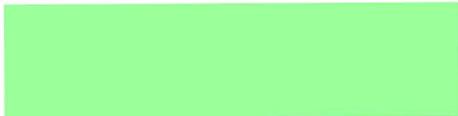


(b)(6)

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

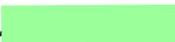


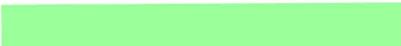
U.S. Citizenship
and Immigration
Services



Date: **JUN 19 2013**

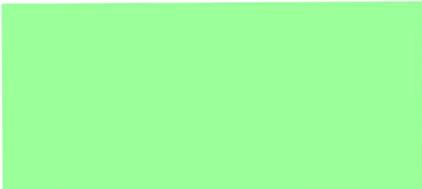
Office: SAN JOSE

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the 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,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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DISCUSSION: The waiver application was denied by the Field Office Director, San Jose, 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 Mexico who was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed a crime involving moral turpitude. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse, U.S. citizen children, and his U.S. lawful permanent resident mother and father.

On April 30, 2012, the Field Office Director denied the application for a waiver (Form I-601), finding that the applicant failed to establish extreme hardship to a qualifying relative.

On appeal, counsel for the applicant asserts that the evidence demonstrates that all of the applicant's qualifying relatives will suffer from extreme hardship as a result of his inadmissibility.

In support of the waiver application, the record includes, but is not limited to: a legal brief from counsel; statements from the applicant's spouse, mother, father, and siblings; medical records for the applicant's spouse; employment letters and tax returns for the applicant's spouse; educational records, awards, and letters of recommendation concerning the applicant's spouse; educational records for two of the applicant's children; biographical information for the applicant's parents, spouse, and children; and documentation in connection with the applicant's criminal convictions and immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of multiple crimes involving moral turpitude. Section 212(a)(2)(A) of the Act states, in pertinent parts:

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

The Board of Immigration Appeals (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....

(b)(6)

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.)

To determine if a crime involves moral turpitude, the Ninth Circuit Court of Appeals employs the categorical approach set forth in *Taylor v. United States*, 110 S.Ct. 2143 (1990). See *Nicanor-Romero v. Mukasey*, 523 F.3d 999, 1004 (9th Cir. 2008), *overruled on other grounds by Marmolejo-Campos v. Holder*, 58 F.3d 903, 911 (9th Cir. 2009). The purpose of the categorical approach is to determine whether the full range of conduct encompassed by the statute constitutes a crime of moral turpitude. *Cuevas-Gaspar v. Gonzalez*, 430 F.3d 1013, 1017 (9th Cir. 2005), abrogation on other grounds recognized by *Holder v. Martinez-Gutierrez*, 132 S.Ct. 2011, 2020-21 (2012). If the statute “criminalizes both conduct that does involve moral turpitude and other conduct that does not, the modified categorical approach is applied.” *Marmolejo-Campos*, 558 F.3d at 912 (citing *Fernando-Ruiz v. Gonzalez*, 466 F.3d 1121, 1163 (9th Cir. 2006)); see also *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1161 (9th Cir. 2009). However, there must be “a realistic probability, not a theoretical possibility, that the statute would be applied to reach conduct that did not involve moral turpitude.” *Nicanor-Romero*, 523 F.3d at 1004 (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). To demonstrate a “realistic probability,” the applicant must point to his or her own case or other cases in which the state courts in fact did apply the statute to conduct not involving moral turpitude. 523 F.3d at 1004-05. A realistic probability also exists where the statute expressly punishes conduct not involving moral turpitude. See *U.S. v. Vidal*, 504 F.3d 1072, 1082 (9th Cir. 2007).

Once a realistic probability is established, the modified categorical approach is applied, which requires looking to the “limited, specified set of documents” that comprise what is known as the record of conviction – the charging document, a signed plea agreement, jury instructions, guilty pleas, transcripts of a plea proceeding and the judgment – to determine if the conviction entailed admission to, or proof of, the elements of a crime involving moral turpitude. *Castillo-Cruz*, 581 F.3d at 1161 (citing *Fernando-Ruiz*, 466 F.3d at 1132-33); see also *Marmolejo-Campos*, 558 F.3d at 912 (citing *Cuevas-Gaspar*, 430 F.3d at 1020). The Ninth Circuit has reaffirmed that courts may not examine evidence outside the record of conviction in determining whether a conviction was for a crime involving moral turpitude. See *Olivas-Motta v. Holder*, --- F.3d ---, 2013 WL 2128318 (9th Cir. May 17, 2013) (rejecting *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)). Where the burden of proof is on the applicant, as in the present case, the applicant cannot sustain that burden where the record of conviction is inconclusive. *Young v. Holder*, 697 F.3d 976, 989 (9th Cir. 2012).

The record indicates that on November 4, 2003 in the Superior Court of California, the applicant was convicted of Vehicle Theft with a Prior Conviction in violation of section 10851(a)/666.5 of the California Vehicle Code. The applicant was sentenced to one year in jail and three years of probation. The applicant had previously been conviction on August 16, 2002 of two

counts of Theft or Unauthorized Use of a Vehicle in violation of section 10851(a) of the California Vehicle Code. For those offenses, he was sentenced to 300 days in the county jail and three years of probation.

California Vehicle Code § 10851 stated, in pertinent part, at the time of the applicant's conviction that:

Theft and unlawful driving or taking of a vehicle

(a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in a county jail for not more than one year or in the state prison or by a fine of not more than five thousand dollars (\$5,000), or by both the fine and imprisonment

....

(e) Any person who has been convicted of one or more previous felony violations of this section, or felony grand theft of a vehicle in violation of subdivision (d) of Section 487 of the Penal Code, former subdivision (3) of Section 487 of the Penal Code, as that section read prior to being amended by Section 4 of Chapter 1125 of the Statutes of 1993, or Section 487h of the Penal Code, is punishable as set forth in Section 666.5 of the Penal Code. The existence of any fact that would bring a person under Section 666.5 of the Penal Code shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere, or by trial by the court sitting without a jury.

...

The Board has stated that a conviction for theft generally qualifies as a crime involving moral turpitude only if the statute of conviction establishes that the offense necessarily entailed a specific intent on the part of the offender to effect a permanent taking of another's property without consent. *See Matter of V-Z-S-*, 22 I&N Dec. 1338, 1346 n.12 (BIA 2000); *Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973); *Matter of D-*, 1 I&N Dec. 143, 144-45 (BIA 1941). Because section 10851(a) proscribes conduct that may not involve a specific intent to effect a permanent taking of another's property without consent, we conclude that a conviction under such provision is not categorically a crime involving moral turpitude. It is therefore appropriate to apply a modified categorical approach, looking to the record of conviction, to ascertain in what capacity the respondent acted in committing the offense and whether the offense for which he was convicted involved the specific intent to permanently deprive another person of his or her property. In this case, the record of conviction, namely the felony complaint, reflects convictions for permanent takings. As the applicant has not contested inadmissibility on appeal, and the record does not show the Field Office Director's

determination to be in error, we will not disturb the finding that the applicant is inadmissible under section 212(a)(2)(A) 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 in this case, 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 lawful permanent resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant’s U.S. citizen spouse, U.S. citizen children and U.S. lawful permanent resident parents are qualifying relatives in this case. 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-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 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 deportation, 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, 885 (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 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.

On appeal, counsel states that the Field Office Director failed to consider important hardship factors and assumed facts not in the evidence. The AAO will consider the hardships to each qualifying relative, in turn, both if they are separated from the applicant and if they were to relocate. The AAO recognizes the impact of separation on families and this matter arises within the jurisdiction of the Ninth Circuit Court of Appeals, which has said that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The first qualifying relative is the applicant’s U.S. citizen spouse. Counsel states that the applicant’s spouse “suffers from serious liver problems for which she’s undergoing medical treatment and takes medications. Counsel also states that USCIS must take into account the worst case scenario which would be that the applicant’s spouse would require a liver transplant. The most recent letter in the record concerning the applicant’s spouse’s condition is dated October 7, 2010 from [REDACTED], a gastroenterologist states that at the time of the letter the applicant’s spouse had been “recently diagnosed” with “Primary Biliary Cirrhosis,” a liver disease. He stated that her treatment involved “periodic monitoring of her health with regular physical examinations,” blood work, and liver function tests. He also stated that she was on medication. [REDACTED] concluded that “in the event that her condition does not respond to medical therapy, the liver disease may progress to full blown cirrhosis and liver failure,” requiring hospitalization and liver transplant surgery. The record; however, does not make clear how the applicant’s spouse’s current condition would be affected by separation from her spouse. [REDACTED] does not state that the applicant’s spouse is currently unable to work or care for her school-age children. The letter also fails to indicate what assistance the applicant’s spouse may require from her spouse as a result of her condition. Discharge instructions dated October 14, 2010 indicate that the applicant’s spouse visited the emergency room for “costochondritis,” chest pain, perhaps the result of emotional stress. The applicant’s spouse was instructed to take ibuprofen and to take the following day off of work as a result of this condition. Additionally, although counsel submitted a letter regarding the applicant’s daughter’s health condition on appeal, no updated information was provided concerning the applicant’s spouse’s condition. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

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Moreover, the record does not indicate that the applicant's spouse would suffer financial hardship in her husband's absence as she is the primary breadwinner for her family. The AAO notes that although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record indicates that the applicant's spouse was employed full-time as a medical assistant and that she obtained health insurance through her employer. The joint federal income tax returns indicate that the couple has two dependent children and relies primarily on the applicant's spouse's income to support the family. Federal income tax returns for 2010 indicate an adjusted gross income of \$36,891 for the family of four, with \$3,698 of that income coming from the applicant and the remaining portion from the applicant's spouse. Without the applicant's income, there is no indication in the record that the applicant's spouse could not financially support her family. The AAO notes that it is not clear from the record why the couple's youngest child is not listed as a dependent on the tax returns. The evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case as a result of the applicant's spouse's separation from the applicant would be extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

In regards to the hardship that the applicant's children would suffer if they were to be separated from the applicant, counsel simply states that the record demonstrates that the children would suffer from extreme hardship, but he does not specify the hardship. The record indicates that the applicant has three U.S. citizen children, but as stated above, the applicant and his spouse's federal income tax returns in the record only claim two of those children as dependents. The record indicates that two of the applicant's children attended elementary school where they performed well. On appeal, counsel submitted a letter from [REDACTED] dated May 9, 2013, stating that the applicant's 10 year old daughter was diagnosed with cone-rod dystrophy and that her "visual acuities meet the criteria for legal blindness." [REDACTED] recommended various adaptive instruments and methods to assist the applicant's daughter in school. There is no further information in the record concerning any medical conditions or special needs of the applicant's children. The record also fails to demonstrate how separation from the applicant would result in extreme hardship to his children. The letters in the record from the applicant's siblings state that the applicant is a "provider" for his children, but those statements are not supported in the record. As stated above, the record demonstrates that the applicant's spouse is the primary breadwinner for the family. Although the AAO notes that the applicant's children would likely endure hardship as a result of long-term separation from their father, the record does not establish that the hardships that any of them would face, considered in the aggregate for each child, rise to the level of "extreme" beyond the hardships normally experienced by families separated due to immigration inadmissibility.

The only documentation in the record concerning hardship to the applicant's U.S. lawful permanent resident parents is in the form of letters from the applicant's parents. The applicant's siblings' letters fail to note any hardship that the applicant's parents would suffer in his absence. The applicant's father states that in the event that he needs anything, he needs his son to be there for him. No further details or documentation were provided to support what assistance, if any, the applicant's father needs from the applicant. The applicant's mother's letter states that she needs her son to help her economically. Again, no documentation was submitted to support the applicant's mother's statement that she relies on the applicant in any way for financial assistance. The record indicates that the applicant's father is 53 years old and the applicant's mother is 49 years old. There is no indication in the record that either of the applicant's parents suffer from any health problems. Although the AAO notes that the applicant's parents would likely endure some hardship as a result of long-term separation from the applicant, the record does not establish that the hardships either one would face, each considered in the aggregate, rise to the level of "extreme."

In regards to the hardship that the applicant's spouse would suffer if she were to relocate to Mexico, the AAO notes that the applicant's spouse was born in the United States and does not appear to have any immediate family ties to Mexico. The AAO also notes that the applicant's spouse is the primary breadwinner for her family and has an established career of over a decade as a medical assistant. The record also indicates that the applicant's spouse has a serious medical condition for which she is receiving ongoing monitoring, treatment and evaluation. The record also establishes that the applicant's spouse has important family ties in the United States, including her U.S. citizen children. The AAO also takes administrative note of the Travel Warning in regards to Mexico issued by the U.S. Department of State on November 20, 2012. Based on the information provided, considered in the aggregate, the evidence illustrates that the hardship suffered in this case, should the applicant's spouse relocate to Mexico, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

In regards to the hardship that the applicant's children would suffer if any of them were to relocate to Mexico to reside with the applicant, the record contains very little information. The AAO notes the applicant's daughter's vision impairment and legal blindness, but the record does not indicate that she would suffer in hardship in Mexico as a result of her condition. Additionally, although the record indicates that the applicant's two eldest children have attended elementary school in the United States, there is no documentary evidence establishing why either of them would suffer extreme hardship if they were to relocate to Mexico and continue their schooling there. The fact that economic and educational opportunities for a child may be better in the United States than in a foreign country does not establish extreme hardship. *See Matter of Kim*, 15 I&N Dec. at 89-90. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should any of the applicant's children relocate to Mexico, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Counsel also states that the applicant's U.S. lawful permanent resident parents would face extreme hardship if they were to relocate to their native Mexico. Again, no documentation was provided to support that assertion. The record does not document how the applicant's parents, in particular,

would face hardship as a result of the safety concerns in Mexico. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should either of the applicant's parents relocate to Mexico, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O*, 21 I&N Dec. at 383.

We can 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 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 to his spouse as a result of separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Although the applicant's qualifying relatives' concerns over the applicant's immigration status are neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(h) of the Act, be above and beyond the normal, expected hardship involved in such cases.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, each considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under section 212(h) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.