

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



U.S. Citizenship
and Immigration
Services

H2

DATE: DEC 18 2012

OFFICE: SAN BERNARDINO, CA

File: [REDACTED]

IN RE:

Applicant: [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:

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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of El Salvador 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 seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen mother and his three U.S. citizen minor children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director*, dated April 8, 2011.

On appeal counsel asserts that “the Service erroneously concluded that Applicant was in need of a waiver under INA §212(h),” and that the evidence submitted should have been deemed sufficient to establish extreme hardship to the applicant’s qualifying relatives. *See Form I-290B, Notice of Appeal or Motion*, received May 4, 2011.

The record contains, but is not limited to: Form I-290B and counsel’s appeal brief; counsel’s motion to reopen the applicant’s adjustment of status application; various immigration applications and petitions; hardship declarations from the applicant’s mother and children; declarations from the applicant and the applicant’s partner/mother of his children; psychological evaluations and internet articles regarding separation from fathers; a doctor’s letter regarding the applicant’s mother and internet printouts regarding various medications and conditions; a Sylvan Learning Center letter; school records; birth certificates and family photos; employment letters; character reference letters; El Salvador country conditions reports; the applicant’s prior waiver application, denial, appeal and its dismissal; and the applicant’s criminal record. The entire record was reviewed and considered in rendering this decision on the appeal.

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

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

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

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime)

more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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

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

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

(Citations omitted.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an "actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, "the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude." 24 I&N Dec. at 697 (citing

Duenas-Alvarez, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The record shows that the applicant has an extensive criminal record expanding nearly 20 years from his first arrest to the completion of his most recent sentence. The applicant was convicted on February 19, 1986 for driving under the influence of alcohol, in violation of California Vehicle Code (CVC) section 23152(A). The applicant was convicted on July 17, 1987 for taking a vehicle without the owner’s consent, in violation of CVC section 10851(A), for his conduct on June 22, 1987. The applicant was sentenced to one year of probation and 30 days in jail. The applicant was convicted on May 11, 1990 for driving under the influence with 0.08 percent or more of alcohol in his blood, in violation of CVC section 23152(B), for his conduct on January 18, 1990. The applicant was sentenced to 48 months of probation and four days in jail. The applicant violated his probation on June 11, 1992 and his driver’s license was suspended. The applicant later had his conviction expunged. The applicant was convicted on December 31, 1997 for inflicting corporal injury on his current or former spouse or cohabitant, (in this case the mother of his three children with whom he still resides) in violation of California Penal Code (CPC) section 273.5(A), for his conduct on August 15, 1997. The applicant was sentenced to 36 months of probation and four days in jail. The applicant subsequently had this conviction expunged. The applicant was convicted on October 9, 2002 for inflicting corporal injury on his current or former spouse or cohabitant, (the victim was again the mother of his three children) in violation of CPC section 273.5(A), for his conduct on August 10, 2002. The applicant was sentenced to three years of probation and 30 days in jail. The AAO notes that despite the applicant’s success in obtaining state court expungements for some of his convictions, for immigration purpose all convictions remain.

Counsel asserts that the applicant does not require a waiver because he has not been convicted of a crime involving moral turpitude. Counsel’s assertion is unpersuasive. At the time of the applicant’s convictions for inflicting corporal injury on the mother of his three children, CPC section 273.5 provided, in pertinent part:

(a) Any person who willfully inflicts upon his or her spouse, or any person who willfully inflicts upon any person of the opposite sex with whom he or she is cohabiting, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 3 or 4 years, or in the county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both.

(b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(c) As used in this section, “traumatic condition” means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.

In *Morales-Garcia v. Holder*, 567 F.3d 1058, 1063-67 (9th Cir. 2009), the Ninth Circuit Court of Appeals found that all offenses under CPC section 273.5 are not categorically crimes involving moral turpitude. Specifically, the Ninth Circuit found that CPC section 273.5 reaches acts against individuals with a broad range of relationships to the perpetrator, some of which “are more akin to ‘strangers or acquaintances, which . . . [does] not necessarily [trigger] a crime involving moral turpitude.’” *Morales-Garcia v. Holder*, 567 F.3d at 1063-67 (quoting *Grageda v. INS*, 12 F.3d 919, 922 (9th Cir. 1993)). Thus, the Ninth Circuit determined that a modified categorical inquiry is required to determine if an offense under CPC section 273.5 constitutes a crime involving moral turpitude.

The records associated with the applicant’s offenses show that all of his convictions under CPC section 273.5 were for incidents of violence against the same individual, who is and was the mother of his children. Irrespective of whether they were married, in *In Re Tran*, 21 I&N Dec. 291, 294 (BIA 1996), the BIA determined that an offense under CPC section 273.5 against the mother of one’s child involves moral turpitude. The BIA stated:

A person who . . . is the parent of the offender's child maintains a relationship of a familial nature with the perpetrator of the harm. This relationship is likely to be one of trust and possibly dependency, similar to that of a spousal relationship. Violence between the parties of such a relationship is different from that between strangers or acquaintances, which may or may not involve moral turpitude, depending on the nature of the offense as delineated by statute. In our opinion, infliction of bodily harm upon a person with whom one has such a familial relationship is an act of depravity which is contrary to accepted moral standards. When such an act is committed willfully, it is an offense that involves moral turpitude.

In Re Tran, 21 I&N Dec. 291, 294 (BIA 1996)(citations omitted). The Ninth Circuit affirmed the BIA’s reasoning. *Morales-Garcia v. Holder*, 567 F.3d at 1065. Accordingly, both of the applicant’s offenses under CPC section 273.5 constitute crimes involving moral turpitude. He is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and he requires a waiver under section 212(h) of the Act.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such

subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

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

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

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

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

A waiver of inadmissibility under section 212(h) 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 or child of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's U.S. citizen mother and his three U.S. citizen children are qualifying relatives. 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 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.

The applicant's mother is a 68-year-old native of El Salvador and citizen of the United States. She indicates that she left El Salvador in 1981 to escape her abusive husband (the applicant's

father), the applicant joined her in the United States in 1984, and the two have lived together ever since. The applicant's mother states that she has hypertension, gastritis, arthritis, hyperlipidemia and impaired fasting glucose, and suffered a heart attack in 2005. [REDACTED] confirms these conditions and adds that she is at very high risk to have another heart attack which could result in her death. [REDACTED] notes that because of the applicant's mother's arthritis, it would be difficult for her to care for herself should she suddenly experience symptoms of a heart attack and thus it would be beneficial if her family was available to monitor her and call for help if needed. The applicant states that his job as a truck driver does not allow him to be home as much as he would like but when he is he takes his mother to medical appointments where he translates for her, and the salary he earns allows him to support her financially and have her reside with him. The applicant's mother indicates that she lives in the applicant's home where she has her own room and where also reside the applicant's longtime partner, and their three children. She states that the applicant pays for her rent and most of her food and other necessities and takes her to her medical appointments. The applicant's mother explains that her only income is \$500 a month in social security, her daughters [REDACTED] and [REDACTED] are unable to support her financially or have her live with them, have families of their own to attend, and she has always been closest to the applicant on whom she relies financially, physically and emotionally. The record contains no corroborating documentary financial evidence demonstrating the applicant's mother's income from any source, demonstrating that the applicant supports his mother financially, or demonstrating that she would be unable to reside with or receive care and support from either of her other daughters. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In a letter dated October 12, 2009 following a single interview with the applicant's mother, [REDACTED] concludes that the bond between the applicant's mother and the applicant is significantly and exceptionally deep, she relies on him for all of her physical, economic and emotional needs and has for many years, and that her age must be taken into consideration as "at the end of a productive life" she needs to be taken care of by her only son. [REDACTED] asserts without foundation that "certainly" the applicant's mother's high blood pressure and gastritis would worsen as a consequence of undergoing excessive stresses and worries with a prolonged separation from her son, and relays that she told him she would suffer to see her grandchildren separated from their father and worries about the applicant's safety in El Salvador. The AAO notes that [REDACTED] does not diagnose the applicant's mother with any psychological condition or disorder nor does he recommend that she undergo any type of therapy or treatment.

The applicant's three minor children, ages seven, 11, and 15-years-old are all natives and citizens of the United States who reside with the applicant, their paternal grandmother, and their mother [REDACTED]. The applicant contends that [REDACTED] has Sjogren's Syndrome, an auto-immune disorder causing her to suffer from severe arthritis and a highly increased risk of disease, which prevents her from holding a full-time job. The record contains no corroborating medical or employment records for [REDACTED]. The applicant's son, [REDACTED] writes that his father works very hard to take care of him, his sisters, his mother and his grandmother, and they enjoy spending

weekends together as well as the three or four days each week his father is home and wishes they could spend even more time together. [REDACTED] states that he has struggled with his grades but is now receiving after-school tutoring. He also plays sports, plays piano at church and is involved in setting up for services as well as Bible studies and youth group. [REDACTED] expresses concern as to who will take care of him and his sisters in the applicant's absence and he does not think that any of his aunts or uncles would do so as well as his father. The applicant's daughter, [REDACTED] expresses nearly identical sentiment and adds that her father is really involved in her school and she hopes he will be able to stay with her and her siblings. [REDACTED] writes that while her relationship with the applicant was not always stable, things have become very good in recent years, they are very involved in church which has changed the way they relate to each other, and he is a good father and role model. She states that she is on several medications for Sjogren's Syndrome, sees a doctor about every two months for monitoring and medication adjustment, and can work only part-time through which she earns about \$1,000 per month. As previously noted, corroborating medical and employment evidence has not been submitted. [REDACTED] maintains that she, the children and the applicant's mother rely primarily on the applicant's earnings to take care of them and while she has a sister and brother in the United States, neither earns enough to help support her family financially in the event of the applicant's removal.

In a letter dated March 17, 2011 following a single interview with the applicant's son on February 26, 2011, [REDACTED] concludes that [REDACTED] is very close to his father and "would be at risk for added, immense distractions with his studies which he cannot afford, as well as at increased risk for developing negative attitudes and mood changes." [REDACTED] speculates without explanation that [REDACTED] would "remain in a very unstable home environment since the mother lacks legal documents and has rheumatoid arthritis and works in this condition" and he "would very likely be dependent upon welfare benefits." The AAO notes that [REDACTED] does not diagnose the applicant's son with any psychological condition or disorder or recommend that he undergo any type of therapy or treatment.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's mother and three children. These include, with regard to his mother: her exceptionally close relationship to the applicant and reliance upon him emotionally; that they have lived together since 1984; her advanced age and significant medical conditions; her asserted reliance upon him financially; the assertion that her other children would be unable to care for her in the applicant's absence; her concerns for the applicant's safety in El Salvador; and that seeing her grandchildren separated from their father would cause her to suffer. With regard to the applicant's children: their closeness to their father and the emotional impact of separation; that [REDACTED] is struggling in school while his sisters are doing well, and the potential impact of separation on all of their schooling; and the economic impact of the applicant's removal – particularly the loss to the children of their father's \$3,500 to \$4,000 steady monthly income from his long-time employment in the United States and the assertion that their mother and/or other family members would be unable to provide for them in his absence. When considered in the aggregate, while not insignificant, the AAO finds that the evidence is insufficient to demonstrate that the applicant's U.S. citizen mother and children would suffer extreme hardship due to separation from the applicant.

Addressing relocation, the applicant's mother states that she does not think she can move back to El Salvador because her friends and family there tell her that medical care is very difficult to obtain. Various internet articles submitted suggest that the health care system in El Salvador is in a state of disarray, supplies of basic drugs and medical equipment are often inadequate, and that hospital budgets are used to pay salaries with little left over for other costs. The applicant's mother notes also that she is no longer a citizen of El Salvador but of the United States. She expresses concern over violence in El Salvador, the existence of which is corroborated by country conditions evidence. The applicant's son, [REDACTED], states that he has visited El Salvador but does not want to live there as he cannot read or write Spanish and believes it would be very difficult for him to go to school there. He adds that all his friends are in the United States and it would be very hard to move away from them and the rest of his family. The applicant's daughter, [REDACTED] indicates that she does not wish to move to El Salvador for the same reasons. The applicant states that he will not be able to take care of his children in El Salvador, none are Salvadoran citizens, and they would likely be forced to split up the children between him in El Salvador and their mother in the United States. Their mother expresses great distress over this possibility. The applicant does not think he will be able to find work in El Salvador, and country conditions documents in the record refer to a troubled economy with high unemployment. The applicant indicates that whether his children join him in El Salvador or remain in the United States, they will suffer from extreme poverty as a result of his removal because he will be unable to provide for them financially without his current employment.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's mother including her adjustment to a country in which she has not resided in more than 30 years; that she is no longer a citizen of El Salvador and has been residing in the United States since 1981; her close family and community ties to the United States over several decades; her advanced age and significant medical conditions requiring ongoing care, her longtime relationship with trusted physicians in the United States, and that the standards for medical treatment and facilities in El Salvador is substantially below that in the United States; her safety concerns regarding El Salvador and her concerns for the health and wellbeing of her qualifying relative grandchildren.

The AAO has also considered cumulatively all assertions of relocation-related hardship to the applicant's children including their adjustment to a country in which they have never lived and do not speak the language; the cultural and societal barriers they would face in attempting to continue their education in a foreign country of which they are not citizens; adjustment difficulties particularly for [REDACTED] who already struggles scholastically; separation from their very close family and community ties in the United States; and asserted economic, employment, health-related, and safety concerns for El Salvador. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's U.S. citizen mother and his three U.S. citizen minor children would suffer extreme hardship were they to relocate to El Salvador to be with the applicant.

Although the applicant has demonstrated that his qualifying relative mother and children would experience extreme hardship if they were to relocate to El Salvador to join him, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown

extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 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 the qualifying relative in this case. Accordingly, the applicant has not established that he is statutorily eligible for a waiver under section 212(h) of the Act.

The AAO further notes that even had extreme hardship been established, the waiver application would have been denied in the exercise of discretion as a result of the applicant's extensive criminal record spanning nearly two decades and including convictions for ongoing alcohol-related crimes where the lives of others were put in danger, and two separate convictions nearly five years apart for the violent crime of inflicting corporal injury on the mother of his three children. It is noted that the applicant and his mother detail how she fled El Salvador to escape physical abuse by her own spouse, the applicant's father, but neither directly addresses the applicant's specific conduct leading to his own most recent convictions. The AAO recognizes that the applicant expresses remorse for his crimes without addressing his specific conduct, and that he appears to have made significant strides in his life on the road to rehabilitation. However, the record does not reflect that the applicant has rehabilitated himself to a degree that his residence in the United States no longer poses a serious risk to the safety and well-being of others in the country. Thus, the AAO finds that at this time, as the record is currently constituted, the applicant would not merit a favorable exercise of discretion even had he established extreme hardship to a qualifying relative.

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. 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.