

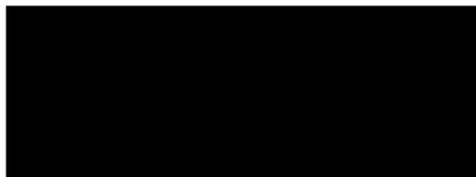
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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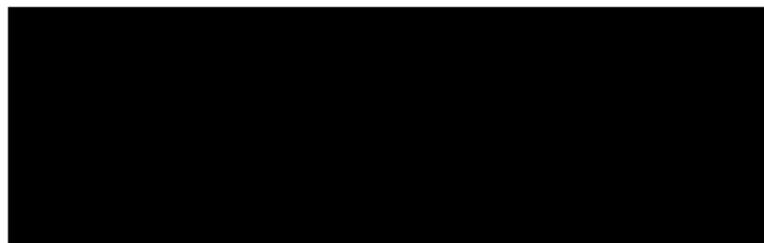
DATE: **AUG 01 2012** Office: MIAMI, FL

FILE: 

IN RE: 

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Field Office Director, Miami, Florida and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who was found to be inadmissible to the United States 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 committed a crime involving moral turpitude. The applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The Field Office Director concluded that the record did not establish that the bar to the applicant's admission would result in extreme hardship for his spouse and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated September 23, 2009.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred in concluding that the applicant's spouse would not suffer extreme hardship as a result of his inadmissibility. Counsel also asserts that the applicant merits a favorable exercise of discretion in this matter. *Form I-290B, Notice of Appeal or Motion*, dated October 20, 2009. Additional evidence is submitted in support of the waiver application.

The record includes, but is not limited to, counsel's briefs, statements from the applicant and his spouse, medical documentation relating to the applicant's spouse, online medical articles relating to various medical conditions or procedures, an online listing of territorial and state laws on cockfighting, country conditions information on Honduras, employment letters for the applicant and his spouse, tax returns and W-2 Wage and Tax Statements for the applicant and his spouse, earning statements for the applicant, documentation of the applicant's and his spouse's financial obligations, and court records relating to the applicant's convictions. The entire record was reviewed and all relevant information considered in reaching a decision on the appeal.

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

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules

of morality and the duties owed between man and man, either one's fellow man or society in general....

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.)

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. The methodology adopted by the Attorney General consists of a three-pronged approach. 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. 24 I&N Dec. at 698 (citing *Duenas-Alvarez*, 549 U.S. at 193). 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 or “modified categorical” inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. 24 I&N Dec. at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708. Finally, 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.

The applicant’s case, however, arises within the jurisdiction of the Eleventh Circuit Court of Appeals, which has recently reaffirmed the traditional categorical approach for determining whether a crime involves moral turpitude, declining to follow the “administrative framework” set forth by the Attorney General in *Silva-Trevino*. See *Fajardo v. Attorney General*, 659 F.3d 1301, 1310 (11th Cir. 2011) (finding that the Congress intended the traditional categorical or modified categorical approach to be used to determine whether convictions were convictions for crimes involving moral turpitude and declining to follow the “realistic probability approach” of *Matter of Silva-Trevino*). In its decision, the Eleventh Circuit defined the categorical approach as “ ‘looking only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions.’ ” 659 F.3d at 1305 (quoting *Taylor v. United States*, 495 U.S. 575, 600 (1990)). The court indicated, however, that where the statutory definition of a crime includes “conduct that would categorically be grounds for removal as well as conduct that would not, then the record of conviction – i.e., the charging document, plea, verdict, and sentence – may also be considered.” 659 F.3d at 1305 (citing

Jaggernaut v. U.S. Att’y Gen., 432 F.3d 1346, 1354-55 (11th Cir. 2005)).

The record reflects that, on February 20, 1996, the applicant pled nolo contendere to the charge of Aggravated Assault with Deadly Weapon, Florida Statutes (Fl. St.) § 784.021(1)(a), with adjudication withheld. He was placed on probation for two years, and ordered to pay court costs, perform 150 hours of community service and complete an anger management program. On February 10, 2003, the applicant was convicted of Attending the Fighting or Baiting of Animals, Fl. St. §828.122(4)(b), with adjudication withheld. He was fined, ordered to pay court costs and placed on probation for four months. On February 12, 2008, the applicant was again convicted of Attending the Fighting or Baiting of Animals, Fl. St. § 828.122(3)(h), and sentenced to 30 days in jail, with two days credit for time served, and placed on probation for 12 months.

At the time of the applicant’s 1996 conviction, Fl. St. § 784.021(1)(a) stated:

(1) An “aggravated assault” is an assault:

(a) With a deadly weapon without intent to kill; or

.....

(2) Whoever commits an aggravated assault shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

A third degree felony is punishable by a term of imprisonment not to exceed five years. *See* Fl. St. § 775.082

The Board of Immigration Appeals (BIA) has long held that an individual convicted of aggravated assault involving a deadly or dangerous weapon has committed a crime involving moral turpitude even though the statute, like that just noted, does not specify a specific intent to inflict serious bodily harm or injury. The BIA has reasoned that an assault aggravated by the use of a dangerous or deadly weapon is inherently base because it is contrary to accepted standards of morality in a civilized society. *See Matter of O*, 3 I&N Dec. 193 (BIA 1948). Moreover, the AAO notes that the Eleventh Circuit Court of Appeals held in *Sosa-Martinez v. U.S. Atty. Gen.*, 420 F.3d 1338, 1342 (11th Cir. 2005) that aggravated battery, which includes the use of a deadly weapon or results in serious bodily injury, is a crime involving moral turpitude. Accordingly, the AAO finds the applicant to have been convicted of a crime involving moral turpitude and that he is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act .

A waiver of a section 212(a)(2)(A)(i)(I) inadmissibility may be granted under section 212(h) of the Act if:

(1)(A) [I]t is established to the satisfaction of the Attorney General [Secretary of Homeland Security] that-

- (i) [T]he 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

The record establishes that the aggravated assault committed by the applicant took place more than 15 years ago¹ and does not indicate that his admission would be contrary to the welfare, safety, or security of the United States. It fails, however, to demonstrate the applicant's rehabilitation, as required by section 212(h)(1)(A)(iii) of the Act.

The record contains a February 1, 2009 letter from [REDACTED] the comptroller at the firm employing the applicant, which describes him as doing an "excellent job" and being a "very trustworthy and respected individual," and an October 22, 2008 statement from the applicant acknowledging his convictions and states his remorse. As previously discussed, however, the record also reflects that in addition to his conviction for aggravated assault, the applicant has twice, in 2003 and 2008, been convicted of Attending the Fighting or Baiting of Animals pursuant to Fl. St. § 828.122. The AAO finds the applicant's 2008 conviction, in the absence of any exculpatory explanation, to demonstrate a lack of rehabilitation.

Counsel has submitted evidence that indicates the applicant's attendance at a cockfighting match would not be a crime in a number of locations in the United States and its territories. He also asserts that, for many, cock fighting is part of Latino culture. While the AAO acknowledges this information, it does not alter our conclusion that the applicant's 2008 conviction for the same offense on which he was convicted in 2003 argues against a finding of rehabilitation. Because of the recency of the applicant's last conviction under Fl. St. §828.122 and the fact that it is a conviction for a repeat offense, the AAO is unable to find that the applicant has been rehabilitated. Therefore, he is not eligible for a waiver under section 212(h)(1)(A) of the Act.

Although the applicant has not established eligibility for a waiver under section 212(h)(1)(A) of the Act, he remains eligible for consideration under section 212(h)(1)(B) of the Act, based on his U.S. citizen spouse.

¹ The AAO notes that an application for admission or adjustment of status is considered 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) (citations omitted).

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, the U.S. citizen or lawfully resident spouse or parent of the applicant. Therefore, in this proceeding, hardship to the applicant will be considered only insofar as it results in hardship to the applicant's spouse, the only qualifying relative.² If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

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 of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The BIA has also held that the common or typical results of 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 BIA has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the

² The AAO notes that the applicant's tax returns indicate that he and his spouse may have a son, but that the record does not include a birth record for this child. Neither does it document his immigration status in the United States. Further, the applicant's Form I-601 does not list a son as a qualifying relative and no reference is made to him by counsel or the applicant. In the absence of any documentary evidence to establish the status or parentage of this child, the AAO has found the applicant's only qualifying relative to be his spouse.

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.

The AAO now turns to a consideration of whether the applicant in the present matter has established that a qualifying relative would experience extreme hardship if the waiver application is denied.

Counsel asserts that the applicant’s spouse is dependent on him for both emotional and financial support. He states that the applicant’s spouse suffers from multiple health problems; that she previously had gallbladder surgery, which has resulted in a great deal of pain and that she underwent tubal sterilization some years previously, which has resulted in complications. Counsel also indicates that the applicant’s spouse has had a total hysterectomy and, as a result, is at risk for blood clots, early osteoporosis and heart disease. He further states that she works as a chef and that she spends many hours on her feet, which has resulted in a great deal of pain and that she is being seen by a doctor. Counsel asserts that the prospect of the applicant’s removal has exacerbated the applicant’s spouse’s medical problems. He also states that the applicant’s spouse depends on the applicant’s financial support and that he is the primary breadwinner. Counsel maintains that the applicant’s spouse’s chronic health conditions sometimes force her to miss work and may severely limit her future earning power. Without the applicant’s income, counsel asserts, the applicant’s spouse would be unable to cover the rent, utilities and her medications.

Counsel further contends that even if the applicant’s spouse remains in the United States the situation in Honduras would result in hardship for her as she would have to visit Honduras to maintain her marriage to the applicant. Counsel asserts that country conditions in Honduras are poor and that public announcements from the U.S. embassy in Tegucigalpa are advising U.S. citizens to defer all non-essential travel to the country. He further points to the continued designation of Honduras as a Temporary Protected Status (TPS) country and that a TPS designation is persuasive evidence of country conditions. The dangerous and substandard conditions in Honduras, counsel maintains, would make visiting Honduras a hardship for the applicant’s spouse.

In an October 22, 2008 affidavit, the applicant states that he and his spouse depend on one another for emotional support as they left their parents and families behind in Honduras. The applicant also states that his spouse had gallbladder surgery several years previously and that she has been in pain ever since and takes medication. He also reports that his spouse suffers from a number of other medical problems. The applicant contends that he earns substantially more than his spouse and that he pays for her medical bills and their daily expenses, including food, housing and clothes. He contends that without his income, his spouse would be unable to cover all their expenses.

In a separate undated statement, the applicant's spouse asserts that she earns very little money and is not feeling well. She states that she had a hysterectomy in Honduras in 2003 and that she has been sick ever since. She also asserts that she is attending a clinic to obtain treatment for the pain in her legs and the swelling in her feet, and has been prescribed Alendronate. The applicant's spouse further contends that she has gallbladder problems and is taking Certal, which was prescribed in Honduras.

The record includes a copy of a prescription for Alendronate, medical appointment reminders, medical billing statements, and a referral for a mammogram, all relating to the applicant's spouse. It also contains a certificate signed by [REDACTED] that indicates the applicant's spouse had a total hysterectomy on April 11, 2004, as well as online articles published by the National Institutes of Health on hysterectomies, uterine fibroids, prophylactic oophorectomies, and gallbladder disease. While the AAO notes this evidence, we do not find it sufficient to establish the state of the applicant's health. The record contains no statement(s) or records from the licensed medical practitioner(s) currently treating the applicant's spouse to document her medical problems, their severity or their impacts on her ability to meet her daily responsibilities, including her ability to work. Accordingly, the AAO is unable to determine the extent to which the applicant's spouse's health would be a hardship factor in the event that she and the applicant are separated.

To establish his and his spouse's financial circumstances, the applicant has submitted copies of their tax returns; his earning statements and Form 1099s; his spouse's W-2 Wage and Tax Statements; rent receipts from 2008 and 2009; a credit card statement reflecting late charges for an overdue payment in 2007; monthly electric bills from 2009; and three receipts for the payment of medical charges. While the submitted evidence provides only limited information concerning the applicant's and his spouse's financial obligations, the AAO notes that a 2008 W-2 Wage and Tax Statement for the applicant's spouse establishes that she earned \$15,600 out of the approximately \$64,000 in income she and the applicant reported on their 2008 federal tax return. We further observe that the applicant's and his spouse's tax returns for the period 2001 through 2008 indicate that they have a son who is financially dependent on them and who would remain the applicant's spouse's dependent if the applicant is removed. Therefore, although the applicant's spouse's 2008 income of \$15,600 places her above the 2008 federal poverty guideline of \$14,000 for a family of two, the AAO, nevertheless, finds that the loss of the applicant's income would have a significant negative financial impact on her.

In support of counsel's claims regarding country conditions in Honduras, the record includes a series of reports issued by the U.S. Department of State, including "2008 Human Rights Report: Honduras," dated February 25, 2009; "Country Specific Information," dated October 2, 2009; "Honduras 2008 Crime & Safety Report," dated April 11, 2008; and "Public Announcements 2009," dated August 10, 2009, September 25, 2009 and October 8, 2009. It also contains 2009 articles relating to the ouster of former Honduran President Zelaya and its impacts from the Wall Street Journal, UN News Centre, Associated Press, Reuters, Amnesty International and the BBC; a USCIS fact sheet on TPS for Honduras; an overview of Honduras from the British Foreign & Commonwealth Office; and reports on malnutrition, and water and sanitation in Honduras by the World Food Program and Water for People respectively.

Having reviewed the submitted country conditions information, the AAO observes that Honduras remains a TPS country, but that the Department of State is no longer warning U.S. citizens against travel to Honduras based on the political upheaval that followed the June 2009 coup d'etat. We also note the overviews of the human rights situation in Honduras, as well as the articles on malnutrition and the lack of potable water in Honduras, but that, as previously discussed, general economic or country conditions in an applicant's native country do not establish hardship in the absence of evidence that these conditions would specifically affect the qualifying relative. *See Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996) (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985)). In the present case, the record fails to indicate how the conditions in Honduras, including those on which the TPS determination is based, would affect the applicant's spouse if she visits the applicant in Honduras. Further, the AAO finds the record to indicate that the applicant has visited Honduras for medical treatment in the past and was in Tegucigalpa as recently as October 14, 2009, when [REDACTED] reports that she requested the certificate he has provided for the record.

Having considered the hardship factors in the record, the AAO acknowledges the financial hardship that the applicant's spouse would experience in his absence, but finds that, even when her financial hardship is combined with the difficulties and disruptions normally created by the separation of spouses, the record does not demonstrate that she would experience extreme hardship if the waiver application is denied and she remains in the United States.

Counsel also asserts that the applicant's spouse would experience extreme hardship if she relocates to Honduras with the applicant as she would be moving to a country experiencing political turmoil and widespread criminal violence. He further contends that Honduras struggles to provide even the most basic services to its citizens, with only half of the population having access to clean water and 25 percent being undernourished. Counsel states that access to health care is a serious problem in Honduras and that if the applicant's spouse relocates to Honduras, she would experience hardship in terms of her health. He contends that Honduras' designation as a TPS country offers persuasive evidence that relocation would result in extreme hardship for the applicant's spouse.

As previously discussed, the applicant has submitted a range of published materials to establish the dangerous and substandard conditions that the applicant's spouse would face if she relocated to Honduras. However, the U.S. Department of State is no longer advising U.S. citizens against travel to Honduras and the overviews of conditions in Honduras do not establish that the applicant's spouse

would be subjected to such conditions if she returned to Honduras. The AAO does, however, note the TPS designation for Honduras and its extension through July 5, 2013 because of the continuing disruption of living conditions and the country's resulting inability to handle the return of its nationals.

The record does not support counsel's claim that the applicant's spouse would not have access to health care in Honduras. As previously indicated, the record does not establish the health care needs of the applicant's spouse. Moreover, the record indicates that the applicant's spouse has previously obtained health care in Honduras. The certificate from [REDACTED] establishes that the applicant's spouse's 2004 hysterectomy was performed in Honduras. Further, the applicant's spouse states that she is taking Certal for her gallbladder condition and that this medication was prescribed for her in Honduras.

While the AAO acknowledges the TPS designation for Honduras, we do not find the record to contain sufficient evidence, even when that evidence is considered in the aggregate, to establish that relocation to Honduras would result in extreme hardship for the applicant's spouse. We also note that the applicant has stated that his and his spouse's families continue to reside in Honduras, that the record indicates that the applicant's spouse has returned to Honduras for medical treatment in the past and that she was in Honduras as recently as October 14, 2009, when she requested the certificate issued by [REDACTED]. Accordingly, the record does not demonstrate that the applicant is statutorily eligible for a waiver under section 212(h)(1)(B) of the Act.

However, even were the AAO to find the applicant to have established statutory eligibility for a waiver under sections 212(h) of the Act, we note that his 1996 conviction for Aggravated Assault with a Deadly Weapon, Fl. St. § 784.021, is a conviction for a violent or dangerous crime and would require him to meet the requirements of the regulation at 8 C.F.R. § 212.7(d) in order to be considered for a favorable exercise of discretion under section 212(h)(2) of the Act.

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

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.

Having reviewed the record, the AAO does not find extraordinary circumstances that would allow the applicant to be considered for a favorable exercise of discretion 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 proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, appeal will be dismissed.

ORDER: The appeal is dismissed.