

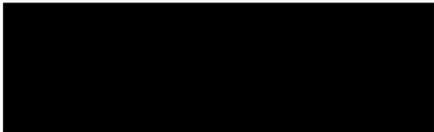
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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



PUBLIC COPY

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FILE: [REDACTED] Office: ATLANTA, GA Date: MAR 09 2011

IN RE: Applicant: [REDACTED]

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

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,

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Canada who was found to be inadmissible under 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 been convicted of committing a crime involving moral turpitude, violation of 18 U.S.C. § 1960. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, the applicant contends that violation of 18 U.S.C. § 1960 is a regulatory offense and is therefore not a crime involving moral turpitude. The applicant states that 18 U.S.C. § 1960 prohibits conducting a money transmitting business without a state license, and is a general intent statute that illegalizes conducting any unlicensed money transmitting business. The applicant contends that the statute does not require intent to commit fraud or theft. The applicant cites *Matter of B*, 6 I&N Dec. 98 (BIA 1954), and states that the Board of Immigration Appeals (Board) held that conspiracy to violate section 340 of the Banking Law of New York, which prohibits conducting a small loan business without a license, does not involve moral turpitude because the section is only a licensing and regulatory provision and does not require criminal intent. The applicant cites *Chaunt v. U.S.*, 364 U.S. 350 (1960), *U.S. v. Carrollo*, 30 F. Supp. 3 (W.D. Mo. 193); *Matter of S-*, 9 I&N Dec. 688 (BIA 1962); *Matter of K*, 8 I&N Dec. 310 (BIA 1959); *Matter of J*, 2 I&N Dec. 99 (BIA 1944), and the U.S. Department of State Foreign Affairs Manual, 9 FAM 40.21(a) N2.3-2(b), in support his claim that violations of regulatory statutes generally are not morally turpitudinous since there is nothing inherently evil in the prohibited conduct.

The applicant was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, which 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 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.)

On August 11, 2006, the applicant was found guilty of conducting, controlling, or directing all or part of an unlicensed money transmitting business in violation of 18 U.S.C. § 1960. The judge sentenced the applicant to imprisonment for time served, placed him on supervised release for three years, ordered that he serve 150 hours of community service, and forfeit \$65,125.

In Florida, on December 5, 1996, the applicant pled nolo contendere to (count 1) resist/obstruct officer with violence, (count 2) driving under the influence, and (count 3) battery on law enforcement officer. For counts 1 and 2, he was ordered to serve one year of probation; for count 2, he was ordered to pay a fine. On November 20, 2003, he pled guilty to driving under the influence, leaving accident/attend vehicle more \$50, fail to use due care, and personal injury insurance requirement.

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.

18 U.S.C. § 1960, prohibition of unlicensed money transmitting businesses, provides:

(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

(b) As used in this section--

(1) the term “unlicensed money transmitting business” means a money transmitting business which affects interstate or foreign commerce in any manner or degree and--

(A) is operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable;

(B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section; or

(C) otherwise involves the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity;

(2) the term “money transmitting” includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

(3) the term “State” means any State of the United States, the District of Columbia, the Northern Mariana Islands, and any commonwealth, territory, or possession of the United States.

In *U.S. v. Keleta*, 441 F.Supp.2d 1, 3 (D.D.C. 2006), the U.S. District Court found that 18 U.S.C. § 1960(b)(1)(B) does not require a defendant either know or willfully violate (or both) federal money transmitting registration requirements in order to violate the statute.

The applicant contends that violation of 18 U.S.C. § 1960 is a regulatory offense, and therefore is not a crime involving moral turpitude. In support of his contention the applicant cites *Matter of B-*, a case in which the Board analyzed whether violation of section 340 (which essentially prohibits the doing of a small loan business without a license), and section 357 (which prohibits a nonlicensee from charging more than 6 per cent interest), of the Banking Law of New York involves moral turpitude. *Id.* at 106-107. The Board found that these statutory provisions do not involve moral turpitude as they are “only a licensing and regulatory enactment with a complete absence of any

element which could be considered to denote baseness, vileness or depravity. No criminal intent is required . . . and negligence in failing to secure a license to carry on a small loan business or inadvertently “receiving” more than the interest permitted would make the offender subject to prosecution.” *Id.* at 107.

On appeal the applicant cites cases listing crimes that do not involve moral turpitude. *See Chaunt v. U.S.*, 364 U.S. 350 (1960) (distributing handbills, making a speech, and a breach of the peace); *U.S. v. Carrollo*, 30 F. Supp. 3 (W.D. Mo. 193) (conducting a lottery); *Matter of S-*, 9 I&N Dec. 688 (BIA 1962)(“gambling and owning and operating a gambling establishment and being a common gambler under sections 970 and 973 of the New York Penal Code are not crimes involving moral turpitude”); *Matter of K-*, 8 I&N Dec. 310 (BIA 1959)(failure to comply with ration law, not having a buying permit, paying more than ceiling price for cigarettes, unlawful possession of packages of cigarettes); and *Matter of J-*, 2 I&N Dec. 99 (BIA 1944) (unlawful sale of liquor to an Indian). The applicant also cites the U.S. Department of State Foreign Affairs Manual, 9 FAM 40.21(a) N2.3-2(b), which lists crimes committed against governmental authority that are not morally turpitudinous because they are “regulatory in character” and do not involve “the element of fraud or other evil intent.”

However, we observe that there is a federal court decision that is relevant to the issue of whether the applicant’s offense of operating an unlicensed money transmitting businesses involves moral turpitude. In *Smalley v. Ashcroft*, 354 F.3d 332, 337 (5th Cir. 2003), Smalley pleaded guilty to “Interstate Travel in Aid of Racketeering Enterprise” under 18 U.S.C. § 1952, which penalizes a defendant who “travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to . . . facilitate the promotion, management, establishment, or carrying on, of any unlawful activity.” 18 U.S.C.1952(a)(3) (2000). The Fifth Circuit found that section 1952 covers a broad range of “unlawful activity” and would encompass conduct that both does and does not involve moral turpitude. The Fifth Circuit therefore analyzed whether Smalley’s crime, as charged, would fall within the subsection of the statute that only covers turpitudinous acts. *Id.* at 336. The Fifth Circuit stated that “Smalley pleaded guilty to traveling in interstate commerce with the intent to facilitate . . . conducting a financial transaction to conceal the proceeds of a specified unlawful activity. . . . Smalley believed that the money he agreed to conceal was the proceeds of illegal drug transactions.” *Id.* at 337. The Fifth Circuit found Smalley’s crime of money laundering to conceal drug proceeds to be a crime involving moral turpitude. *Id.* at 338-339.

18 U.S.C. § 1960(b)(1)(C) prohibits “the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity.” In accordance with *Smalley*, we find that the language of this subsection is broad enough to encompass (hypothetically) conduct that both involves moral turpitude (such as money laundering to conceal drug proceeds) and conduct that does not. Since violation of 18 U.S.C. § 1960 does not categorically involve moral turpitude, the AAO must review the record of conviction, which consists of consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript to determine if the applicant’s conviction was based on morally turpitudinous conduct. For a finding of moral turpitude for violation of 18 U.S.C. § 1960 there must be evidence in the record establishing the applicant knew that he was transporting or transmitting funds derived from a criminal offense that is morally turpitudinous or transmitting funds intended to be used to promote or support unlawful activity of a morally turpitudinous character.

To meet his burden, the applicant must, at a minimum, submit the available documents that comprise the record of conviction and show that these fail to establish that his conviction was based on conduct involving moral turpitude. To the extent such documents are unavailable, this fact must be established pursuant to the requirements in 8 C.F.R. § 103.2(b)(2). The AAO notes that the applicant submitted copies of the judgment, the plea agreement, the consent to forfeiture, the indictment, and the certificate of the trial attorney. The plea agreement states that the applicant pled guilty to count one of the indictment, which charge stated that the applicant “did knowingly conduct, control, and direct all or part of an unlicensed money transmitting business . . . which involved the transportation of funds which the defendant knew were derived from a criminal offense and intended to be used to promote unlawful activity.” However, none of these documents describe the criminal offense from which the funds were derived or the unlawful activity for which they were intended to be used. We take note that though the applicant states in the letter dated December 2, 2009, that his criminal conduct was to cash checks to pay illegal workers, and in the letter dated February 7, 2006, he states that he was involved in “the illegal aliens payroll,” we require that the applicant submit all of the available documents of his record of conviction so that we may determine the specific conduct of which he was convicted. The AAO finds that the applicant has not established, in accordance with the requirements in 8 C.F.R. § 103.2(b)(2), that all of the documents comprising his record of conviction for violation of 18 U.S.C. § 1960 are unavailable. Because the submitted documents do not demonstrate that the applicant's offense was not a crime involving moral turpitude, we will not disturb the finding that the applicant's conviction of threat to commit crime is a crime involving moral turpitude.

Since the applicant's violation of 18 U.S.C. § 1960 involves moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, we need not make a determination as to whether his own/operate/conduct chop shop, and possession/sell motor vehicle with altered vehicle identification number convictions involve moral turpitude.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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 section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives here are the applicant's U.S. citizen spouse, and his

U.S. citizen daughter and son, and his lawful permanent resident son and stepson. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (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 are possible 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 to be taken is difficult, and it is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. Cf. *Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board 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*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 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 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.*

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).

In rendering this decision, the AAO will consider all of the evidence in the record including birth certificates, letters, naturalization certificates, deeds, invoices, tax assessments, medical records, and other documentation.

With regard to remaining in the United States without the applicant, the applicant’s wife states in the letter dated November 17, 2009, that she is 52 years old and has lived in the United States since 1992. She indicates that she met her husband in 2003 and married him in 2005. She conveys that they have a close relationship; and that her mother, her brother and his wife and their children, her sister, her stepdaughter and her husband, and her grandson are all U.S. citizens; and that her sons and father are lawful permanent residents. She asserts that she would be emotionally destroyed without her husband. The applicant’s wife indicates that they own eleven properties in the United States, ten of which are rentals, and that she will be unable to take care of the properties without her husband because she has spinal problems and had back surgery in July 2004. She avers that in 2006 she was in a car accident and treated for a herniated disc in her upper spine, which causes pain wherever she performs heavy work, and that she recently broke her right foot and requires crutches. She states that their houses are old and require maintenance. The applicant’s wife declares that they owe \$200,000 and have annual property taxes of \$8,940. She states that because of the depressed economy they cannot sell their houses, nine of which are in low income neighborhoods. The AAO notes that the record reflects that the applicant and/or his spouse own 11 properties. Further, we observe that the applicant indicates in the letter dated February 7, 2006, that he has a close relationship with his daughter.

Family separation 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 type of familial relationship considered. For example, in *Matter of Shaughnessy*, the Board 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) (██████████ 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 otherwise 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 familial relationship involved, the hardship resulting from family separation is 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. Indeed, the specific facts of a case may dictate that even the separation of a spouse and children from an applicant does not constitute extreme hardship. In *Matter of Ngai*, for instance, the Board did not find extreme hardship because the claims of hardship conflicted with evidence in the record and because the applicant and his spouse had been voluntarily separated from one another for 28 years. 19 I&N Dec. at 247. 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 asserted hardship factor in the instant case is the emotional hardship of separation from the applicant. The applicant’s wife asserts that she has a close relationship with her husband and would be emotionally destroyed without him. She conveys that she has known her husband since 2003, and the marriage certificate shows that they have been married since July 5, 2005. In view of the substantial weight that is given in the hardship analysis to the separation of spouses from one another, such as in this case, where the record demonstrates a close marital relationship for five years, we find the applicant has demonstrated the hardship that his wife will experience as a result of separation is extreme.

With regard to the hardship of joining the applicant to live in Canada, the applicant's wife states that she is 52 years old, that her ties to the United States are having lived here since 1992; having her extended and immediate family members here; and the ownership of 11 properties, which the applicant's wife states are not saleable because of the depressed economy. The AAO acknowledges that the applicant's wife will experience hardship in having to return to Canada after living in the United States for many years. Furthermore, we recognize that the applicant's wife will experience emotional hardship as a result of separation from family members in the United States. However, the record does not indicate that her emotional hardship would be the same as that of minor children who separate from a parent upon whom they are emotionally and financially dependent. Further, the record does not suggest that the applicant's wife's sons are minor children. In addition, the Board of Tax Assessors records show that the real property owned by the applicant and/or his wife is in either excellent or good condition, and they do not indicate that their property values have declined. Moreover, it has not been fully demonstrated that the properties must be immediately sold rather than rented and professionally managed. When all of the hardship factors are considered in the aggregate, we cannot find they establish extreme hardship to the applicant's wife if she joins the applicant to live in Canada.

Finally, we need not address whether the applicant's daughter, son, or stepson would experience extreme hardship in Canada because the applicant has not demonstrated that they would experience extreme hardship if they remain in the United States without him.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.