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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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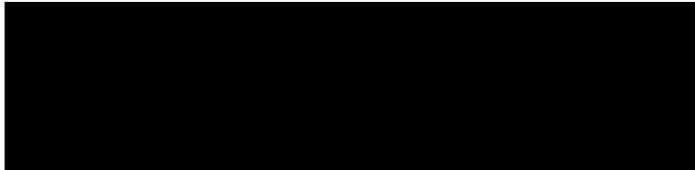
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IN RE:



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:



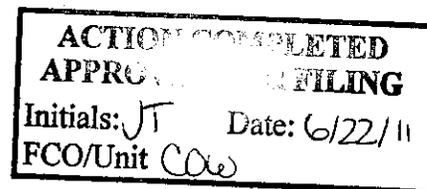
INSTRUCTIONS:

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,

Perry Rhew
Chief, Administrative Appeals Office



DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala 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 son of a lawful permanent resident and claims two U.S. citizen children. 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 found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated June 24, 2009.¹

On appeal, counsel asserts that the Field Office Director applied the incorrect hardship standard to the applicant's case and that the applicant has demonstrated that his qualifying relatives would suffer extreme hardship if his waiver application is not approved. Counsel also contends that the waiver should be granted as a matter of discretion even if the applicant is found to have committed a violent crime and must establish exceptional and extremely unusual hardship to a qualifying relative. *Form I-190B, Notice of Appeal or Motion*, dated July 21, 2009.

The record includes, but is not limited to, the following evidence: counsel's brief; statements from the applicant, his mother and the mothers of his children; a medical statement from the applicant's mother's doctor; a statement from a social worker regarding the medical conditions of the applicant's daughter; online articles on various medical conditions; country conditions materials on Guatemala; an employment letter for the applicant; copies of money transfer receipts and checks; tax returns for the applicant's mother and documentation relating to the applicant's convictions. 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.

¹ The Field Office Director's decision misstates the section of law under which the applicant is seeking a waiver of inadmissibility. As indicated by counsel on appeal, eligibility for a waiver of 212(a)(2)(A)(i)(I) inadmissibility is considered under section 212(h) of the Act.

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 reflects that on May 3, 2001, in the Superior Court of California, County of Los Angeles, the applicant pled nolo contendere to the willful infliction of corporal injury on a spouse in violation of section 273.5(a) of the California Penal Code (Cal. Penal Code) and was sentenced to three years of probation under the condition that he serve 270 days in Los Angeles County jail. According to section 273.5(a) of the California Penal Code, a person convicted under the statute “shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both that fine and imprisonment.” Because the offense can result in a range of punishments, it is referred to as a “wobbler” statute, providing for either a misdemeanor or a felony conviction. *Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 844 (9th Cir. 2003). The record in the present case states that the applicant was convicted of a felony violation of Cal. Penal Code § 273.5(a). Accordingly, the maximum penalty possible for the applicant’s offense was imprisonment for four years.

The Ninth Circuit Court of Appeals has held that a conviction under Cal. Penal Code § 273.5(a) is categorically a crime involving moral turpitude. In *Grageda v. INS*, the Ninth Circuit held, “Because spousal abuse is an act of baseness or depravity contrary to accepted moral standards, and willfulness is one of its elements . . . spousal abuse under section 273.5(a) is a crime of moral turpitude.” 12 F.3d 919, 922 (9th Cir. 1993); see *Guerrero de Nodahl v. INS*, 407 F.2d 1405, 1406-07 (9th Cir. 1969) (“we rule that inflicting ‘cruel or inhuman corporal punishment or injury’ upon a child is so offensive to American ethics that the fact that it was done purposely or willingly (the California definition of ‘willful’) ends debate on whether moral turpitude was involved. When the crime is this heinous, willful conduct and moral turpitude are synonymous terms.”). The AAO finds that the applicant’s conviction for a crime involving moral turpitude renders him inadmissible under

section 212(a)(2)(A)(i)(1) of the Act² and that he must seek a waiver of inadmissibility under section 212(h) of the Act, which provides:

(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

. . . .

(2) the Attorney General [Secretary] , in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa for admission to the United States or adjustment of status.

The AAO also finds that the applicant's conviction under Cal. Penal Code § 273.5(a) is not only a crime involving moral turpitude but a violent crime. Accordingly, to receive a section 212(h) waiver, the applicant must prove the existence of extraordinary circumstances (i.e. exceptional and extremely unusual hardship rather than extreme hardship to a qualifying relative) for a favorable exercise of discretion under section 212(h)(2) of the Act. *See* 8 C.F.R. § 212.7(d). The concept of exceptional and extremely unusual hardship has been addressed by the Board of Immigration Appeals (BIA) in *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), in which the BIA found that many of the factors that are considered in assessing extreme hardship should be considered in evaluating exceptional and extremely unusual hardship. The BIA held, however, that the hardship suffered by the qualifying relative(s) must be "substantially beyond that which would ordinarily be expected to result from the alien's deportation," but need not be "unconscionable." *Id.* At 59-63. Therefore, in determining whether the record establishes that a qualifying relative would suffer the exceptional and exceptionally unusual hardship needed to support a favorable exercise of the Attorney General's (now Secretary's) discretion under section 212(h)(2) of the Act, the AAO will first consider whether the record before it demonstrates extreme hardship to a qualifying relative.

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission would impose extreme hardship on a qualifying relative, which includes the U.S. citizen

² The AAO notes that, based on the applicant's testimony at his adjustment interview, the Field Office Director also found the applicant to have been convicted of battery under section 243(a) of the Cal. Penal Code on August 27, 1999. The record, however, indicates that, on August 27, 1999, prosecutors in the applicant's case deferred the filing of felony charges against him. No information regarding the final disposition of the battery charge is found in the record.

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 claims his mother, a lawful permanent resident, and a U.S. citizen daughter and son as his qualifying relatives. While the record includes sufficient evidence to establish the applicant's relationship to his mother and son, it does not demonstrate that the applicant is the father of a daughter born in the United States. The record contains a birth certificate for [REDACTED] but the AAO notes that this document does not identify the applicant as her father. Although the birth certificate for the applicant's son also fails to list the applicant as his father, the record includes genetic testing results that establish the blood relationship between them. No similar documentation has been submitted in support of the applicant's claimed relationship to his daughter and the record does not document that he is or was ever married to [REDACTED] mother. Accordingly, the AAO finds the record to establish only the applicant's mother and son as qualifying relatives in this case. If extreme hardship to either is demonstrated by the record, 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 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 the evidence of record and whether it establishes that the applicant’s mother or son would experience extreme hardship if his waiver application is denied.

In a March 1, 2006 statement, the applicant’s mother asserts that the applicant has no one in Guatemala and that to return to a country where he has no family or employment would result in extreme hardship for him. In an August 5, 2009 statement, the applicant also contends that there is nothing for him in Guatemala. The record includes a copy of the section on Guatemala from the Country Reports on Human Rights Practices – 2008, released by the Department of State on February 25, 2009; the Guatemala 2008 Crime & Safety Report issued by the Overseas Security Advisory Council, Department of State; and two Human Rights Watch reports on conditions in Guatemala in 2008. While the AAO notes the preceding claims and the submitted country conditions materials, hardship to the applicant, as previously discussed, is not considered in waiver proceedings unless the record establishes how that hardship would affect the applicant’s qualifying relative(s). In that the applicant fails to address the hardship that would be experienced by his mother and/or son in Guatemala, he has not established that relocation would result in extreme

hardship to a qualifying relative. 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.

On appeal, counsel contends that the applicant’s U.S. citizen children, especially his daughter Emery will suffer emotional, medical and financial hardship if he is denied admission. Counsel states that the applicant’s daughter suffers from a permanent and dangerous health condition that requires constant care and that she will require a full-time caretaker for the rest of her life. Counsel also asserts that her health condition is a unique circumstance that makes the emotional hardship she would suffer as a result of separation from her father more severe. Counsel further states that the applicant provides financial support for Emery and helps provide medical care. Counsel contends that the applicant is able to be alone with his daughter because he has been trained in emergency procedures and that he is able to provide transportation for his daughter to many of her medical appointments. If the applicant is removed, counsel states, he would likely be unable to support Emery’s mother, thereby placing her under greater strain and affecting her ability to provide financial support and medical care for their daughter. Counsel also states that the applicant’s son will lose his constant contact with his father, as well as the financial support he receives from the applicant’s monthly child support payments.

The record contains a May 6, 2009 statement from [REDACTED] mother, [REDACTED] who asserts that the applicant is the father of her daughter and that her daughter suffers from Congenital Central Hypoventilation Syndrome (CCHS). She states that her daughter cannot breathe on her own while she sleeps, needs to be connected to a ventilator at night, is cared for by a nurse during the night, and has been diagnosed as disabled for life. [REDACTED] also asserts that the applicant is important in her daughter’s life, that he has been a good father and that he helps [REDACTED] emotionally, morally and financially. She contends that her daughter would be devastated if the applicant is removed as he is part of her daily life. [REDACTED] also reports that the applicant sometimes helps with trips to the doctors and that they have both been trained to help [REDACTED] in any emergency. The record includes documentation of regular payments made by the applicant to [REDACTED] from 2002 to 2007. It also contains sufficient documentation to establish that [REDACTED] daughter suffers from CCHS, chronic respiratory failure and Gastro Esophageal Reflux Disease; is respiratory dependant; has a tracheostomy, and requires significant medical care. It further indicates that the applicant has received training in CPR for children and infants.

While the AAO acknowledges [REDACTED] serious, long-term health problems, we note that no evidence in the record establishes her as the applicant’s daughter. [REDACTED] birth certificate does not list the applicant as her father and [REDACTED] identification of the applicant as [REDACTED] father and his monthly payments to her are insufficient proof of a parent-child relationship. In that the record does not establish the applicant as [REDACTED] father, her hardship cannot be considered in this proceeding and the record does not indicate how any hardship she might suffer in the applicant’s absence would affect her grandmother and/or her half brother, the only qualifying relatives. 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)).

The record also contains an April 21, 2009 statement from the mother of the applicant's son, [REDACTED], who states that the applicant pays \$300 each month in child support and that he has been current with all his child support payments. She also indicates that the applicant has open visitation with his son and that the applicant is very significant in her son's life. [REDACTED] states that it would affect her son emotionally and psychologically, and unbalance him as a human being if he were to be separated from his father because a parent is an essential part of a child's life. The record contains copies of checks and money transfers made out to [REDACTED] by the applicant.

While the AAO acknowledges [REDACTED] statement and the fact that the applicant provides her with some level of child support, we do not find the record to establish that the applicant's removal would result in financial or emotional hardship for his son. Beyond the statements made by [REDACTED] the record offers no evidence of the extent to which the applicant is part of his son's life. Neither does it document, e.g., an evaluation of the applicant's son performed by a licensed mental health practitioner, the emotional impact of the applicant's removal on his son. The record also fails to establish the extent to which [REDACTED] is dependent on the applicant's payments to provide care for her son as there is no documentation of her income or her financial obligations. Neither does it demonstrate that the applicant would be unable to obtain employment in Guatemala and thereby assist [REDACTED] from outside the United States. Accordingly, the AAO does not find the record to establish that the applicant's son would suffer extreme hardship if the applicant is removed from the United States.

The AAO also finds the record to offer insufficient proof that the applicant's mother would suffer extreme hardship in his absence. On appeal, counsel contends that the applicant's mother suffers from hypertension and relies upon the applicant to take her to medial appointments, obtain her medication, help pay her bills and care for his younger half brother. In an August 3, 2009 statement, the applicant's mother asserts that since she was diagnosed with hypertension six years ago, the applicant has taken charge of anything she needs. She reports that he is the person responsible for taking her to her monthly doctor's visits, filling her prescriptions, taking her to work and helping with any other necessities that arise. Every month, she states, he gives her \$800 to help her meet her expenses, which total approximately \$1,900. She also states that he is her only mode of transportation and is her translator when she needs to talk to a doctor, teacher or a business. The applicant's mother indicates that her health has recently worsened with her blood pressure skyrocketing and that the applicant is helping her deal with her health requirements. She contends that, if he were removed, the resulting stress might make her conditions worse.

The record contains an April 30, 2009 medical statement from [REDACTED] who indicates that the applicant's mother has been his patient for the past year and that she has hypertension. [REDACTED] also notes that his patient has a 12-year-old son with whom she needs assistance if she is to continue working and that the applicant helps by taking his brother to and from school. The record

also contains an online article that discusses the health risks related to hypertension. The AAO acknowledges this evidence, but finds it insufficient to demonstrate that the applicant's mother suffers from a health condition that makes her dependent on the applicant. [REDACTED] letter establishes that the applicant's mother has high blood pressure. It does not, however, indicate the severity of her medical condition, that she requires medication or that her condition limits her ability to function in any way. The AAO also notes that the applicant's mother is married to a lawful permanent resident and the record fails to establish that he is unable or unwilling to provide any care or support that she might require as a result of her health condition.

The record also fails to demonstrate that the applicant's mother requires the applicant's financial support. Although it contains copies of her tax returns, there is no documentary evidence of her monthly financial obligations. Neither does the record demonstrate that the applicant is giving his mother \$800 each month.

The AAO notes [REDACTED] statement that the applicant's mother will not be able to keep her job if the applicant is not able to help her with his younger brother. The record, however, establishes that the applicant's younger brother has two lawful permanent resident parents and again fails to demonstrate that the applicant's mother could not seek her husband's assistance in caring for their son, including providing him with transportation to and from school. Accordingly, the record also fails to establish that the applicant's mother would experience extreme hardship if the applicant's waiver application is denied and she remains in the United States.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of a denial of the applicant's waiver application, the AAO finds that it also fails to demonstrate that a qualifying relative would suffer the heightened standard of exceptional and extremely unusual hardship. Having found the applicant ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Therefore, the AAO will not address counsel's statements regarding the exercise of discretion in this matter.

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.