

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**

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**

*H2*

[Redacted]

FILE: [Redacted]

Office: NEW YORK

Date:

**MAR 16 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:

[Redacted]

**INSTRUCTIONS:**

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

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

*Michael Hummer*

*for* Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for waiver of inadmissibility was denied by the District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Korea 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 crimes involving moral turpitude. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen wife and son, and lawful permanent resident mother.

The director determined that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated July 28, 2008.

On appeal, counsel asserts that the director failed to consider the hardship the applicant's wife, son and mother would suffer if the applicant is denied admission to the United States. *Statement on Notice of Appeal (Form I-290B)*, dated August 27, 2008.

In support of the waiver application, the record includes, but is not limited to, statements from the applicant's family members, the applicant's court records, financial documentation, the applicant's spouse's naturalization certificate, the applicant's son's birth certificate, the applicant's son's school records, the applicant's mother's permanent resident card, the applicant's divorce decree, the applicant's father's death certificate, and the applicant's sister's naturalization certificate. The entire record was reviewed and 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.

(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).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record reflects that on June 22, 1995, the applicant was convicted in the Supreme Court of the State of New York, Queens County, of assault in the second degree in violation of New York Penal Law § 120.05-2. The applicant was sentenced to five years probation, imprisonment for the time served, and his spouse received a five year order of protection [REDACTED] Assault in the second degree is a class D felony, punishable by a term of imprisonment not exceeding seven years. New York Penal Law § 70.00.

At the time of the applicant's conviction, New York Penal Law § 120.05-2 provided that "a person is guilty of assault in the second degree when with intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument."

In *Matter of Solon*, the BIA addressed whether a lesser offense of assault in the third degree, a class A misdemeanor, is a crime involving moral turpitude. 24 I&N Dec. 239 (BIA 2007). The alien in *Matter of Solon* was convicted of a violation of New York Penal Law § 120.00(1), which provides that a person is guilty of assault in the third degree when, "[w]ith intent to cause physical injury to another person, he causes such injury to such person or to a third person." 24 I&N Dec. at 243. The BIA concluded that:

[A] conviction for assault in the third degree under section 120.00(1) of the New York Penal Law requires, at a minimum, (1) that the offender acts with the conscious

objective to cause another person impairment of physical condition or substantial pain of a kind meaningfully greater than mere offensive touching, and (2) that such impairment of physical condition or substantial pain actually results. Thus, a conviction under this statute requires, at a minimum, intentionally injurious conduct that reflects a level of depravity or immorality appreciably greater than that associated with the crime at issue in *Matter of Sanudo, supra*, at 971-72 (stating that the minimal conduct necessary for a battery conviction under section 242 of the California Penal Code was in the nature of a simple battery). Accordingly, we conclude that a conviction under section 120.00(1) of the New York Penal Law is a conviction for a crime involving moral turpitude.

24 I&N Dec. at 245.

A conviction for a violation of New York Penal Law § 120.05-2, similarly requires intent to cause injury and further involves the aggravating factor of a deadly weapon or a dangerous instrument. *See Matter of Medina*, 15 I. & N. Dec. 611, 614 (BIA 1976)(stating “assault with a deadly weapon is generally deemed to be a crime involving moral turpitude.”). Therefore, the AAO finds that the applicant’s conviction for assault in the second degree in violation of New York Penal Law § 120.05-2 is categorically a crime involving moral turpitude, and the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant has not contested this determination on appeal.

Section 212(h) of the Act provides, in pertinent parts:

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

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 . . . ; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions

and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

Since the criminal conviction for which the applicant was found inadmissible occurred more than 15 years ago, he is eligible for a waiver under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated. However, even if the applicant establishes that he meets the requirements of section 212(h)(1)(A), we cannot favorably exercise discretion in the applicant's case except in an extraordinary circumstance. *See* 8 C.F.R. § 212.7(d).

The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The AAO notes that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and the AAO is aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. §

16, or the specific language thereof, in 8 C.F.R. § 212.7(d). Thus, we find that the statutory terms “violent or dangerous crimes” and “crime of violence” are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependant on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms “violent” and “dangerous”. The term “dangerous” is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms “violent” and “dangerous” in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). Black’s Law Dictionary, Seventh Edition (1999), defines violent as “of, relating to, or characterized by strong physical force” and dangerous as “likely to cause serious bodily harm.” Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual “case-by-case basis.” 67 Fed. Reg. at 78677-78.

The AAO finds that a violation of New York Penal Law § 120.05-2, which proscribes the intentional injury to a victim by means of a deadly weapon or a dangerous instrument, a violent and dangerous crime within the meaning of 8 C.F.R. § 212.7(d), and the heightened discretionary standards found in that regulation are applicable in this case.

Accordingly, the applicant must show that “extraordinary circumstances” warrant approval of the waiver. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant’s admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities, the AAO will consider whether the applicant has “clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship” to a qualifying relative. *Id.*

Although 8 C.F.R. § 212.7(d) does not specifically state to whom the applicant must demonstrate exceptional and extremely unusual hardship, the AAO interprets this phrase to be limited to qualifying relatives described under the corresponding waiver provision of section 212(h)(1)(B) of the Act. A waiver of inadmissibility under section 212(h)(1)(B) 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. The qualifying relatives in this case include the applicant’s U.S. citizen wife and son, and lawful permanent resident mother.

In *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001), the BIA determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that “must be ‘substantially’ beyond the ordinary hardship that would be

expected when a close family member leaves this country.” However, the applicant need not show that hardship would be unconscionable. *Id.* at 61

The BIA stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. 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. 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 an exclusive list. *Id.*

In *Monreal*, the BIA provided additional examples of the hardship factors it deemed relevant for establishing exceptional and extremely unusual hardship:

[T]he ages, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives. For example, an applicant who has elderly parents in this country who are solely dependent upon him for support might well have a strong case. Another strong applicant might have a qualifying child with very serious health issues, or compelling special needs in school. A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.

23 I&N Dec. at 63-4.

In the precedent decision issued the following year, *Matter of Andazola-Rivas*, the BIA noted that, “the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by comparing it to the hardship others might face.” 23 I&N Dec. 319, 323 (BIA 2002). The issue presented in *Andazola-Rivas* was whether the Immigration Judge correctly applied the exceptional and extremely unusual hardship standard in a cancellation of removal case when he concluded that such hardship to the respondent’s minor children was demonstrated by evidence that they “would suffer hardship of an emotional, academic and financial nature,” and would “face complete upheaval in their lives and hardship that could conceivably ruin their lives.” *Id.* at 321 (internal quotations omitted). The BIA viewed the evidence of hardship in the respondent’s case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The BIA noted:

While almost every case will present some particular hardship, the fact pattern presented here is, in fact, a common one, and the hardships the respondent has

outlined are simply not substantially different from those that would normally be expected upon removal to a less developed country. Although the hardships presented here might have been adequate to meet the former "extreme hardship" standard for suspension of deportation, we find that they are not the types of hardship envisioned by Congress when it enacted the significantly higher "exceptional and extremely unusual hardship" standard.

23 I&N Dec. at 324.

However, the BIA in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as *Andazola-Rivas*, clarified that "the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief." 23 I&N Dec. 467, 470 (BIA 2002). The BIA found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The BIA noted that these factors included her heavy financial and familial burden, lack of support from her children's father, her U.S. citizen children's unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The BIA stated, "We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met." *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate. *See Gonzalez Recinas*, 23 I&N Dec. at 469 ("While any hardship case ultimately succeeds or fails on its own merits and on the particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship."). The AAO notes that exceptional and extremely unusual hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On appeal, counsel asserts that the applicant financially supports his spouse, children and mother. Counsel states that the applicant's spouse has a volunteer position at a church, and receives a "nominal income" from her position with [REDACTED]. Counsel states that the applicant's mother resides with the applicant because in the Korean culture the eldest son takes care of his parents. Counsel notes that the applicant's mother suffers from high blood pressure and severe arthritis and rarely leaves their home. Counsel states that the applicant's son is a 16-year-old high school student, and has resided in the United States since his birth. Counsel notes that the applicant's son is involved in his church group. Counsel states that the applicant's sister, who is a U.S. citizen, does not have time to care for her mother because she works full-time. *Appeal Brief*, dated September 26, 2008.

The applicant's son states that he resides with his father, older sister, grandmother, and stepmother. He asserts that if his father returned to Korea, it would be very hard for him to leave the United States. He states that he is in the 11<sup>th</sup> grade at a high school in Queens, New York, and he has many friends from school that he plays basketball with. He states that he goes to church services every

Sunday and is involved in the church's youth group. He contends that his father is his family's only means of support, and his grandmother is too sick to return to Korea. He states that if he remains in the United States, he would be separated from his father, and he does not think his father would earn enough to financially support him. *Affidavit of* [REDACTED] dated September 24, 2008. The applicant's son expressed identical concerns in his previous affidavit. *See Affidavit of* [REDACTED] dated June 11, 2008.

The applicant's spouse asserts that the applicant financially supports her, his two children from a prior marriage, and his mother. She states that she is a volunteer Bible teacher at [REDACTED] and earns no money for her services. She states that her mother-in-law is 79 years old, suffers from high blood pressure and severe arthritis, and very rarely leaves the home. She states that she cares for her mother-in-law with the help of her step-daughter, and husband's sister. She states that it would be very hard for her and the applicant to find employment in Korea. She states that if her husband were to leave, his mother would suffer great hardship because she is too old and ill to return to Korea. She states that her stepchildren would also lose their means of support, and may not see their father again. *Affidavit of* [REDACTED] dated June 11, 2008.

The applicant's son and spouse have made claims of financial hardship if they were separated from the applicant. The Affidavit of Support (Form I-864) filed on behalf of the applicant by his spouse reflects that in 2007, the applicant earned \$16,500.00 and his spouse earned \$9,360.00. In her affidavit, the applicant's spouse stated that she has not worked for pay since 2005, and has been a volunteer Bible teacher since January 2006. *Affidavit of* [REDACTED] para 5. On appeal, counsel explains that [REDACTED] has essentially been unemployed since 2005. . . . She [...] does some work for [REDACTED], which provides only a nominal income." The AAO acknowledges that a salary of \$9,360.00 is below the federal poverty line. *See Department of Health and Human Services 2007 Federal Poverty Guidelines*. However, the applicant's spouse has not explained whether she could work full-time to overcome any financial difficulties resulting from the applicant's departure. Nor has the applicant's son, who is 19 years old, discussed the possibility of working full- or part-time. The applicant's spouse has indicated that during the day she cares for her mother-in-law who she states suffers from high blood pressure and severe arthritis. The applicant has submitted an affidavit from his sister, which states that she has little time to support her mother. *See Affidavit of* [REDACTED] dated September 24, 2008. However, there is no medical documentation in the file corroborating the claims of medical hardship to the applicant's mother. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Accordingly, the AAO cannot determine the extent of the financial hardship the applicant's qualifying family members will suffer if they are separated from the applicant.

The AAO acknowledges that the applicant's spouse, son and mother will experience emotional hardship if they are separated from the applicant as a result of his inadmissibility. 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). The AAO acknowledges that the applicant’s spouse, mother and son will experience emotional hardship if they remain in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, rises to the level of exceptional and extremely unusual. While almost every case will present some hardship, the fact pattern here is not ‘substantially’ beyond ordinary hardship.

As previously discussed, a determination of exceptional and extremely unusual hardship should include a consideration of the impacts of relocation on the applicant’s qualifying relatives.

Counsel asserts that the applicant’s mother will be unable to return to Korea with the applicant because of her health. Counsel contends that the applicant would have no employment opportunities in Korea, and he would be unable to support his mother. Counsel states that the applicant’s mother’s close relatives reside in the United States, including her daughter, daughter-in-law, and grandchildren. Counsel asserts further that the applicant’s spouse would have no prospects of employment in Korea. Finally, counsel asserts that the applicant’s son has resided in the United States his entire life. Counsel notes that the applicant’s son would be unable to finish school, would have to leave his close friends, and he would no longer be able to participate in organized basketball. *Appeal Brief*, dated September 26, 2008.

The AAO acknowledges that the applicant’s mother, who is 82 years old and has been a lawful permanent resident since October 1999, would have difficulty relocating to her native country of Korea. However, counsel has not furnished any documentation related to her health condition to corroborate the claims of medical hardship should she decide to relocate to Korea to maintain family unity with her son. Counsel claims that the applicant would be unable to financially support his mother, but again, there is no documentation in the file to show that an individual with the applicant’s employment background and skills would be unable to find employment. Nor is there any evidence to support the claim that the applicant’s spouse would be unable to find employment in Korea. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO gives some weight to the family ties that would be severed should the applicant’s mother relocate to Korea, but finds that this hardship factor does not alone rise to the level of exceptional and extremely unusual hardship, or even meet the lower extreme hardship standard.

The AAO recognizes that the applicant’s 19-year-old son has resided in the United States his entire life, and is integrated into his community. The Board of Immigration Appeals and U.S. Courts have found extreme hardship in cases where the language capabilities of the children were not sufficient for them to have an adequate transition to daily life in the applicant’s country of origin. For example, *Matter of Kao and Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent’s 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in Taiwan. The girl had lived her entire life in the United States and

was completely integrated into an American life style. The BIA found that uprooting her at this stage in her education and her social development to survive in a Chinese-only environment would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5<sup>th</sup> Cir. 1983), the Fifth Circuit Court of Appeals stated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown. In *Prapavat v. INS*, 638 F.2d 87, 89 (9<sup>th</sup> Cir. 1980) the Ninth Circuit Court of Appeals found the BIA abused its discretion in concluding that extreme hardship had not been shown to the aliens' five-year-old citizen daughter, who was attending school, and would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her.

While it is unknown whether the applicant's son is fluent in Korean, he has expressed his involvement with his friends, church and community. The record demonstrates that he has family and cultural ties to the United States. However, the applicant has failed to demonstrate that this hardship to his son, when combined with other hardship factors, rises to the level of exceptional and extremely unusual. Although the hardships presented here may meet the "extreme hardship" standard under section 212(h), "they are not the types of hardship envisioned by Congress when it enacted the significantly higher 'exceptional and extremely unusual hardship' standard." *Andazola-Rivas*, 23 I&N Dec. 319, 324.

In conclusion, the record does not reflect that the applicant's spouse, son or mother would suffer exceptional and extremely unusual hardship upon separation from the applicant or upon relocation to Korea. The AAO therefore finds that the applicant has failed to establish that he warrants a favorable exercise of discretion for a waiver of inadmissibility under section 212(h) of the Act.

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.