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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

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[Redacted]

FILE: [Redacted] Office: MIAMI, FL

Date: **SEP 21 2010**

IN RE: [Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

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

If you believe the 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 \$585. 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,

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

**ACTION COMPLETED
APPROVED FOR FILING**
Initials: JT Date: 6/22/11
FCO/Unit COW

DISCUSSION: The waiver application was denied by the District Director, Miami, 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 Venezuela 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 married to a U.S. citizen and the mother of a U.S. citizen. She 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 with her family.

The District Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the District Director*, dated November 18, 2008.

On appeal, counsel asserts that she has submitted sufficient evidence to establish extreme hardship to the applicant's spouse and child. *Counsel's brief*, received December 18, 2008.

The record includes, but is not limited to, the following evidence: counsel's briefs; statements from the applicant and her spouse; letters of support; documents relating to health and automobile insurance; telephone billing statements; bank statements; articles of incorporation for the applicant's spouse's business; a statement from the applicant's spouse's accounting firm; documentation relating to the applicant's criminal record; and country conditions materials on Venezuela. The entire record was reviewed and all relevant evidence considered in reaching a determination in this matter.

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 (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.)

The record indicates that on October 24, 2007, the applicant pled guilty to one count of racketeering and one count of conspiracy to commit racketeering under Florida Statutes §§ 895.03(3) and (4) respectively. The applicant was placed on probation for a period of ten years; ordered to pay court-ordered costs and fines, including restitution in the amount of \$501,033.76; and required to perform 400 hours of community service.

Florida Statutes §§ 895.03(3) and (4) state:

- (3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity¹ or the collection of an unlawful debt.
- (4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of . . . subsection (3).

Florida Statutes § 895.02 defines racketeering activity as follows:

- (1) 'Racketeering activity' means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:
 - (a) Any crime that is chargeable by indictment or information under the following provisions of the Florida Statutes:
 1. Section 210.18, relating to evasion of payment of cigarette taxes.
 -
 3. Section 409.20 or s. 409.9201, relating to Medicaid fraud.
 4. Section 414.39, relating to public assistance fraud.

¹ Florida Statutes § 895.02(4) defines pattern of racketeering activity as engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of the Florida Racketeer Influenced and Corrupt Organizations (RICO) Act and that the last of such incidents occurred within five years after a prior incident of racketeering conduct.

....

22. Chapter 784, relating to assault and battery.

....

27. Section 810.02(2)(c), relating to specified burglary of a dwelling or structure.

....

30. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

....

43. Chapter 896, relating to offenses related to financial transactions.

....

(b) Any conduct defined as “racketeering activity” under 18 U.S.C. s. 1961(1).

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining inadmissibility under section 212(a)(2)(i)(I) of the Act, adopting the “realistic probability” standard used by the Supreme Court in *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183 (2007). The methodology requires an adjudicator to review the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute could be applied to reach conduct that does not involve moral turpitude. 24 I&N Dec. 687, 698 (A.G. 2008)(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 has been 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.

In the present case, the applicant has been convicted of racketeering activity and conspiracy to commit racketeering activity, which as defined in Florida Statutes § 895.02 includes a broad range of crimes, including that of theft. Theft under Florida Statutes § 812.014 is committed when an individual knowingly obtains or uses the property of another with the intent to temporarily or permanently deprive that individual of his or her property or appropriate the property to his or her own use. The Board of Immigration Appeals (BIA) has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another’s property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973).

As the Florida racketeering provisions under which the applicant was convicted include a broad range of offenses, not all of which are categorically crimes involving moral turpitude, the AAO must, pursuant to *Silva-Trevino*, review the entire record, including the record of conviction and, if necessary, other relevant evidence, to determine whether the applicant’s convictions under Florida Statutes §§ 895.03(3) and (4) bar her admission to the United States.

The record of conviction in the present matter includes the Information under which the applicant was charged, Forms 611 and 373 relating to the applicant’s plea and probation, a document issued by the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida that sets forth the terms of the applicant’s negotiated settlement; and Orders of Supervision. Although it is not part of the record of conviction, the record also contains the applicant’s arrest report, the only other evidence relating to her convictions.

Count 1 of the Information, participation in enterprise through a pattern of racketeering activity, charges the applicant as having unlawfully, willfully and knowingly conducted or participated in a continuous pattern of racketeering activity and committing crimes chargeable by indictment or information under Chapters 812, 817 and 896 of the Florida Statutes by engaging in at least two incidents of racketeering activity. The Information also specifies the multiple predicate incidents of racketeering in which the applicant participated and states that in each instance she did:

knowingly obtain or use, or endeavor to obtain or use *U.S. currency* of a value of \$100,000 or more, which was the property of the U.S. government, or its fiscal agent, First Coast Service Options, Inc., a Florida corporation, or the federal Medicare program, or any other person not the defendants, *with the intent to permanently or temporarily deprive* the U.S. government, or First Coast Service Options, Inc. or the federal Medicare program, or any other person not the defendants of the property or

benefit therefrom or to appropriate the property to the use of [the defendants] or to the use of any person not entitled thereto, contrary to Florida Statutes 812.014(1) and (2)(a) [emphasis added].

The Information further indicates that the applicant engaged in multiple money laundering activities involving Medicare funds, specifically that she did:

unlawfully with one or more financial transactions entered into with [Company] together totaling or exceeding \$20,000 but less than \$100,000 in any 12-month period, and knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conduct or attempt to conduct such a financial transaction which in fact involved the proceeds of specified unlawful activity with the intent to promote the carrying on or specified unlawful activity; or knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or to avoid a transaction reporting requirement or money transmitters' registration requirement under Florida State law, contrary to Florida Statutes 896.101(3) and (5)(b); [and]

unlawfully with one or more financial transactions entered into with [Company], together exceeding \$100,000 in any 12-month period, and knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, conduct or attempt to conduct such a financial transaction which in fact involved the proceeds of specified unlawful activity with the intent to promote the carrying on or specified unlawful activity; or knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or to avoid a transaction reporting requirement or money transmitters' registration requirement under Florida State law, contrary to Florida Statutes 896.101(3) and (5)(c).

Count 2 of the Information, conspiracy to commit racketeering, charges the applicant with having, unlawfully and knowingly combined, conspired, confederated and agreed to violate the laws of the State of Florida by conducting or participating in the affairs of her employer through a continuous pattern of racketeering activity, contrary to Florida Statutes § 895.03(3) or by intending to participate in the affairs of her employer with the knowledge and intent that other employees would engage in at least two incidents of racketeering activity as defined by Florida Statutes § 895.02(4). Count 2 lists the same predicate incidents set forth under Count 1.

The Information therefore establishes that the racketeering activities to which the applicant pled guilty on October 24, 2007 involved theft under Florida Statutes §§ 812.014(1) and (2)(a) and money laundering in violation of Florida Statutes §§ 896.101(3), and (5)(b) and (c). The AAO notes

that the money laundering activities identified in the Information fall under Florida Statutes § 896.101(3)(a).

Florida Statutes § 812.014(1) states:

- (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)(a)
 1. If the property stolen is valued at \$100,000 or more or is a semitrailer that was deployed by a law enforcement officer; or
 2. If the property stolen is cargo valued at \$50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock

In the present case, the language in the Information that describes the applicant's theft offenses, like Florida Statutes § 812.014(1), indicates either a temporary or permanent taking and, as previously noted, the BIA in *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. The AAO notes, however, that in *Matter of Grazley*, the BIA also found it reasonable to assume that a conviction for theft involving cash involved a permanent taking. As the record indicates that the applicant in pleading guilty to Counts 1 and 2 of the Information, acknowledged having engaged in and having conspired to engage in multiple instances of grand theft involving U.S. currency, the AAO finds the applicant to have been convicted of knowingly taking the property of the U.S. Government with the intent to permanently deprive it of that property, a crime involving moral turpitude. The applicant does not contest this finding.

Florida Statutes § 896.101(3) states:

- (3) It is unlawful for a person:
 - (a) Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, to conduct or attempt to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity:
 1. With the intent to promote the carrying on of specified unlawful activity; or
 2. Knowing that the transaction is designed in whole or in part:

- a. To conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
- b. To avoid a transaction reporting requirement or money transmitters' registration requirement under state law.

....

(5) A person who violates this section, if the violation involves:

....

- (b) Financial transactions totaling or exceeding \$20,000 but less than \$100,000 in any 12-month period, commits a felony of the second degree
-
- (c) Financial transactions totaling or exceeding \$100,000 in any 12-month period, commits a felony of the first degree

While the Information does not indicate under which of the specific provisions of Florida Statutes § 896.101(3)(a) the applicant was convicted, it does establish that the applicant pled guilty to having knowingly and willfully participated in and conspired in the laundering of Medicare payments she knew to have been illegally obtained. Based on the record, the AAO concludes that the applicant's money laundering activities were intended to defraud the U.S. Government and are crimes involving moral turpitude. We note that "[e]ven if the intent to defraud is not explicit in the statutory definition, a crime nevertheless may involve moral turpitude if such intent is 'implicit in the nature of the crime.'" *Goldeshtein v. INS*, 8 F.3d 645, 648 (9th Cir. 1993) (quoting *Winestock v. INS*, 576 F.2d 234, 235 (9th Cir. 1978); *Smalley v. Ashcroft*, 354 F.3d 332(5th Cir. 2003). Generally any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87 (9th Cir. 1965), *cert. den'd*, 383 U.S. 915 (1966). The applicant does not contest this finding.

As the applicant has been convicted of racketeering activity and conspiracy to commit racketeering activity involving crimes of moral turpitude, the applicant's admission to the United States is barred under section 212(a)(2)(A)(i)(I) of the Act and she must seek a waiver under section 212(h), which provides in pertinent part:

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

....

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the

alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

A waiver of inadmissibility under section 212(h) 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 child 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 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 BIA 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 establishes that the applicant’s spouse would experience extreme hardship if her waiver application is denied.

On appeal, counsel states that the District Director failed to acknowledge the country conditions evidence in the record and that it is this evidence that raises the hardship in the applicant’s case above that experienced by other spouses separated as a result of removal. He notes the human rights problems that exist in Venezuela, specifically unlawful killings, arbitrary arrests and detention, warrantless searches, violence against women and human trafficking, and contends that, if the family returns to Venezuela, they could be subject to persecution as a result of President Hugo Chavez’ ideological opposition to the United States. Counsel also states that the applicant’s spouse has never been to Venezuela and that consideration should also be given to the hardship that the applicant’s U.S. citizen daughter would face in Venezuela based on President Chavez’ plans to reshape Venezuelan schools by introducing communism to the school system. Counsel also notes that if the applicant’s daughter is raised in Venezuela during her formative years, she may be economically, educationally and socially disadvantaged if she returns to the United States.

In an April 15, 2008 affidavit, the applicant’s spouse states that he owns a gas station and would have to sell his business if he relocated with the applicant to Venezuela. He asserts that he has no savings to support his family in Venezuela and no resources that would assist him in starting a new

career. He also indicates that he financially supports a ten-year-old child from a previous marriage and that he does not believe that he would be able to continue to provide this support from Venezuela. The applicant's spouse also states that all of his family lives in Florida and that he has no one in Venezuela.

While the AAO notes counsel's claims regarding the impact of country conditions in Venezuela on the applicant's spouse and child, we do not find the record to support them. The submitted section on Venezuela from Country Reports on Human Rights Practices – 2007, released by the U.S. Department of State on March 11, 2008, provides an overview of the human rights situation in Venezuela and indicates issues of concern. However, nothing in the record demonstrates how the findings in the Department of State report relate to the applicant's spouse or child, or establishes that conditions in Venezuela would place them at risk. Further, neither the report does not support counsel's claim that the applicant or her family would be subjected to persecution based on President Chavez' views of the United States.

The AAO also acknowledges the media articles from 2001 and 2007 that report on concerns that President Chavez is planning to use the Venezuelan school system to impose his leftist ideology. However, these two news stories are insufficient proof of what is being or will be taught in the Venezuelan school system or that the applicant's child would be undergo communist indoctrination if she attended school in Venezuela. The AAO also observes that the 2007 article reports that eight years after President Chavez' election, the curriculum at most Venezuelan schools remains largely unchanged. We also find that the record fails to provide evidence that growing up in Venezuela would disadvantage the applicant's child if and when she later returned to the United States. The AAO notes that the BIA has previously 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 the language of her parents' home country would suffer extreme hardship if she relocated. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). However, these hardship factors are not present in the this matter as the applicant's daughter is only three years of age.

While the record does establish that the applicant's spouse is the sole owner of a gas station, it fails to provide sufficient financial documentation to demonstrate that he would be required to sell his business if he relocated to Venezuela. Further, the record does not document that the applicant's spouse supports a child from a previous marriage or demonstrate the level of support he provides. The AAO also finds no proof in the record (e.g., country conditions reports on the economy and employment situation in Venezuela) that the applicant and her spouse would be unable to obtain employment in Venezuela to support their family. Although the AAO notes that the human rights report in the record indicates that the minimum wage in Venezuela does not provide a decent standard of living for a worker and his or her family, no evidence establishes that the applicant and/or her spouse would be limited to minimum-wage employment. Based on the record before it, the AAO does not find the applicant to have established that relocation to Venezuela would result in extreme hardship for her spouse and/or her child.

The applicant has also failed to demonstrate extreme hardship to her spouse and/or child if they remain in the United States. The AAO finds that she has not addressed what hardships if any would result from separation. We note that the burden of proof in this proceeding lies with the applicant, and “while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts.” *Matter of Ngai*, 19 I&N Dec. at 247. Accordingly, the AAO is unable to find that the applicant’s spouse and/or child would suffer extreme hardship if the applicant’s waiver application is denied and they continue to reside in the United States.

The AAO therefore finds that the applicant has failed to establish 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 she merits a waiver as a matter of discretion and the AAO will not address counsel’s assertions regarding the positive discretionary factors in this case.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.