 2010 statement, the applicant claims that his family would not be able to live safely in Mali. He also states that all of his stepsons have been placed in [REDACTED] because of learning disabilities and that no such programs would be available to them in Mali. He further asserts that they do not speak French or Bambara and, as a result, would be disadvantaged at school, spending many years trying to catch up. The applicant notes that his stepchildren have been raised as Christians not Muslims and are unfamiliar with the culture of Mali. He contends that there would be no medical care available to his spouse in Mali and that she would also be unable to work as she does not speak the language.

The applicant also asserts that he would be unable to support his family in Mali as he does not have a job or a skill that would allow him to find work. He states that the economy is depressed and that he no longer has the connections necessary to obtain employment. He claims that the only family he still has in Mali are his elderly mother and a brother with whom she lives. His other brothers, he states, live outside Mali, including a brother residing in the United States as a lawful permanent resident.

In support of the above claims, the record contains medical records that establish the applicant's spouse suffers from hypertension for which she takes daily medication and that she has been treated for headaches. Other medical documentation indicates that she was medically treated following a 2007 car accident, but does not demonstrate the severity of the knee injury she sustained. The record also reflects that the applicant's spouse reinjured her knee in 2008 as the result of a fall, but does not document that she continues to require treatment or medication for her knee at this time. Submitted medical documentation also establishes that the applicant's spouse was treated for an ectopic pregnancy in 2009.

The record further includes school records from the Mukilteo School District No. 6, demonstrating that three of the applicant's [REDACTED] are currently enrolled in IEPs. There is also an unsigned copy of an Application for Supplemental Security Income (SSI) made by the applicant's spouse on behalf of her [REDACTED] k. The application states that [REDACTED] is disabled and that his disability began on October 23, 1998, two years after his birth. It does not, however, identify his disability or how it affects him, and no other evidence in the record documents the disability or indicates that [REDACTED] receives SSI payments based on a disability. The record also lacks any documentary evidence establishing that [REDACTED] has been diagnosed with ADHD.

The AAO also notes that the record contains the section on Mali from the Department of State's Country Reports on Human Rights Practices – 2009, issued March 11, 2010, as well as its publication, Country Specific Information on Mali, current as of June 16, 2010. We observe that in its discussion of the availability of medical care in Mali, the Country Specific Information report indicates that medical facilities in Mali are limited and that most U.S. medicines are unavailable, although European medicines may be more easily obtained. It also reports that, in many places, health care providers require payment in cash at the time of treatment. This same publication cautions U.S. citizens against traveling to the northern regions of Mali as a result of continuing operations on the part of the Islamic extremist group, Al Qaeda in the Islamic Maghreb (AQIM). The AAO notes that the Department of State updated its travel warning for Mali on August 6, 2010, noting AQIM's interest in kidnapping Westerners as far south as Bamako, Mali's capital and the city in which the record indicates the applicant's mother and brother reside.

Based on the preceding evidence, the AAO finds the applicant to have established that his spouse would experience extreme hardship if she moves with him to Mali. We acknowledge that the applicant's spouse would relocate to a country where she does not speak the language and that her inability to speak French would have a significant, negative impact on her ability to obtain employment or to adjust to a new culture and society. Moreover, the applicant's spouse would be faced with relocating four children, none of whom are French speakers, to an unfamiliar country and that three of these children would be likely to have significant, long-term problems in adjusting to a new educational curriculum taught in another language. The record also indicates that while the applicant's spouse might be able to find medical care and medication in Mali for her hypertension actually obtaining them could prove problematic. We further observe that the country to which the applicant's spouse would relocate is the subject of a Department of State travel warning that indicates Westerners as far south as Bamako, the applicant's spouse's probable place of residence, may be at risk from extremists. When these specific hardships and those normally created by the disruptions and difficulties of relocation are considered in the aggregate, the AAO finds the applicant to have demonstrated that his spouse would experience extreme hardship upon relocation.

The record also establishes that the applicant's stepchildren would experience extreme hardship if they relocated to Mali with their mother. The AAO notes that three of the applicant's stepchildren are enrolled in IEPs to overcome existing learning deficits and finds that relocation to Mali, where they would be taught in French, would add to the problems with which they are already struggling. Moreover, the applicant's stepchildren, like their mother, would face security risks in Mali. The AAO also notes that in *Matter of Kao and Lin*, the BIA found that a 15-year-old child who had lived her entire life in the United States, was completely integrated into the American lifestyle and was not fluent in Chinese would suffer extreme hardship if she relocated to Taiwan. 23 I&N Dec. 45 (BIA 2001). In the present matter, the birth certificates in the record establish that the applicant has [REDACTED] who, like the child in [REDACTED] have lived their entire lives in the United States and do not speak, read or write any of the languages found in Mali. Relying on the BIA's reasoning in *Matter of Kao and Lin*, the AAO concludes that relocation to Mali would create a similar disruption in the lives of the applicant's 13- and 14-year-old stepsons and, therefore, would constitute an extreme hardship for them.

Counsel also asserts that the applicant's spouse would experience significant hardship if his waiver application is denied and she and their children remain in the United States. He contends that the applicant's spouse depends on the applicant to take care of their children as she works long hours to support the family and that without him, she would not be able to work these hours. The applicant's

spouse's mother and brother, counsel notes, would be unable to help her financially in the applicant's absence as her mother is ill and her brother disabled. Counsel also states that the applicant's spouse and stepsons would suffer severe emotional hardship if the family is separated. He further claims that the applicant's spouse may be pregnant and that the applicant's stepchildren all have special educational needs.

In her July 19, 2010 statement, the applicant's spouse states that she and her sons depend on the applicant. She contends that the applicant's removal would affect her children psychologically and would hurt their education and ability to succeed in school where they are already struggling. She states that all of her sons have special educational needs and are each on IEP plans. The applicant's spouse asserts that the applicant helps the children with their homework and reading, and is involved in their activities. She asserts that the applicant's return to Mali would mean that the children would receive less care and attention as she must work very long hours. The applicant's spouse claims that the thought of losing the applicant makes her feel as though her "whole world is about to end" and that he is the only father her children have ever known.

The applicant's spouse also asserts that the applicant helps her mother who has a heart condition and her disabled brother who is blind and mentally retarded. She states that because the applicant cares for her brother when she is not available, her mother is able to work.

In his statement, the applicant asserts that his spouse has no one to help her in his absence other than her elderly mother and disabled brother. He states that if he were not available to care for his stepchildren, his spouse would not be able to work as she could not afford daycare and would not be able to rely on their oldest son who suffers from ADHD. The applicant also indicates that his spouse has chronic medical conditions that require ongoing treatment and that there are days when because of her high blood pressure and severe headaches she is unable to cook or watch their children.

Although the record does not provide documentation that establishes the applicant's oldest stepson, Kendrick, has ADHD, it does include school records that demonstrate three of the applicant's stepchildren have been placed on IEPs to help them overcome learning difficulties. It also establishes that the applicant's spouse has been diagnosed with hypertension and that her brother is disabled. The AAO notes that the record contains an April 29, 2010 letter from the Washington State Department of Social & Health Services addressed to the applicant's brother-in-law that does not identify his disability but does establish that he is a Qualified Medicare Beneficiary and that the State of Washington will pay his premiums for Medicare Part A and B, his coinsurance and his deductibles. A notice issued by the Washington State Aging & Disability Services Administration, addressed to the applicant's spouse's brother and mother, indicates that he receives in-home health care provided by the state. The AAO observes that documentation supporting the applicant's spouse's 2007 tax return demonstrates that the majority of her income during that year came from the care she provided for her disabled brother through this home health care program.

The AAO does not, however, find the preceding evidence to be sufficient to establish that, without the applicant, his spouse would be unable to continue working or to meet her parental responsibilities. While the record establishes that the applicant's spouse suffers from hypertension, it fails to indicate that her condition affects her ability to care for her children as claimed by the applicant. No documentation in the record establishes that the applicant's spouse has days where she is debilitated by hypertension. There is also no objective evidence that demonstrates the applicant's spouse, who was treated for a series of headaches in July 2010, chronically suffers from severe

headaches. Neither does the record establish that the applicant's spouse is pregnant with his child. The AAO also notes that the record does not demonstrate that, in the applicant's absence, his spouse would be required to pay for daycare for her children, all of whom attend school. We observe that the applicant's spouse has two teenaged sons who may be able to assist her by caring for their younger brothers and that the record does not demonstrate that either, including [REDACTED] is unable or unwilling to do so. The record also fails to provide documentation that establishes the applicant's mother-in-law has a heart condition that would prevent her from caring for her grandchildren or financially assisting her daughter. The medical report relating to the applicant's mother indicates that she has benign hypertension and Type II Diabetes, but does not reflect that either of these conditions restricts her activities, including her ability to work. There is also no evidence in the record that demonstrates the applicant plays any role in the care of his spouse's disabled brother or that indicates how the loss of his assistance would affect her and/or his stepchildren, the only qualifying relatives.

The AAO further finds the record to offer no documentary evidence to establish that the applicant's presence is critical to his stepsons' educational progress. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). No statements or reports from the children's schools, their teachers, school counselors or other professionals involved in education indicate that the applicant is participating in his stepchildren's IEPs or working with them on their homework and reading. The applicant has submitted a copy of a notice regarding the development of one of his stepchildren's IEP. The notice, however, identifies the applicant's spouse as the parent who participated in the development of the IEP.

With regard to the emotional hardship that counsel and the applicant's spouse claim she and her children would suffer as a result of separation, the AAO acknowledges their statements and notes that significant weight is given to emotional hardship in cases involving the separation of family members. In the present case, however, we find the record to contain no documentary evidence, e.g., a mental health evaluation performed by a medical practitioner, that supports the claims of emotional hardship. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Matter of Soffici, supra*. Moreover, the AAO finds the record to provide evidence that raises questions as to whether the applicant's spouse continues to believe that she and her children would suffer emotional hardship if the applicant is removed from the United States.

The AAO observes that subsequent to the filing of the appeal, the applicant was arrested for domestic violence and that a protection order was entered against him on November 30, 2010. The order restrains the applicant from assaulting, threatening, abusing, harassing, following, interfering with or stalking his spouse and/or his stepsons, or from any type of communication with his spouse. It is, therefore, no longer clear that the statements made by counsel and the applicant's spouse, all of which predate the protection order, accurately reflect her concerns regarding the emotional impacts that would result from the denial of the applicant's waiver application. Accordingly, the AAO finds the record to lack any reliable evidence of the emotional hardship that would be experienced by the

applicant's spouse and/or stepchildren if he is returned to Mali. Based on the record before us, the AAO concludes that the applicant has failed to establish that his spouse and/or stepchildren would suffer extreme hardship if his waiver application is denied and they remain in the United States.

The applicant has established that his spouse and stepchildren would experience extreme hardship upon relocation. However, his failure to demonstrate that any of them would also suffer extreme hardship upon remaining in the United States prevents him from establishing eligibility for a waiver of inadmissibility 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 an application for a waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the AAO will affirm our prior decision.

ORDER: The motion is granted. The prior decision of the AAO is affirmed.