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



H2

Date: **APR 05 2012**

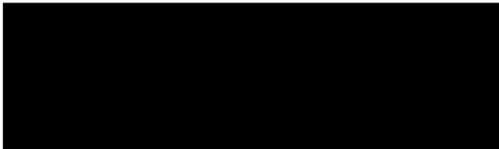
Office: LONDON

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$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 District Director, London, England, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ireland 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; and under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for seeking admission into the United States by fraud or willful misrepresentation. The director indicated that the applicant sought a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(h) and 1182(i), respectively. 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, counsel states that the applicant was convicted in Ireland for the crimes possession of a firearm and ammunition; driving a vehicle in a manner that was dangerous to the public; and use or engage in threatening, abusive or insulting words or behavior, and that his crimes do not involve moral turpitude.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The Board of Immigration Appeals (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.)

The record shows that on November 3, 2000, the applicant pled guilty to and was convicted of possession of firearms giving rise to an inference of unlawful purpose contrary to section 27(A)(1)

of the Firearms Act, 1964; and possession of ammunition giving rise to an inference of unlawful purpose contrary to Section 27(A)(1) of the Firearms Act, 1964.¹ The applicant was sentenced to a suspended sentence of imprisonment for two years and six months for each of the counts, and was ordered to pay 100 pounds and to keep the peace and be of good behavior for two years. Then on January 15, 2002, the applicant was convicted of driving a vehicle in a manner that was dangerous to the public. The applicant was ordered to be imprisoned for four months without hard labor, and disqualified for holding a driving license for five years. Lastly, on May 21, 2002, the applicant was convicted of using or engaging in threatening, abusive or insulting words or behavior with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace might have been occasioned. The applicant was ordered to pay a penalty, and in default of payment he was to be imprisoned.

In analyzing whether the applicant's convictions involve moral turpitude, we turn to *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008). In *Silva-Trevino*, 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."

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. 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.

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. *Id.* at 699-704, 708-709. However, this "does not mean that the parties would be free to present any and

¹ Specifically, section 27(A)(1) of the Firearms Act, 1964 (as inserted by Section 8 of the Criminal Law (Jurisdiction) Act, 1976 and as amended by Section 14 of the Criminal Justice Act, 1984 and by Section 4 of the Firearms and Offensive Weapons Act, 1990); and possession of ammunition giving rise to an inference of unlawful purpose contrary to Section 27(A)(1) of the Firearms Act, 1964 as inserted by Section 8 of the Criminal Law (Jurisdiction) Act, 1976 and as amended by Section 4 of the Firearms and Offensive Weapons Act, 1990.

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.

In general, carrying a concealed weapon is not a crime involving moral turpitude. *See U.S. ex rel. Andreacchi v. Curran*, 38 F.2d 498 (S.D.N.Y. 1926); and *Ex Parte Saraceno*, 182 F. 955 (C.C.N.Y. 1910). However, in [REDACTED] the Board held that carrying a concealed and deadly weapon with intent to use it against the person of another is a crime involving moral turpitude because "the use of a dangerous weapon against the person of another is motivated by an evil, base, and vicious intent. The essence of the offense is the carrying of the dangerous weapon with a base, evil and vicious intent to injure another." [REDACTED]

Section 27(A)(1) of the Firearms Act, 1964 (as inserted by Section 8 of the Criminal Law (Jurisdiction) Act, 1976 and as amended by Section 14 of the Criminal Justice Act, 1984 and by Section 4 of the Firearms and Offensive Weapons Act, 1990) states that:

Possession of firearm or ammunition in suspicious circumstances.

27A (1) A person who has a firearm or ammunition in his possession or under his control in such circumstances as to give rise to a reasonable inference that he has not got it in his possession or under his control for a lawful purpose shall, unless he has it in his possession or under his control for a lawful purpose, be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding five years.

(2) In the application of section 2 of the Criminal Law (Jurisdiction) Act, 1976, to this section, it shall be presumed, unless the contrary is shown, that a purpose that is unlawful in the State is unlawful in [REDACTED]

Section 2 of the Criminal Law (Jurisdiction) Act, 1976 states that:

Offences committed in [REDACTED] and related offences committed in state.
2.—(1) Where a person does in [REDACTED] an act that, if done in the State, would constitute an offence specified in the Schedule, he shall be guilty of an offence and he shall be liable on conviction on indictment to the penalty to which he would have been liable if he had done the act in the State. . . .

The Schedule that is listed in the Criminal Justice Act, 1951, and referenced in the aforementioned Section 2 of the Criminal Law (Jurisdiction) Act, 1976, includes as a "purpose that is unlawful" the following: an offence in the nature of a public mischief; obstruction of the administration of justice or the enforcement of the law; perjury; assault occasioning actual bodily harm, indecent assault; an offence under section 38 or section 60 of the Offences against the Person Act, 1861; and other offenses.

Since the offenses set forth in the Schedule indicate that violation of Section 27(A)(1) may or may not involve possession of a deadly weapon with an intent to use it against another person, a crime

involving moral turpitude, we will engage in a second-stage inquiry in which the “record of conviction” is reviewed to determine if the conviction was based on conduct involving moral turpitude. [REDACTED] 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. [REDACTED] If the record of conviction cannot resolve the question of the applicant’s intent, then we may consider any additional evidence deemed necessary or appropriate to resolve this question, with the burden of proving that the conviction was not a crime involving moral turpitude on the applicant. [REDACTED] Although counsel cites *Matter of Silva-Trevino* in his brief, he incorrectly states that that decision stands for the proposition that “only the language of the underlying statute, regardless of the specific facts of the case” may be considered in determining whether a conviction is a crime involving moral turpitude. Rather, the [REDACTED] framework departs from the traditional categorical approach in that it sanctions a review beyond the confines of the statutory text and record of conviction in order to reach a definitive conclusion as to the presence or absence of the dispositive element in the crime committed, regardless of whether that element is explicit element in the criminal statute. In this case, the element that would render this crime a crime involving moral turpitude would be the applicant’s intent to use the weapon possessed against another person. The applicant has the burden of demonstrating by means of the record of conviction or any other relevant evidence that his crime was not committed with such intent.

The submitted certificate of conviction states that the applicant had in his possession a double barrel shotgun and two shotgun cartridges “in such circumstances as to give rise to a reasonable inference that he did not have that firearm in his control for a lawful purpose.” The applicant has not provided the full record of conviction for this offense, which might describe the unlawful purpose for which the applicant possessed the shotgun and ammunition, nor has he provided additional evidence to indicate his unlawful purpose. Additionally, the applicant has not established in accordance with the requirements of [REDACTED] that the documents comprising the record of conviction are unavailable. The submitted certificate of conviction does not demonstrate that the applicant's crime of possession of firearm or ammunition in suspicious circumstances does not involve moral turpitude. As stated above, in proceedings 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. Accordingly, we will not disturb the finding that the applicant’s conviction of possession of firearm or ammunition in suspicious circumstances is a crime involving moral turpitude rendering the applicant inadmissible under section [REDACTED] of the Act.

The applicant was convicted of driving a vehicle in a manner that is dangerous to the public contrary to Section 53(1) of the Road Traffic Act, 1961 (as amended by Section 51 of the Road Traffic Act, 1968) and (2)(b) (as amended by Section 3 of the Road Traffic (Amendment) Act, 1984) of the Road Traffic Act, 1961.

Section 53(1) states:

A person shall not drive a vehicle in a public place at a speed or in a manner which, having regard to all the circumstances of the case (including the nature, condition and use of the place and the amount of traffic . . .) is dangerous to the public.

In *D.P.P.-v- Peter O'Dwyer*, IECA 94 [2005], the Court of Criminal Appeal indicated that the trial judge stated that:

[T]he meaning of dangerous driving was driving in a manner which a reasonable, prudent, motorist, having regard to all the circumstances, would clearly recognise as involving a direct and serious risk of harm to the public. . . . the concept of dangerous driving is based on an objective test or an objective view of the facts. It is a test of what a prudent careful person would do.

If this crime were merely a “regulatory” offense, we could find that there was not a realistic probability that it would apply to conduct involving moral turpitude. *See Matter of L-V-C-*, 22 I&N Dec. 594 (BIA 1999) (regulatory offenses are not generally considered turpitudinous). While it is likely that this statute may be violated by conduct that does not involve moral turpitude, we cannot find, based on the statutory language alone, that there is not a realistic probability that it applies to conduct involving moral turpitude – criminally reckless conduct creating a risk of death or serious harm. In [REDACTED] the Board stated that crimes committed intentionally or knowingly have been found to involve moral turpitude, and that “[m]oral turpitude may also inhere in criminally reckless conduct, i.e., conduct that reflects a conscious disregard for a substantial and unjustifiable risk.” [REDACTED] The Board stated that “as the level of conscious behavior decreases, i.e., from intentional to reckless conduct, more serious resulting harm is required in order to find that the crime involves moral turpitude.” *Id.* at 242. Further, the Board in *Matter of Medina*, 15 I&N Dec. 611 (BIA 1976), addressed whether criminally reckless conduct defined by Chapter 38 of the Illinois Revised Statutes section 4–6 provided a basis for a finding of moral turpitude. 15 I&N Dec. at 613-614. Section 4-6 provided that:

A person is reckless or acts recklessly, when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense; and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation. An act performed recklessly is performed wantonly, within the meaning of a statute using the latter term, unless the statute clearly requires another meaning.

Id. The Board stated that the definition of recklessness at section 4-6 “requires an actual awareness of the risk created by the criminal violator’s action” and that even though the “statute may not require a specific intent to cause a particular harm, the violator must show a willingness to commit the act in disregard of the perceived risk. The presence or absence of a corrupt or vicious mind is not controlling.” The Board held that the conduct defined by section 4–6 was the basis for a finding of moral turpitude. *Id.*

In the instant case, Section 53(1) states that a person shall not drive a vehicle at a speed or in a manner which is dangerous to the public. The term “dangerous driving” is defined as “driving in a manner which a reasonable, prudent, motorist . . . would clearly recognise as involving a direct and serious risk of harm to the public.” We cannot conclude, and the applicant has not demonstrated, that violation of Section 53(1) is a regulatory offense that does not extend to criminally reckless conduct that creates the risk of death or serious harm. As previously stated, in proceedings 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. The applicant has the burden of demonstrating by means of the record of conviction or any other relevant evidence that his crime did not involve moral turpitude. Accordingly, we will not disturb the finding that the applicant's conviction of driving a vehicle in a manner that is dangerous to the public is a crime involving moral turpitude, rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Lastly, the applicant was convicted of violation of Section 6 of the Criminal Justice (Public Order) Act, 1994. That section states:

It shall be an offence for any person in a public place to use or engage in any threatening, abusive or insulting words or behavior with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace might have been occasioned.

Section 6 of the Criminal Justice (Public Order) Act, 1994 appears to be similar to the crime of disorderly conduct in the United States, which is an offense that encompasses various types of conduct deemed disruptive to the peace, not all of which involve moral turpitude. In limited circumstances, disorderly conduct has been found to be a crime involving moral turpitude. *See Matter of Alfonso-Bermudez*, 12 I&N Dec. 225 (BIA 1967). Disorderly conduct generally is not a crime involving moral turpitude where evil intent is not necessarily involved. *See Matter of S-*, 5 I&N Dec. 576 (BIA 1953); *Matter of P-*, 2 I&N Dec. 117 (BIA 1944); and *Matter of Mueller*, 11 I&N Dec. 268 (BIA 1965).

However, Section 6 also appears to encompass conduct that may be in the nature of assault, a crime which may or may not involve moral turpitude. As a general rule, simple assault or battery is not deemed to involve moral turpitude for purposes of the immigration laws. *Matter of Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996). This general rule does not apply where an assault or battery necessarily involved some aggravating dimension, such as the use of a deadly weapon or serious bodily harm. *See, e.g., Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988), *Matter of Goodalle*, 12 I. & N. Dec. 106 (BIA 1967), and *Matter of S-*, 5 I&N Dec. 668 (BIA 1954).

The applicant has not provided the full record of conviction for this offense, which might describe the acts for which he was convicted, nor has the applicant provided additional evidence to indicate the underlying conduct for which he was convicted. Additionally, the applicant has not established in accordance with the requirements of 8 C.F.R. § 103.2(b)(2) that the documents comprising the record of conviction are unavailable. The submitted certificate of conviction does not demonstrate that the applicant's crime of violation of Section 6 of the Criminal Justice (Public Order) Act, 1994 was not a crime involving moral turpitude. As previously stated, in proceedings 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. The applicant has the burden of demonstrating by means of the record of conviction or any other relevant evidence that his crime did not involve moral turpitude. Thus, we will not disturb the finding that the applicant's conviction under Section 6 of the Criminal Justice (Public Order) Act, 1994 is a crime involving moral turpitude rendering the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is 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 . . .

The applicant was also found inadmissible under section 212(a)(6)(C) of the Act. That section provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

An applicant who applies for admission pursuant to the visa waiver program must complete Form I-94W, Arrival Record. The reverse side of Form I-94W, at Part B, asks an applicant the following: "Have you ever been arrested or convicted for an offense or crime involving moral turpitude . . . ?" The director stated that the applicant applied for admission to the United States under the Visa Waiver Program on six separate occasions (June 28, 2005, April 13, 2006, January 14, 2008, December 15, 2008, and June 19, 2009) and failed to disclose on the Form I-94W, Arrival Record, his crimes. As previously discussed, the applicant committed crimes involving moral turpitude. The applicant stated in an undated letter that, in filling out the visa waiver form, it was his understanding that none of his criminal charges were crimes involving moral turpitude because they did not involve harm to another person, and his entry into the United States did not involve a willful deception. However, the applicant does not provide the basis for this understanding. As previously discussed, we cannot determine that the applicant's offenses of possession of firearm or ammunition in suspicious circumstances, driving a vehicle in a manner that is dangerous to the public, and using or engaging in any threatening, abusive or insulting words or behavior, were crimes that did not involve harm to others, or the creation of risk of harm to others. The applicant stated that he recognizes that offenses involving harm to other people are crimes involving moral turpitude. We acknowledge that the applicant is not an expert on immigration law, but we do not equate willful ignorance of a disclosure requirement with a lack of willfulness as required by section 212(a)(6)(C) of the Act. An applicant for admission must answer truthfully, and not knowing which answer is the correct answer, but choosing one of the answers without making a proper inquiry, is not the same as honestly believing that an incorrect answer is, in fact, correct. The applicant had ample opportunity to consult with an appropriate authority to obtain a correct understanding of the disclosure required, as he was admitted to the United States on six separate occasions. We do not find that the applicant's repeated (and self-serving) misrepresentations lacked the element of willfulness. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

This decision will apply to both the section 212(h) and the section 212(i) waivers. However, because the waiver under section 212(i) imposes a higher standard, we will apply that standard in this decision. The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an 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, who in this case is the applicant's U.S. citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 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.

In rendering this decision, the AAO will consider all of the evidence in the record.

The applicant’s wife stated in the letter dated January 13, 2009 that her primary hardship is medical in nature because her ability to hear has so deteriorated that she relies on lip-reading for communication. She indicates having lived in the United Kingdom and not being able to have her hearing needs met, and thus deciding to return to the United States. The applicant’s wife feels that the standard of medical care in Ireland is not comparable to what she receives in the United States. She stated that for the past 14 months she has been employed with a youth home and that she intends to continue working while attending a master’s degree program in social work. The applicant’s wife indicated that she was accepted to a master’s program in the United Kingdom, but did not attend because she was not eligible for financial assistance. The applicant’s wife expresses distress about separation from her husband and indicates that her hearing loss exacerbates her stress and difficulties. Lastly, she conveys that she will lose her support system of her mother, brother, sister, and sister-in-law are her support system in the United States if she lived overseas.

The asserted hardship factors in the instant case are the emotional and financial impact to the applicant’s wife if she remains in the United States without the applicant, and if she joins him to live in Ireland, where the applicant presently resides. The Biographic Information (G-325) reflects that the applicant’s wife not only lived in [REDACTED] but received a

[REDACTED] The record further indicates that the applicant was also a student in England from September 2004 to July 2007. As both the applicant and his wife attended and graduated from college programs in England, we will not give great weight to the applicant's wife's assertion that she cannot afford to attend a master's degree program in England. The record contains evidence from [REDACTED] that is consistent with the applicant's wife's assertion of having moderate to severe hearing loss. [REDACTED] stated that the hearing loss is both congenital and acquired, that the applicant's wife had surgery on her eardrums in January 2009 and might require additional surgery if the first procedure is not successful. [REDACTED] stated that the applicant's wife is likely to have further hearing loss in the future. [REDACTED] conveyed that the applicant's wife indicated that the hearing aids she tried in Scotland were not particularly beneficial and were uncomfortable. However, the applicant has not fully demonstrated that suitable medical care is not availability in Ireland for his wife's hearing disability. Lastly, the applicant's wife's claim of being emotionally dependent on her family members in the United States is not consistent with the Form G-325 as it conveys that the applicant's wife lived apart from her family while working as a social worker in [REDACTED]

[REDACTED] We acknowledge that the applicant's wife has a hearing impairment and will experience emotional hardship as a result of separation from her husband. But when the hardship factors are considered together, they fail to demonstrate that the hardship the applicant's wife will experience as a result of separation is more than the common result of inadmissibility or removal. Additionally, the hardship factors, when considered collectively, fail to establish the hardship to the applicant's wife will be extreme if she joined the applicant to live in Ireland.

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.