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

(b)(6)

[redacted]

DATE: JAN 0 2 2013 Office: LIMA, PERU FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Ground of Inadmissibility pursuant to sections 212(a)(9)(B)(v) and (h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and (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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Peru who was found to be inadmissible to the United States pursuant to sections 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien seeking admission within 10 years of departure or removal after having been unlawfully present in the United States for one year or more, and 212(a)(2)(A)(i)(I) of 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 the spouse of a U.S. citizen. He seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and (h) of the Act, 8 U.S.C. §§ 1182(9)(B(v) and (h), in conjunction with an immigrant visa application, in order to obtain admission to the United States as a lawful permanent resident.

The director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship to the qualifying relative, as required for a waiver under section 212(a)(9)(B)(v) of the Act, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated May 27, 2011. The director further found that the applicant had not demonstrated that she was not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of a crime involving moral turpitude.

On appeal, the applicant contends that that her U.S. citizen husband will suffer extreme hardship if her waiver application is denied and submits additional supporting evidence.

The record of evidence includes, but is not limited to, the applicant's statements; the applicant's spouse's statements; a statement from the applicant's spouse's daughter in the United States; the applicant's spouse's U.S. passport; two doctors' letters regarding the applicant's spouse's medical and psychological conditions; criminal enforcement records for the applicant; and a summary of background articles regarding country conditions in Peru. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent parts:

> (B) ALIENS UNLAWFULLY PRESENT.-
>
> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

...

(v) Waiver.-The Attorney General [Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

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 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).

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

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

(1) (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.

The record indicates that the applicant has been admitted to the United States on multiple occasions. She was last admitted to the United States on or about March 22, 2004 as a B-2 nonimmigrant visitor for an authorized period not to exceed September 21, 2004. However, she remained in the United States beyond the authorized period of stay. Criminal enforcement documents indicate that the applicant was arrested for retail theft in violation of section 5/16A-3(a)[1] of Chapter 720 of the Illinois Compiled Statutes (ILCS) on February 21, 2009 and that a bench warrant was issued subsequently. The record indicates that a judgment was ultimately entered on the criminal charge. The applicant has not produced a certified disposition of this conviction. The applicant, thereafter, departed the United States on or about September 19, 2009.[2]

As the applicant has not disputed inadmissibility under section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien seeking admission within 10 years of departure or removal after having been unlawfully present in the United States for one year or more, from approximately September 22, 2004 to September 19, 2009, and the record does not show that finding of inadmissibility to be in error, the AAO will not disturb the determination. The applicant seeks a waiver of his inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. The record establishes that the applicant's husband is a U.S. citizen and a qualifying family member for purposes of the applicant's section 212(a)(9)(B)(v) waiver application.

On appeal, the applicant does not specifically address the director's determination of inadmissibility under section 212(a)(A)(i)(I) of the Act, for having committed a crime involving moral turpitude, based on the applicant's retail theft conviction. However, she acknowledges her arrest and her failure to appear in criminal court on the outstanding charges. We review whether the determination of inadmissibility is supported.

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

---

[1] The statute has since been repealed effective January 1, 2012.

[2] The director noted in her decision that records indicate that the applicant was admitted to the United States again on or about September 26, 2009 but shows no corresponding date of departure. It is clear, however, that the applicant is presently outside the United States. The applicant has also produced a certified certificate of migratory movement issued by the Ministry of Interior in Peru, setting forth the applicant's arrivals and departures from Peru. The record indicates a date of arrival that corresponds to the applicant's September 19, 2009 departure from the United States and shows no subsequent travel to and from the United States.

> 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 the recently decided *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. *Matter of Silva-Trevino*, 24 I&N Dec. 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." *Id.* 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. *Id.* 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.' The sole purpose of the inquiry is to ascertain the nature of a prior conviction; it is not an invitation to relitigate the conviction itself." *Id.* at 703 (citation omitted).

At the time of the applicant's arrest and conviction in 2009, the criminal statute for Retail Theft under 720 ICLS 5/16-3 provided, in pertinent part, that:

> Offense of Retail Theft. A person commits the offense of retail theft when he or she knowingly:

> (a) Takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise.

The Board has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. *See Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). However, where the criminal statute does not distinguish between a permanent or temporary taking, the Board in *Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2006), has found that violation of a retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently.

The AAO notes that the statute under which the applicant here was convicted is for a retail theft offense involving a permanent taking. Accordingly, based solely on the criminal statute, the AAO finds that the applicant's crime was categorically retail theft. The applicant was therefore convicted of knowingly taking goods of another with the intent to permanently deprive that person of such goods. *See Matter of Jurado*, 24 I&N Dec. at 33-34. Thus, the AAO finds no error with the director's determination that a conviction for retail theft under 720 ICLS 5/16-3(a) would constitute a crime involving turpitude. However, we note that a conviction under this statute may be for a misdemeanor or a felony, depending on the retail value of the stolen property. 720 ICLS 5/16A-10. If the conviction was a misdemeanor, the maximum penalty for the conviction would be less than one year. 730 ICLS 5/5-8-3. As such, if the applicant was sentenced to less than six months, the conviction would not render the applicant inadmissible as it qualifies for the petty offense exception to inadmissibility for crimes involving moral turpitude under section 212(a)(2)(A)(ii)(I) of the Act. However, as the applicant has failed to produce a certified disposition for her conviction, she has failed to demonstrate that she falls within the petty offense exception and is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act. She, therefore, also requires a waiver of inadmissibility under section 212(h) of the Act.

Sections 212(a)(9)(B)(v) and (h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

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 (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 v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (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 contends that her U.S. citizen husband would suffer extreme emotional and mental hardship upon separation from the applicant. In support of this assertion, the applicant's husband submitted written statements in which he states that he loves his wife and that he would be devastated if they were separated. He states that since learning that the applicant may be barred for ten years from returning to the United States, his emotional and physical health has deteriorated. He contends that he sees a doctor in Peru to deal with his high anxiety and stress levels and that he is

suffering from headaches, back pains, and insomnia. He hypothesizes that these conditions will worsen, leading to depression and possible suicide, and cites to attached background articles on these symptoms. The applicant's husband asserts that the applicant has saved him during this stressful time, providing him with love and support and ensuring that she takes his medication. He states that he suffers from high blood pressure when he thinks about possible separation from his wife.

The record contains a medical certificate from Cusco Medical Assistance Clinic, issued June 18, 2011, indicating that the applicant has been receiving treatment for approximately eight months for arterial hypertension, high cholesterol, acute depressive anxiety syndrome, and chronic mountain sickness (polycythemia). The certificate indicates that the applicant's husband is receiving medication and treatment for his ailments and was advised to seek supportive psychotherapy. A June 16, 2011 letter from psychologist, indicates that the applicant's husband is receiving assistance for emotional stress difficulties arising from living conditions in Peru and emotional instability due to possibility of separation from his wife. notes that due to this, the applicant's husband is showing stress with emotional and physical complications and that he "would show" depression if separated from his wife.

The AAO acknowledges that separation from his wife may cause the applicant emotional distress and anxiety. However, we observe that does not make an actual diagnosis of depression. Neither of the doctors' letters provide any explanation for why the applicant may be susceptible to depression in the future and do not give credence to the applicant's concern that his condition may deteriorate to the point he may become suicidal. Moreover, it appears that the stress and anxiety the applicant's husband suffers from is a situational condition, correlating specifically to the dilemma he faces regarding remaining in Peru or returning to the United States. There is no indication that it is a long-term condition, or what impact treatment or resolution of the current uncertainty may have. We also note that the applicant has indicated that many of his medical ailments arise from the conditions in Peru where he resides. Thus, residing in the United States would alleviate the emotional and physical burden arising from his poor physical health while in Peru. Moreover, as the applicant's husband notes, returning to the United States would also enable him to be more involved in his daughter's life there, as well as pursue his employment and educational goals.

The applicant's husband also indicates that he wants to have a family soon but notes that his wife has already suffered a miscarriage in Peru. Relying on a summary of an article regarding causes of miscarriage, he asserts that his wife's doctor advised that she miscarried because of the stress of watching the applicant's suffering and her fear of separation. The applicant's husband also believes that it is because his wife works so hard in order to get food and buy his medicines. We note that the applicant has not provided a letter from her doctor corroborating her husband's assertions and also does not refer to this incident in her own statement.

Having carefully considered the evidence of record, the AAO finds that it does not demonstrate that the applicant's husband would experience extreme hardship as a result of separation from the applicant. While we acknowledge that the applicant's husband will undoubtedly suffer emotional distress as a result of separation, the record does not show that the hardship constitutes "significant hardship over and above the normal disruption of social and community ties" normally associated with deportation or refusal of admission. *Matter of O-J-O-*, 21 I&N Dec. at 385.

We also consider the applicant's assertion that her husband would suffer ongoing extreme hardship due to his relocation to Peru to be with her. The record indicates that the applicant's husband is presently residing in Peru since sometime after the applicant departed the United States in September 2009. It is unclear exactly how long he had been residing in Peru. The applicant's husband is a native of Guatemala and a naturalized citizen of the United States. The record does not indicate how long the applicant's husband has been in the United States before his move to Peru or how long he has been a U.S. citizen. The applicant's husband indicates that he speaks Spanish but is not familiar with Peruvian culture. As previously noted, he asserts that since moving to Peru, he has suffered a number of physical ailments, attributable to the conditions in Peru. For instance, he is now suffering from high cholesterol and has health problems arising from the high altitude where he resides. We note that the medical certificate does not set forth any prognosis for the applicant, but it also does not suggest that the medical conditions from which the applicant's husband suffers are untreatable. To the contrary, the applicant's husband receives medication and treatment for those conditions. Moreover, as noted by the director, it is unclear why the applicant and her husband cannot move to an area in Peru that is closer to sea level. The applicant's husband's asserts on appeal that moving to another area in Peru without relatives or connections is almost impossible, but he does not explain why.

The applicant's husband also voices concern about trying to have children in Peru, because medical conditions are not good in all the hospitals in Peru. We note again that the applicant's husband is receiving both medical and psychological care in Peru and he does not assert that the care he receives is poor. In addition, the applicant indicates that she, along with her mother and father, departed the United States in 2009 to return to Peru so that her mother could get tests done and receive medical care there after being advised she may have ovarian cancer. There is no assertion that the applicant's mother did not receive proper care and treatment in Peru subsequently.

The applicant's husband also indicates that he is suffering financial hardship as a result of relocation. He states that he cannot pay child support because he is unemployed. He provides a certified record of child support payments from March to October 2008 to his former wife. We note, however, that according to the divorce judgment in the record, the applicant's husband's daughter, is now over 18 years old. The applicant's husband also notes that his wife makes approximately $380 per month and that after rent and bills for utilities, they still do not have enough money for food and medicine. He states that he has to find temporary jobs which pay $2.50 per day for five days maximum. He asserts that he lost his maintenance job in Peru due to personnel reduction and because he did not have a degree. The applicant's husband states that everyone is required to have a degree in order to be employed, though he does not explain how he was able to obtain his maintenance job without one in the first place. He states that in the United States, he has his old job waiting for him.

While the AAO recognizes that relocation may result in some financial distress, the applicant here has failed to demonstrate that her spouse is suffering financial hardship. The record lacks any corroborating evidence, including the applicant's and her husband's tax returns, income or earnings records, bank statements, bills, or other financial records, that would enable the AAO to meaningfully assess the financial impact of relocation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly lacking is evidence of the

applicant's husband employment and financial status in the United States to demonstrate the financial detriment of relocation. Moreover, we note that the applicant's husband had moved with his wife and her parents to Peru. Yet, the record is silent as to whether the applicant's parents are part of the couple's household and contribute financially. We note that the applicant's statement indicates that at one time, the applicant's mother and stepfather owned businesses in Peru. It is unclear whether that is still the case, as there are no statements from either of them in the record.

The applicant's husband also asserts hardship based on the loss of close family ties in the United States, namely his daughter. He asserts that he wishes to be closer to his daughter in the United States and that he is unable to see her or have much contact with her since moving to Peru due to financial reasons. He contends that his daughter would suffer extreme hardship by not having her father in her life and cites to a summary of an article addressing psychological effects on a teenager resulting from such separation. The applicant's daughter, [redacted] has submitted a letter indicating that she wants her father and her stepmother in the United States and that she is unable financially to travel to Peru to see them. The AAO notes again that the applicant's daughter is now 18 years old. We further note that while the applicant resided in Illinois, and based on his statement, apparently intends to return to Illinois, his daughter lives in Florida with her mother. There is no indication that even when he resided in the United States that he saw his daughter more than "sometimes" a year. *See* [redacted] *statement.* Moreover, we note that despite the hardship of separating from his daughter, he chose to do so when he left the United States in 2009 when she was still a minor. The record also lacks any evidence that the applicant's husband's daughter faced hardship during the past few years while her father was in Peru.

After careful consideration of the evidence, we find that the applicant has not demonstrated that her husband would suffer hardship that rises to the level of extreme hardship as a result of relocation.

In this case, as the record does not establish that the hardships to the applicant's U.S. citizen husband, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship, the AAO finds that the applicant has failed to establish extreme hardship to her qualifying relative as required under sections 212(a)(9)(B)(v) and (h) of the Act. She, therefore, remains inadmissible to the United States under sections 212(a)(9)(B)(i)(II) and 212(a)(2)(A)(i)(I) of the Act. Since the applicant failed to establish statutory eligibility for the waivers, the AAO finds that no purpose would be served in considering whether the applicant merits the waivers in the exercise of discretion.

In proceedings for application for a waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and (h) of the Act, the burden of proving eligibility remains entirely with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.