



U.S. Citizenship
and Immigration
Services

[REDACTED]

H2

DATE: DEC 05 2012

Office: BANGKOK, THAILAND

FILE: [REDACTED]

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:

SELF-REPRESENTED

INSTRUCTIONS:

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

If you believe the 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 Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Bangkok, Thailand and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States pursuant to 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 a crime involving moral turpitude. The applicant is married to a U.S. citizen and the father of 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 District Director found that the applicant had failed to establish that his inadmissibility would result in extreme hardship for a qualifying relative under section 212(h) of the Act, 8 U.S.C. § 1182(h), and further concluded that the applicant did not merit a favorable exercise of discretion. He denied the Form I-601, Application for Waiver of Ground of Excludability, accordingly. *Field Office Director's Decision*, dated February 2, 2011.

On appeal, the applicant contends that his U.S. citizen spouse's circumstances have changed and that she needs his financial support in order to seek medical care. *Form I-290B, Notice of Appeal or Motion*, dated February 15, 2011; *Applicant's Statement*, dated February 10, 2011.

In support of the application, the record contains, but is not limited to, statements from the applicant, his spouse, one of his daughters and her husband; a psychological evaluation of the applicant's spouse; a medical statement relating to the applicant's spouse; a Notice of Intent to Foreclose on property owned by the applicant's stepdaughter; a denial notice for a Medicaid application filed by the applicant's spouse; and court records relating to the applicant's convictions. The entire record was reviewed and all relevant evidence considered in arriving at a decision on the appeal.

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

- (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 record reflects that the applicant pled guilty to Theft by Check, \$200-\$750, Texas Penal Code § 31.03(e)(3)(A), on August 4, 1994, a Class A misdemeanor, with adjudication of guilt deferred. The applicant was placed on probation for two years and ordered to pay restitution in the amount of \$895.11. On August 7, 2003, the applicant pled guilty to Aggravated Sexual Assault, Texas Penal Code § 22.021, a First Degree felony, and was placed on probation for ten years and ordered to pay a fine of \$1,500, \$223 in court costs and a probation supervision fee of \$60 per month.

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 or 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.

At the time of the applicant’s theft conviction, Texas Penal Code § 31.03(e)(3)(A) stated:

(e) Except as provided by Subsection (f), an offense under this section is:

....

(3)(A) a Class A misdemeanor if :

(A) the value of the property stolen is \$200 or more but less than \$750 . . .

On appeal, the applicant states that his offense involved a “bounced” business check written to a wholesaler. He asserts that he was unaware of the problem until he was contacted by the court as the wholesaler did not notify the business about the returned check, but, instead, filed it with the court. The applicant does not, however, contest the District Director’s finding that his conviction for Theft by Check, Texas Penal Code § 31.03(e)(3)(A), is a crime involving moral turpitude.

The AAO notes that the applicant has previously sought to withdraw his guilty plea for Aggravated Sexual Assault under Texas Penal Code §22.021 based on a claim of having received erroneous legal advice. The record also contains a statement from the applicant in which he contends that he did not commit Aggravated Sexual Assault, but pled guilty on the advice of someone he believed to be an attorney, but who was, instead, a paralegal. However, on appeal, the applicant acknowledges that his conviction under Texas Penal Code § 22.021 is a crime involving moral turpitude and that it bars his admission under section 212(a)(2)(A)(i)(I) of the Act.

In that the applicant does not contest that the offenses of which he has been convicted are crimes involving moral turpitude, and the record does not show that determination to be erroneous, the AAO will not disturb the District Director's findings. The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(i)(I) of the Act.

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

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

....

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

A waiver under section 212(h) of the Act is dependent first upon a showing that the bar would impose an extreme hardship on a qualifying relative of the applicant. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In most discretionary matters, the alien bears the burden of proving eligibility simply by showing that the mitigating factors in his or her case are not outweighed by the adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). However, in the present case, the AAO cannot find that the applicant is eligible for a favorable exercise of discretion based solely on the balancing of favorable and adverse factors. He has been convicted of Aggravated Sexual Assault, Texas Penal Code § 22.021, which Article 62.001(6)(A), Chapter 62, Texas Code of Criminal Procedure includes under its definition of a sexually violent offense. Therefore, the AAO finds that the applicant has been convicted of a dangerous or violent crime and is subject to the requirements of the regulation at 8 C.F.R. § 212.7(d), which 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 exceptional and extremely unusual hardship standard is more restrictive than the extreme hardship standard. *Cortes-Castillo v. INS*, 997 F.2d 1199, 1204 (7th Cir. 1993). 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," but that the applicant need not show that hardship would be unconscionable. *Id.* at 61. The BIA also 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. Accordingly, the AAO will first consider the applicant's waiver application under the extreme hardship requirement of section 212(h) of the Act. Should the record establish that the hardship resulting from the applicant's inadmissibility satisfies section 212(h) of the Act, we will proceed with a consideration of whether such hardship also meets the heightened standard imposed on the applicant by 8 C.F.R. § 212.7(d).

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. In this proceeding, the applicant's qualifying relatives include his U.S. citizen spouse and a daughter born in 1991.¹ Any hardship asserted in relation to the applicant or other family members will, therefore, be considered in terms of its impact on these individuals. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the 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

¹ While the AAO notes that the applicant claims that he has other U.S. citizen children residing in the United States, the record fails to establish them as qualifying relatives. The record contains three birth certificates one for the applicant's daughter, [REDACTED] who was born in Houston, Texas in 1991, and two birth certificates for children born to him and his spouse in 1981 and 1982 in Pakistan in the names of [REDACTED] and [REDACTED]. No documentation, however, is provided to establish these children as U.S. citizens or lawful permanent residents and, therefore, qualifying relatives for the purposes of this proceeding.

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 entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal, the applicant states that if the waiver application is denied, his U.S. citizen spouse and children would experience extreme hardship. In a February 10, 2011 statement, he asserts that his U.S. citizen spouse is in desperate need of his help as their daughter [REDACTED] with whom his spouse previously lived, has filed for bankruptcy and is no longer able to care for her mother. The applicant states that as two of his other children were working for [REDACTED] they are now unemployed and also cannot help their mother financially. He further maintains that he has a third child living in Texas,

but that she is unable to assist her mother financially since she is married to a member of the U.S. military who is deployed to Afghanistan and is a new mother. As a result, the applicant states, his spouse must now live with distant relatives.

As further evidence of the hardship his spouse is experiencing, the applicant states that she has medical conditions that prevent her from working and that she is no longer able to depend on Medicaid for her healthcare and is, therefore, not receiving treatment for her diabetes and an arthritic knee. He also reports that his spouse is severely depressed, but unable to seek mental health treatment because of her financial situation.

In a June 25, 2010 affidavit, the applicant's spouse states that she and the applicant have three children together and that he has informally adopted her two children from a previous marriage. She asserts that her mother died in 1983 and that she has struggled with serious depression ever since, experiencing a period of depression each year on the anniversary of her mother's death. The applicant's spouse contends that this period of depression is not as bad when the applicant is around to support her. She also reports that she has had trouble with alcoholism and that, without the applicant, she finds it harder to control her drinking.

The applicant's spouse further states that in the applicant's absence she has been able to rely on her daughter [REDACTED] for financial support, that she lives with her and that [REDACTED] also helps to support three of her and the applicant's other children. She notes, however, that her son, [REDACTED] has had to drop out of college because the family is no longer able to afford his college tuition, while her daughter [REDACTED] pays for her schooling through financial aid and part-time work. The applicant's spouse also indicates that Raheel has problems with alcohol and drugs, and that she is having problems dealing with him. She maintains that she cannot afford to visit the applicant in Pakistan and further that the applicant has warned her against visiting him because of the instability and violence in the country.

The applicant's spouse asserts that the applicant's removal has taken a toll on her health and that when he was living in the United States, they had a more active lifestyle, going to the gym on a daily basis. She states that she no longer has transportation and that her children are too busy to take her to the gym. The applicant's spouse further asserts that she no longer gets the emotional and physical support previously provided by the applicant and that being separated from him has been hard on her. She also contends that the applicant's removal has caused a great deal of sadness for the family.

In a July 15, 2010 statement, the applicant's daughter [REDACTED] asserts that her husband, a member of the U.S. military, is being deployed to Afghanistan for a second time and that his absence will result in mental and emotional strain for her. She states that the granting of her father's waiver would remove a huge burden from a military family and would, to some extent, fill the void left by her husband's deployment. In a second, undated statement, [REDACTED] asserts that it would be dangerous for her and her husband to visit Pakistan as a result of the country's problems with insurgents and the Taliban. She states that her husband's military service is known in the community where her father resides and that they would, therefore, be in danger if they were to visit him.

In support of the preceding hardship claims, the record includes a notice of Benefit Denial for Medicaid, dated February 23, 2011 and addressed to the applicant's spouse. The basis for the denial is not clearly established, however, as the notice states both that the denial is based on "Citizenship

or acceptable alien status requirements are not met” and that “Your case is denied as you have no children in your household 18 years old or younger.” The record also contains a Notice of Intent to Foreclose, dated February 17, 2011, and addressed to a [REDACTED] indicating that two mortgage payments have not been received and that the mortgage loan on the residence (where the record establishes that the applicant’s spouse previously lived) is in default. Two bank statements in the name of [REDACTED] show balances of \$1,427.14 and \$26.64.

The record also contains a June 4, 2010 statement from Dr. [REDACTED] who reports that he has been the applicant’s spouse’s physician for 30 years. Dr. [REDACTED] states that the applicant’s spouse has a history of arthritis in the knee and that she has multiple other problems, including a severe Vitamin D deficiency, diabetes, abdominal issues, and at one point required surgery for an abdominal hernia. Dr. [REDACTED] further indicates that as the applicant’s spouse has pain in her knees, she requires help with walking and getting out of bed, and that her “body has worsened to the point that she needs help from her husband.” Dr. [REDACTED] states that the applicant needs to return to the United States so that he can assist his spouse with her daily needs and get her the medical treatment she requires.

The record also includes a May 23, 2010 psychological evaluation prepared by licensed clinical psychologist [REDACTED] Psy.D., who finds the applicant’s spouse to have a history of major depression and to meet the criteria for Anxiety Disorder, Not Otherwise Specified (DSM-IV-TR). Dr. [REDACTED] further notes that the applicant’s spouse reported symptoms of agitation, irritability, increased interpersonal sensitivity and ruminative thoughts, and that the Symptom Checklist 90-R she administered to the applicant’s spouse reflected that her somatic complaints and hostility index were at a “clinically significant” level.

While the AAO notes the documentation submitted to establish financial hardship to the applicant’s spouse, we do not find it sufficient to support the applicant’s claim that his spouse is experiencing financial hardship in his absence. The 2011 Notice of Intent to Foreclose sent to the address at which the applicant’s spouse previously resided and the submitted bank statements do not demonstrate that the applicant’s spouse’s daughter [REDACTED] has declared bankruptcy and is no longer able to offer financial support to her mother. Neither does the record establish that the applicant’s other children are unable to assist their mother financially. In the absence of documentary evidence to establish [REDACTED] income and that of her siblings, e.g., tax records, the AAO is unable to determine their financial circumstances. We also note that the record includes no country conditions information that establishes the applicant is unable to assist his spouse financially from Pakistan. Without such documentation, the Medicaid application filed by the applicant’s spouse does not establish that she is experiencing financial hardship.

The AAO notes that the applicant’s spouse suffers from a range of health conditions and that her physician believes that her health has reached a point where she needs the applicant to assist her in meeting her daily needs and in obtaining medical treatment. However, the record fails to indicate that the applicant’s adult children in the United States cannot, in his absence, provide their mother with whatever assistance she requires. Further, while the input of any mental health provider is respected and valued, and we acknowledge Dr. [REDACTED] findings regarding the applicant’s history of depression and her current anxiety, we do not find the evaluation to establish how the applicant’s spouse’s diagnosed mental state is affecting her. Although Dr. [REDACTED] reports that the applicant’s spouse is experiencing symptoms of agitation, irritability and increased sensitivity, she fails to

indicate the severity of these symptoms or describe their impact on the applicant's spouse's ability to function or meet her daily responsibilities.

While the AAO acknowledges the claims made by the applicant's daughter [REDACTED] we also observe that the record includes no documentation that establishes her as the applicant's daughter and, therefore, a qualifying relative. Accordingly, the AAO will not consider her hardship claim and finds no evidence in the record to establish how any hardship she might experience in the applicant's absence would affect her mother, the only qualifying relative.

Based on the record before us, the AAO cannot find that the hardship factors raised by the record, even when considered in the aggregate, establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and she remains in the United States.

The applicant's spouse also claims that she would experience hardship if she returns to Pakistan to live with the applicant. In her June 25, 2010 affidavit, the applicant's spouse states that she cannot return to Pakistan because of the instability and violence there. She further states that she is a Roman Catholic, a religious minority in Pakistan, and is afraid that she would be a victim of extremism if she relocated.

The AAO acknowledges the applicant's spouse's concerns about the violence in Pakistan and notes that the U.S. Department of State has issued a travel warning for Pakistan, last updated on September 19, 2012, that advises U.S. citizens to avoid travel to Pakistan as a result of widespread terrorism. However, the applicant's spouse's claim to be a Roman Catholic is disputed by the record as the submitted birth certificates for the applicant's children born in Pakistan in 1981 and 1982 list the applicant's spouse's religion as "Islam." Moreover, although the applicant's spouse states on the G-325A, Biographic Information, in the record that her father's name was [REDACTED] the birth certificate from 1982 indicates that her father's name was [REDACTED] while the birth certificate from 1981 does not provide her father's name. Accordingly, we will not consider the applicant's spouse's assertion that she would be a member of a religious minority in Pakistan and at risk because of her Christian faith.

Nevertheless, we have taken note of the applicant's spouse's age, her long-term residence in the United States, the presence of at least one U.S. citizen child living in the United States and the current travel warning for Pakistan. When these specific hardship factors and the general difficulties and disruptions created by relocation are considered in the aggregate, the AAO finds that if the applicant's spouse returned to Pakistan, she would experience hardship beyond that normally created by relocation.

We can, however, find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant

has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to a qualifying relative in this case.

As the record in the present matter does not establish extreme hardship to a qualifying relative under section 212(h) of the Act, it also fails to demonstrate that the applicant's inadmissibility would result in exceptional and extremely unusual hardship, the heightened standard of hardship imposed on the applicant by the regulation at 8 C.F.R. § 212.7(d). Therefore, the applicant has not demonstrated eligibility for a waiver under section 212(h) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 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.