

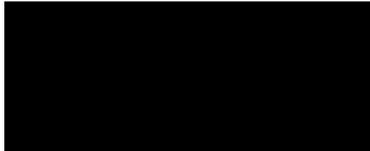
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U. S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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Date: **JUL 08 2011** Office: GUATEMALA CITY FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h), 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

**INSTRUCTIONS:**

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

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

Thank you,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for waiver of inadmissibility was denied by the Acting Field Office Director, Guatemala City, Guatemala. The matter 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of his last departure from the United States. The applicant was further found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude. The applicant seeks a waiver of grounds of inadmissibility in order to relocate to the United States with his U.S. citizen spouse, daughter and stepson.

The Acting Field Office Director (“director”) found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative. The director further found that the applicant failed to demonstrate that he warranted a waiver as a matter of discretion. The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that while the applicant is inadmissible for unlawful presence, the applicant’s crimes are not ones involving moral turpitude. Counsel states that the applicant has demonstrated that his family has suffered extreme financial and emotional hardships as a result of his departure to Guatemala.

The record contains, but is not limited to, statements from the applicant’s spouse, financial documentation, conviction records, psychological evaluations, medical documentation, and letters of support from the applicant’s friends and church. The entire record was reviewed and considered in rendering this decision.

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.

(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, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The record reflects that on June 11, 1999, the applicant was convicted in the General District Court of Prince William County, Virginia of assault and battery in violation of section 16-8 of the Prince William County Code. He was sentenced to a 90 day suspended sentence (case no. [REDACTED]). The record further reflects that the applicant was arrested for throwing a missile at an occupied vehicle in

violation of section 18.2-154 of the Virginia Code. The applicant pled guilty to this offense, and the court deferred a finding of guilt for a period of 12 months on the condition that the applicant be placed on probation for a period of six months, paid fines and restitution, and completed community service. On May 16, 1999, the court determined that the applicant was in full compliance with all the terms and conditions of the deferred finding, and the charge of throwing a missile was amended to the misdemeanor charge of destruction of private property in violation of section 18.2-137 of the Virginia Code (case no. 11395).

The AAO concludes, for the reasons set forth below, that moral turpitude is not inherent in the applicant's conviction for misdemeanor assault and battery. The Board of Immigration Appeals (Board) has "observed that moral 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." *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992). Additionally, "[m]oral turpitude has been defined as an act which is per se morally reprehensible and intrinsically wrong, or malum in se, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude." *Matter of Franklin*, 20 I&N Dec. 867, 868 (BIA 1994). In order to determine whether a conviction involves moral turpitude, the decision-maker must "look first to statute of conviction rather than to the specific facts of the alien's crime." *Matter of Silva-Trevino*, 24 I&N Dec. 687, 688 (A.G. 2008).

The record shows that the applicant was convicted of assault and battery in violation of Prince William County Code § 16-8, which provides that "[a]ny person who shall commit a simple assault or assault [is] guilty of a Class 1 misdemeanor." The state law reference for assault and battery under the Prince William County Code is section 18.2-57 of the Virginia Code.

At the time of the applicant's conviction, Va. Code § 18.2-57 provided, in pertinent part:

A. Any person who commits a simple assault or assault and battery shall be guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, the penalty upon conviction shall include a mandatory, minimum term of confinement of at least six months, thirty days of which shall not be suspended, in whole or in part.

Crimes of assault and battery may or may not involve moral turpitude; an assessment of both the mental state and level of harm to complete the offense is required. *See, e.g., Matter of Solon*, 24 I&N Dec. 239 (BIA 2007). Intentional conduct resulting in a meaningful level of harm may be found to be morally turpitudinous, and aggravating factors are to be taken into consideration. *See id.* at 242. However, "[o]ffenses characterized as 'simple assaults' are generally not considered to be crimes involving moral turpitude . . . because they require general intent only and may be committed without the evil intent, depraved or vicious motive, or corrupt mind associated with moral turpitude." *Id.* at 241 (internal citations omitted); *see also Perez-Contreras*, 20 I&N Dec. at 617-18 (holding that Washington conviction for assault in the third degree is not a crime involving moral

turpitude where statute required no intent nor any conscious disregard of a substantial and unjustifiable risk); *Matter of Fualaau*, 21 I&N Dec. 475, 478 (BIA 1996) (en banc) (holding that Hawaiian conviction for assault in the third degree was not a crime involving moral turpitude where the offense is similar to simple assault).

The Board has held that a conviction for assault and battery against a family or household member in violation of section 18.2-57.2 of the Virginia Code is not categorically a crime involving moral turpitude. *See Matter of Sejas*, 24 I&N Dec. 236 (BIA 2007). The Board found:

A conviction for assault and battery in Virginia does not require the actual infliction of physical injury and may include any touching, however slight. *See Adams v. Commonwealth*, 534 S.E.2d 347, 351 (Va. App. 2000) (In Virginia, it is abundantly clear that a perpetrator need not inflict a physical injury to commit a battery.). While the Virginia law of assault and battery requires an intent or imputed intent to cause injury, the intended injury may be to the feelings or mind, as well as to the corporeal person. *Wood v. Commonwealth*, 140 S.E. 114, 115 (Va. 1927) (quoting 2 Am. & Eng. Ency. L. 953, 955); *see also Lynch v. Commonwealth*, 109 S.E. 427 (Va. 1921). Although some decisions have referred to an intent to do bodily harm, that term has been broadly construed to include offensive touching. *See, e.g., Gilbert v. Commonwealth*, 608 S.E.2d 509, 511 (Va. App. 2005) (stating that the requisite harm under the Virginia assault and battery statutes can include the slightest touching ... in a rude, insolent, or angry manner (quoting *Crosswhite v. Barnes*, 124 S.E. 242, 244 (Va. 1924))).

*Id.* at 238 (internal quotation marks omitted).

Here, the applicant was convicted of misdemeanor assault and battery under Prince William County Code § 16-8, which does not require the actual infliction of physical injury. The applicant was not convicted of assault with aggravating circumstances, such as assault with intent to maim, under Va. Code Ann. § 18.2-51 (1991), or assault and battery against a law enforcement officer under Va. Code Ann. § 18.2-57.1 (1991). Like the Board in *Matter of Fualaau*, the AAO concludes that the applicant's offense is "fundamentally different from those that have been determined to involve moral turpitude" because the statute does not require "the death of another person, the use of a deadly weapon, or any other aggravating circumstance." 21 I&N Dec. at 478 (internal quotation marks and citations omitted); *cf. Yousefi v. INS*, 260 F.3d 318, 326 (4th Cir. 2001) (per curiam) (stating that District of Columbia conviction for assault with a dangerous weapon is a crime involving moral turpitude); *Matter of Solon*, 24 I&N Dec. at 243 (holding that New York offense of assault in the third degree, which requires both specific intent and physical injury, is a crime involving moral turpitude). Accordingly, the AAO finds that a Virginia conviction for misdemeanor assault and battery is not a crime involving moral turpitude because "none of the circumstances in which there is a realistic probability of conviction involves moral turpitude." *Silva-Trevino*, 24 I&N Dec. at 699 n.2.

At the time of the applicant's conviction for destruction of private property, Va. Code § 18.2-137 provided:

A. If any person unlawfully destroys, defaces, damages or removes without the intent to steal any property, real or personal, not his own, or breaks down, destroys, defaces, damages or removes without the intent to steal, any monument or memorial for war veterans . . . shall be guilty of a Class 3 misdemeanor; provided that the court may, in its discretion, dismiss the charge if the locality or organization responsible for maintaining the injured property, monument, or memorial files a written affidavit with the court stating it has received full payment for the injury.

B. If any person intentionally causes such injury, he shall be guilty of (i) a Class 1 misdemeanor if the value of or damage to the property, memorial or monument is less than \$1,000 or (ii) a Class 6 felony if the value of or damage to the property, memorial or monument is \$1,000 or more . . . .

The BIA has held that the malicious destruction of property is not a crime involving moral turpitude when the statute under which the alien was convicted does not require base or depraved conduct. *See Matter of M*, 2 I&N Dec. 686 (BIA 1946)(unlawful destruction of railway telegraph equipment found not to involve moral turpitude); *Matter of C-*, 2 I&N Dec. 716 (BIA 1947)(no moral turpitude in damaging a glass door of private property); *Matter of B*, 2 I&N Dec. 867 (BIA 1947)(willfully damaging mailboxes and other private property found not to involve moral turpitude). However, when the conviction involves malicious and wanton injury to property, the BIA has found that the crime constitutes moral turpitude. *Matter of M*, 3 I&N Dec. 272, 273-74 (BIA 1948). The AAO notes that the statute under which the applicant was convicted is a divisible statute violated by either "unlawful" or "intentional" destruction of property.

The applicant has not presented and the AAO is unaware of any prior case in which a conviction has been obtained under Va. Code § 18.2-137 for conduct not involving moral turpitude. In accordance with the language of *Silva-Trevino*, the AAO will review the record as part of its categorical inquiry to determine if the statute was applied to conduct not involving moral turpitude in the applicant's own criminal case. The AAO notes that the applicant initially pled guilty to throwing a missile at an occupied vehicle under Va. Code § 18.2-154, which can be violated by either malicious or unlawful conduct. The documents comprising the record of conviction are inconclusive as to whether the applicant acts were malicious or wanton. The record does not contain an arrest report detailing the facts resulting in the applicant's arrest.

Nevertheless, even if we find that the applicant's conviction under Va. Code § 18.2-137 was for a crime involving moral turpitude, the applicant is eligible for the "petty offense" exception to inadmissibility arising under section 212(a)(2)(A)(i)(I) of the Act. Section 212(a)(2)(A)(ii)(II) of the Act provides an exception for aliens who have been convicted of only one crime if the maximum penalty possible for the crime of which the alien was convicted did not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of 6 months. Here, the applicant qualifies for the exception because he was not sentenced to imprisonment. The court order

reflects that he was convicted of a misdemeanor, and a punishment for a Class 1 misdemeanor offense is confinement in jail for not more than 12 months. *See* Va. Code § 18.2-11. Therefore, the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The director determined, and the applicant does not contest, that the applicant entered the United States without inspection in February 1994 and departed the United States in July 2008. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until July 2008. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and seeking admission within 10 years of the date of his departure from the United States.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

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 Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

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

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for

28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal, the applicant's spouse asserts in an affidavit dated February 19, 2009 that the applicant helped with taking care of their children and his income covered at least half of their household expenses. She states that she now takes care of their children alone, and is not able to work long hours. She states that their mortgage, utilities and food expenses are not covered by her income. She indicates that her daughter is not able to sleep alone and has nightmares because of the applicant's absence. She contends that she loves the applicant and is suffering emotional pain from their separation.

The record contains two psychological evaluations respectively [REDACTED]. The evaluation conducted after the applicant's departure, dated [REDACTED] from [REDACTED] conducted diagnostic tests of the applicant and concluded that the applicant's spouse's "marriage is currently in a vulnerable state and the current separation makes these vulnerabilities, both [REDACTED] past infidelity as well as [REDACTED] difficulty trusting, more pronounced. A protracted separation, at this moment in time, could potentially be the demise of this marriage and of this intact family unit." The AAO notes that [REDACTED] has not diagnosed the applicant's spouse as suffering from any type of mental health condition or disorder as a result of the applicant's departure. The psychological evaluation is limited to a discussion of emotional hardship the applicant's spouse is suffering.

The AAO acknowledges that the applicant's spouse is experiencing emotional hardship as a result of her separation from the applicant as a result of his inadmissibility, and is sympathetic to their situation. In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and that "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted). We will accordingly give significant weight to the emotional hardship the applicant's spouse is currently suffering.

The applicant's spouse has made claims of financial hardship as a result of the applicant's departure. The wage and tax statements submitted by the applicant reflect that he earned \$35,184 in 2007 for his employment with [REDACTED]. He has submitted an expense report reflecting his monthly household expenses as \$11,255.77. However, these expenses include a mortgage in the amount of \$3,677.18 from [REDACTED] for a property at which he and his spouse do not reside. The psychological evaluation narrative reflects that the applicant and his spouse have a rental property. The applicant has not presented rental income from this property as evidence of their monthly income. Further, the applicant has not presented the income the applicant's spouse earned in 2008 as realtor. It should be noted that according to the applicant's 2007 tax return, the applicant's spouse earned \$20,900 as a realtor. The most current evidence of the applicant's spouse's earnings are her earnings and deduction statements from December 2008, which reflect that after the applicant's departure, she was earning a gross income of \$1,444.41 per week (\$75,109.32

annually) for her employment with [REDACTED]. In sum, the AAO acknowledges that the applicant's spouse is likely suffering financial hardships from the loss of the applicant's income; however, the applicant has failed to present a clear picture of his spouse's financial situation. Because the record contains the aforementioned deficiencies, we cannot give significant weight to the claims of financial hardship.

Finally, the applicant submitted a letter from [REDACTED] Centre, dated February 29, 2008, stating that the applicant's spouse suffers from lumbago/lumbalgia, pain in thoracic region, thoracic or lumbar neuritis/radiculitis and muscle spasms. However, the letter does not provide a more detailed prognosis of her conditions, a statement of their impact on her daily functioning, or any treatment plans. Nor does it state how her conditions have affected her activities of daily life. Accordingly, we cannot find that the applicant's spouse is suffering from medical conditions that are resulting in hardships as a result of her separation from the applicant.

All elements of hardship the applicant's spouse will suffer if she remains separated from the applicant has been considered in the aggregate. The AAO acknowledges that the applicant's spouse is suffering hardships related to the emotional impact of separation and some financial hardships. However, the applicant has not clearly demonstrated the extent of the financial hardship. Nor has he submitted evidence to show that the emotional hardship of separation is atypical and beyond what would normally be expected. Based on the foregoing, the applicant has not demonstrated that his spouse will suffer extreme hardship upon separation from him.

Furthermore, the applicant has failed to establish extreme hardship to his spouse if she relocates to Guatemala to maintain family unity. The applicant has not asserted, or submitted evidence to demonstrate, that his spouse would suffer extreme hardship in Guatemala if she relocated there. 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 cannot determine that the applicant's spouse would suffer extreme hardship if she relocated to Guatemala.

Accordingly, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his spouse, as required for a waiver under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility 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. The waiver application is denied.