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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:

JAN 28 2011

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:

SELF-REPRESENTED

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 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 Mexico 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 a crime involving moral turpitude. The applicant is married to a lawful permanent resident and is the mother of two U.S. citizens.¹ 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.

The District Director concluded that the applicant had failed to establish that the bar to her admission would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *District Director's decision*, dated August 21, 2008.

On appeal, the applicant asserts that the District Director erred by failing to consider her eligibility for an exception under section 212(a)(2)(ii)(I) of the Act. She further contends that her spouse and children will suffer extreme hardship if the waiver application is denied. *Form I-290B, Notice of Appeal or Motion*, dated September 18, 2008.

In support of the waiver application, the record contains, but is not limited to, statements from the applicant and her spouse; a psychological evaluation of the applicant and her family; tax returns and W-2 forms, 2004-2006; and school records for and achievement certificates awarded to the applicant's daughter. The entire record has been reviewed and all relevant evidence considered in rendering a decision on the appeal.

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....

¹ The clinical psychologist who prepared the evaluation of the applicant's family that is contained in the record indicates that the applicant and her spouse have three children. Although the AAO notes the presence of a third child, we will not consider hardship claims made on his behalf as the record fails to document that he is a qualifying relative for the purposes of this proceeding, i.e., either a U.S. citizen or a lawful permanent resident.

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 January 27, 1999, the applicant, using the name ██████████ pled guilty to grand theft of the third degree, in violation of Florida Statutes (Fl. Stat.) § 812.014(2)(c)(1). Grand theft of the third degree is punishable by a maximum of five years imprisonment. Fl. Stat. § 775.082(3)(d). The applicant was placed on probation for a period of two years.

At the time of the applicant's conviction, Fl. Stat. § 812.014(2)(c)(1) provided, as follows:

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

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

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

(2) . . .

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

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

In *Matter of Silva-Trevino* the Attorney General adopted the "realistic probability" standard articulated by the Supreme Court in *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183 (2007), as an approach for determining inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. See 24 I&N Dec. 687, 698 (2008).

The methodology articulated by the Attorney General for determining whether a conviction is a crime involving moral turpitude 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 would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. at 193). 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. . . ." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

Several U.S. Courts have distinguished the realistic probability test articulated in *Duneas-Alvarez* in cases where “a state statute explicitly defines a crime more broadly than the generic definition” and “no ‘legal imagination,’ is required to hold that a realistic probability exists that the state will apply its statute to conduct that falls outside the generic definition of the crime.” *United States v. Grisel*, 488 F.3d 844, 850 (9th Cir. 2007)(citing *Duenas-Alvarez*, 127 S.Ct. at 822). In *United States v. Vidal*, the Ninth Circuit Court of Appeals determined that a “realistic probability” that the theft statute under which the alien was convicted would be applied to conduct that falls outside the generic definition of theft could be found in the plain text of the statute. 504 F.3d 1072, 1082 (9th Cir. 2007). The Ninth Circuit noted that “when ‘[t]he state statute’s greater breadth is evident from its text,’ a defendant may rely on the statutory language to establish the statute as overly inclusive.” *Id.* (citing to *United States v. Grisel*, 488 F.3d at 850.).

The Board of Immigration Appeals (BIA) has determined that for a theft offense to constitute a crime involving moral turpitude, it must require the intent to permanently take another person’s property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) (“Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended.”). In the present case, the statute under which the applicant was convicted, Fl. Stat. § 812.014, involves both temporary and permanent takings. A plain reading of Fl. Stat. § 812.014 shows that it can be violated by knowingly obtaining or using the property of another with intent to, either temporarily or permanently, deprive an individual of his or her property or appropriate the property to his or her own use. As a result, the AAO cannot find that a violation of Fl. Stat. § 812.014 is categorically a crime involving moral turpitude.

Since the full range of conduct proscribed by Fl. Stat. § 812.014 does not constitute a crime involving moral turpitude, we will apply the modified categorical approach and engage in a second-stage inquiry by reviewing the applicant’s record of conviction to determine if the conviction was based on conduct involving moral turpitude. *Silva-Trevino* 24 I&N Dec. at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708. The record of conviction in this case includes the “Information” filed by [REDACTED] which provides that:

. . . [REDACTED] on the 15th day of December, A.D. 1998 . . . did then and there unlawfully and knowingly use, or endeavor to use the property of [REDACTED] to wit: merchandise, of the value of three hundred dollars (\$300.00) or more, but less than five thousand dollars (\$5,000), with the intent to either temporarily or permanently deprive [REDACTED] of the right to the property or benefit from the property, or to appropriate the property to [her] own use or the use of any person not entitled to the use of the property

In *In re Jurado-Delgado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the BIA found that violation of a Pennsylvania retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently. The reasoning in *Jurado-Delgado* may be applied to the present case as the record establishes that the applicant’s crime was retail theft. Therefore, the AAO finds that the applicant pled guilty to knowingly taking the property of another with the intent to permanently

deprive that person of the property, a crime involving moral turpitude, and that she is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Prior to considering the applicant's eligibility for a waiver under section 212(h) of the Act, the AAO will address her claim that she is eligible for an exception under section 212(a)(2)(A)(ii)(I) of the Act, which states:

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

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States

While the AAO notes that the applicant has been convicted of only one crime, she is not eligible for the exception offered by section 212(a)(2)(A)(ii)(I) of the Act as she was not under 18 years of age on the date she committed the crime. Based on the birth certificate submitted by the applicant, her date of birth is February 5, 1967, making her 31 years of age on December 15, 1998, the date on which she committed the theft for which she was convicted. Accordingly, the applicant must seek a waiver of her inadmissibility under section 212(h) of the Act.

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-Morales*, 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 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 the waiver application is denied

On appeal, the applicant's spouse states that his family's life is in the United States. He further states that his son has reading difficulties and has been a slow learner, and that, in Mexico, he would not be provided with the support he requires in order to continue his studies. The record, however, fails to include medical or school reports that establish the applicant's son has problems reading or learning. Neither does it provide country conditions materials to demonstrate that the Mexican educational system would be unable to meet the applicant's son's learning needs if he relocated. 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)).

A psychological evaluation prepared by [REDACTED] a clinical psychologist, reports that she interviewed the applicant and her family on September 16, 2008. Based on that interview, [REDACTED] states that it is the family's best interests to remain in the United States. She asserts that the applicant's children would not be served by moving to Mexico as they would not be able to receive the type of education they need and their parents would not be able to provide them with the upbringing and standard of living they have in the United States. [REDACTED] also states that going to school in Mexico would require the applicant's son to learn a new language because his parents would be unable to afford an English-speaking school or tutors to help him. [REDACTED] further reports that the applicant's spouse is very concerned about insecurity in Mexico and how it would affect the family upon relocation.

While the AAO notes [REDACTED]'s assessment of the impact that moving to Mexico would have on the applicant's children's education and their parents' ability to provide for them, we do not find it to be supported by the record, e.g., published country conditions materials on the economy and the educational system in Mexico. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.* Therefore, we find [REDACTED]'s opinions regarding the negative effects of relocation on the applicant's children's education and standard of living to be insufficient proof that they would face these hardships if they moved to Mexico.

We also observe that [REDACTED] has not reported the specifics of the security concerns that were stated by the applicant's spouse during her September 16, 2008 interview with him, the applicant and their children. However, we note that the applicant's waiver appeal was submitted at a time when drug-related violence had begun to spread across Mexico. In light of this violence, which has resulted in the U.S. Department of State's issuance of a 2010 travel warning advising U.S. citizens against travel to certain areas of Mexico, we have considered whether the applicant's spouse and children would be at risk from drug violence if they were to join the applicant in Mexico.

The record indicates that the applicant, if removed, would be likely to return to [REDACTED] the city where she was born and where her parents continue to reside. [REDACTED] is part of Mexico City's metropolitan area and is not one of the locations identified by the Department of State in its travel warning as prone to drug-related violence. Therefore, the AAO does not find the threat of drug violence to be a factor that should be considered in determining extreme hardship to the applicant's spouse and children upon relocation. We are also unable to determine that the applicant's spouse

and/or children would be at risk on any other basis as no evidence relating to the security concerns expressed by the applicant's spouse at the time of the family's interview has been provided.

Based on our review of the record, the AAO does not find it to contain sufficient evidence to establish that the applicant's spouse and/or daughter would experience extreme hardship if either or both were to relocate to Mexico.

The AAO does, however, note that the applicant's son, who is now 18 years of age, does not speak Spanish and has lived his entire life in the United States. 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 applicant has an 18-year-old son who, like the child in *Matter of Kao and Lin*, has lived his entire life in the United States and does not speak the language of the country to which he would relocate. Relying on the BIA's reasoning in *Matter of Kao and Lin*, the AAO concludes that relocation to Mexico would create a similar disruption in the life of the applicant's son and, therefore, would constitute an extreme hardship for him. Accordingly, the record establishes that a qualifying relative would experience extreme hardship upon relocation to Mexico.

On appeal, the applicant's spouse claims that he and his children would also experience extreme hardship if the applicant is removed and they remain in the United States as the applicant is their emotional support and they would experience psychological trauma without her. He states that the applicant is not only his wife but his best friend. He asserts that she helps him with his work. The applicant's spouse also reports that the applicant has helped to raise their children and that both his son and daughter need their mother to drive them back and forth to school, to help them with their homework and to teach them good moral values. The applicant's spouse specifically asserts that the applicant's presence is required to ensure that their son, who has reading difficulties and requires tutors, receives the best education possible.

In support of the applicant's spouse's claims, [REDACTED] asserts that she believes separation from the applicant would result in extreme hardship for her children as it would be significantly detrimental and traumatic. She also finds that separation from the applicant would result in extreme hardship for her spouse. [REDACTED] states that the applicant's spouse loves his wife and that the thought of her leaving is devastating for him. She further states that the applicant's spouse knows how difficult it would be to raise two teenagers by himself.

Although the input of any mental health professional is respected and valuable, the AAO notes that [REDACTED]'s report fails to provide the type of detailed mental health analysis normally associated with a psychological evaluation. It fails to identify any specific mental health impacts of separation on the applicant's spouse and children, indicate the severity of these impacts, or specify how they would affect family members' abilities to function on a daily basis. Instead, [REDACTED] concludes that separation from the applicant would result in extreme hardship for her spouse and/or children. We note, however, that a finding of extreme hardship in a 212(a) waiver proceeding is a statutory determination made by United States Citizenship and Immigration Services (USCIS). Accordingly, the AAO finds [REDACTED] evaluation to be of limited value to a determination of extreme hardship in this proceeding.

Based on the record before us, the AAO does not find the applicant to have submitted sufficient evidence to demonstrate the claimed impacts of separation on her spouse and/or children. Nothing in the record demonstrates that the emotional hardships they would individually experience in her absence, even when considered in the aggregate, are other than those normally created by the separation of families. Accordingly, the AAO does not find the applicant to have established that her spouse and/or her children would experience extreme hardship if the waiver application is denied and they remain in the United States.

Although the record demonstrates that the applicant's son would face extreme hardship upon relocation, it does not also prove that this would be the case if he remained in the United States. Therefore, 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.

In proceedings for application for 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.