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U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **MAR 07 2013**

Office: SAN BERNARDINO

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:

[Redacted]

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 our 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-190B, 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 a 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

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 Mexico 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 crimes involving moral turpitude. On November 22, 2010, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. Lawful Permanent Resident (LPR) spouse and U.S. citizen children.

In a decision dated December 1, 2011, the field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that his qualifying relatives would experience extreme hardship as a consequence of his inadmissibility. The field office director further denied the waiver application as a matter of discretion.

On appeal, counsel for the applicant asserts that the field office director erred in finding that the record evidence did not establish that the applicant's bar to admission would result in extreme hardship to his spouse. Counsel contends that the evidence outlining the family ties and long residence history of the applicant's qualifying relatives, as well as the asserted medical, emotional, educational, and financial difficulties to the applicant's spouse and son demonstrate extreme hardship to his qualifying relatives.

The record contains, but is not limited to: counsel's brief; a statement by the applicant's spouse; a statement by the applicant's son, [REDACTED]; copies of income tax returns; copies of utility bills; an employment discharge letter concerning the applicant's son; birth certificates; employer reference letters; character reference letters; a letter by the applicant's spouse's treating physician; the applicant's spouse's prescription list; literature about Polycystic Kidney Disease; school enrollment records; and documentation regarding the applicant's criminal 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 has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) provides, in pertinent part, that:

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

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

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 on or about May 8, 1996, the applicant was convicted in the Superior Court of California, County of Riverside, of Inflicting Corporal Injury on Spouse, in violation of section 273.5(a) of the California Penal Code. The applicant was sentenced to 120 days in jail, probation for a term of 36 months, and was fined. The record further shows that on or about October 24, 2005, the applicant was again convicted in the Superior Court of California, County of Riverside, of Inflicting Corporal Injury on Spouse, in violation of section 273.5(a) of the California Penal Code. For this second domestic violence offense, the applicant was sentenced to 90 days in jail, 36 months of probation, and was fined. The field office director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude.

According to section 273.5(a) of the California Penal Code, "Any person who willfully inflicts upon a person who is his or her spouse, ..., corporal injury resulting in a traumatic condition is guilty of a felony." The Ninth Circuit Court of Appeals has held that a conviction under Cal. Penal Code § 273.5(a) is categorically a crime involving moral turpitude. In *Grageda v. INS*, the Ninth Circuit held: "Because spousal abuse is an act of baseness or depravity contrary to accepted moral standards, and willfulness is one of its elements . . . spousal abuse under section 273.5(a) is a crime of moral turpitude." 12 F.3d 919, 922 (9th Cir. 1993) (Emphasis added); See *Guerrero de Nodahl v. INS*, 407 F.2d 1405, 1406-07 (9th Cir. 1969) ("[W]e rule that inflicting 'cruel or inhuman corporal punishment or injury' upon a child is so offensive to American ethics that the fact that it was done purposely or willingly (the California definition of 'willful') ends debate on whether moral turpitude was involved. When the crime is this heinous, willful conduct and moral turpitude are synonymous terms."). Here, as in *Grageda*, the scope of our analysis is limited to spouses only, as the record evidence clearly establishes that the applicant was twice convicted for inflicting corporal injury upon his wife. Cf. *Morales-Garcia v. Holder*, 567 F.3d 1058, 1065 (9th Cir. 2009). Consequently, the AAO finds that the applicant's two convictions for crimes involving moral turpitude render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest this determination on appeal.

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

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

....

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

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives here are the applicant's LPR spouse and U.S.

citizen children. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996). In most discretionary matters, the alien bears the burden of proving eligibility simply by showing equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). However, the AAO cannot find that the applicant merits a favorable exercise of discretion solely by balancing the applicant's favorable and adverse factors. The applicant's conviction indicates that he may be subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

The applicant was twice convicted of Inflicting Corporal Injury on Spouse. The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The AAO notes that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and the AAO is aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in 8 C.F.R. § 212.7(d). Thus, we find that the statutory terms "violent or dangerous crimes" and "crime of violence" are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependent on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms "violent" and "dangerous". The term "dangerous" is not defined

specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms “violent” and “dangerous” in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual “case-by-case basis.” 67 Fed. Reg. at 78677-78.

As stated, the applicant was convicted on May 8, 1996 and October 24, 2005, of willful infliction of corporal injury on his spouse, a felony, in violation of Cal. Penal Code § 273.5(a).

Cal. Penal Code § 273.5(a) provides:

(a) Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, 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 two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both that fine and imprisonment.

From the plain language of this statute, it can be concluded that the applicant has been convicted of a violent crime pursuant to 8 C.F.R. § 212.7(d). Therefore, even if the applicant satisfied the extreme hardship requirement of section 212(h)(1)(B) of the Act, he would still be subject to the heightened hardship requirement of showing exceptional and extremely unusual hardship to warrant a favorable exercise of discretion under section 212(h)(2) of the Act. The regulation at 8 C.F.R. § 212.7(d) requires a showing of a higher level of hardship for applicants who have committed violent or dangerous crimes.

Accordingly, the applicant must show that “extraordinary circumstances” warrant approval of the waiver. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant’s admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities, the AAO will consider whether the applicant has “clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship.” *Id.*

The exceptional and extremely unusual hardship standard is more restrictive than the extreme hardship standard. *Cortes-Castillo v. INS*, 997 F.2d 1199, 1204 (7th Cir. 1993). Since the applicant is subject to 8 C.F.R. § 212.7(d), he must meet the higher standard of exceptional and extremely unusual hardship. Therefore, the AAO will, at the outset, determine whether the applicant meets this standard.

In *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001), the BIA determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that “must be ‘substantially’ beyond the ordinary hardship that would be

expected when a close family member leaves this country.” However, the applicant need not show that hardship would be unconscionable. *Id.* at 61.

The BIA stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. These 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 upon the qualifying relatives; 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *Id.*

In *Monreal-Aguinaga*, the BIA provided additional examples of the hardship factors it deemed relevant for establishing exceptional and extremely unusual hardship:

[T]he ages, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives. For example, an applicant who has elderly parents in this country who are solely dependent upon him for support might well have a strong case. Another strong applicant might have a qualifying child with very serious health issues, or compelling special needs in school. A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.

23 I&N Dec. at 63-4.

In the precedent decision issued the following year, *Matter of Andazola-Rivas*, the BIA noted that, “the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by comparing it to the hardship others might face.” 23 I&N Dec. 319, 323 (BIA 2002). The issue presented in *Andazola-Rivas* was whether the Immigration Judge correctly applied the exceptional and extremely unusual hardship standard in a cancellation of removal case when he concluded that such hardship to the respondent’s minor children was demonstrated by evidence that they “would suffer hardship of an emotional, academic and financial nature,” and would “face complete upheaval in their lives and hardship that could conceivably ruin their lives.” *Id.* at 321 (internal quotations omitted). The BIA viewed the evidence of hardship in the respondent’s case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The BIA noted:

While almost every case will present some particular hardship, the fact pattern

presented here is, in fact, a common one, and the hardships the respondent has outlined are simply not substantially different from those that would normally be expected upon removal to a less developed country. Although the hardships presented here might have been adequate to meet the former "extreme hardship" standard for suspension of deportation, we find that they are not the types of hardship envisioned by Congress when it enacted the significantly higher "exceptional and extremely unusual hardship" standard.

23 I&N Dec. at 324.

However, the BIA in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as *Andazola-Rivas*, clarified that "the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief." 23 I&N Dec. 467, 470 (BIA 2002). The BIA found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The BIA noted that these factors included her heavy financial and familial burden, lack of support from her children's father, her U.S. citizen children's unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The BIA stated, "We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met." *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate in this case. See *Gonzalez Recinas*, 23 I&N Dec. at 469 ("While any hardship case ultimately succeeds or fails on its own merits and on the particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship.").

The record reflects that the applicant is 53 years old and his wife is 51 years old. The applicant married [REDACTED] a LPR, in Los Angeles, California, on July 9, 1988. The applicant and his spouse have four U.S. citizen children: a 23-year-old son, [REDACTED]; a 22-year-old daughter, [REDACTED]; a 21-year-old son, [REDACTED] and a 20-year-old son, [REDACTED]. It is asserted that all four children reside with the applicant and his wife. The applicant's spouse and children are qualifying members in these proceedings. The record reflects that the applicant's wife's immediate family members, including her parents and siblings, all reside lawfully in the United States.

The applicant's wife indicates in her letter dated October 10, 2011 that the applicant's inadmissibility or possible removal from the United States would bring about severe hardship to her life and well-being. The applicant's wife indicates that she has found great happiness with the applicant and to not have him at her side "would destroy [her] emotionally and feeling empty." She further mentions the hardships the family would suffer as a result of the applicant's possible denial of admission.

With regard to medical difficulties, the applicant's wife states that she has been diagnosed with diabetes, obesity, and abnormal liver enzymes. She states that the applicant has been instrumental in helping her control her conditions, as he monitors her intake of medications and food. The

applicant's wife also asserts that he provides her with the support and stability to help maintain balance in her life. The record evidence includes a letter prepared by [REDACTED], dated August 9, 2011, indicating that the applicant's wife has been diagnosed with diabetes, obesity, and abnormal liver enzymes. [REDACTED] mentions that the applicant is currently taking medication to treat these conditions, as well as diet, daily exercise and monitoring of blood glucose. However, while the letters demonstrate that the applicant's wife suffers from various health problems, they do not support the applicant's assertions that separation would result in the worsening of her conditions. There is no evidence in the record establishing that the applicant's wife depends upon him for medical appointments, treatment, or medical care. Though the applicant's wife asserts that the applicant monitors her intake of medications, there is no indication in the record that the applicant's wife would discontinue her treatment as a result of the applicant's inadmissibility.

The applicant's wife also asserts that the applicant's inadmissibility would result in medical hardships to their son, [REDACTED]. The applicant's wife indicates that the applicant helps support their son [REDACTED], who has been diagnosed with a condition known as Polycystic Kidney Disease (PDK). The applicant's wife asserts that [REDACTED] is presently receiving medical care for this condition and that he needs ongoing monitoring and medication to prevent further complications. The record evidence includes literature regarding the applicant's son's condition which indicates that PDK is a genetic disease. The AAO recognizes the concern that this medical diagnosis may cause, especially in the case of a son. However, the current documentation submitted as part of the record is insufficient to support the applicant's wife claim that their son's medical diagnosis and treatment would cause the son extreme hardship in the absence of the applicant or would cause her extreme hardship in having to care for [REDACTED] by herself. That is, the record does not contain detailed evidence indicating that the applicant's son condition requires the daily care of another, or that the applicant is the only individual who is able to provide daily care for his son, if needed. The medical literature indicates that PDK treatment includes control of blood pressure, treatment of kidney infections, bed rest and ingestion of constant fluids, and a healthy lifestyle. There is no evidence in the record that the applicant's son leads an unhealthy lifestyle or is unable to monitor his blood pressure levels. Also, there is no evidence showing that the applicant's son has endured bladder or kidney infections recently.

The record includes a letter dated October 10, 2011 by the applicant's son in which he mentions that the applicant needs the emotional and moral support of his father. He further indicates that the applicant reads self-help books to him, prayed with him, and has helped with his self-confidence and esteem. The AAO acknowledges the close and loving relationship between the applicant and his son, [REDACTED]. Consequently, the applicant's son will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be exceptionally and extremely unusual. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant's wife and son, and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the requisite hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove the requisite hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The applicant's wife indicates in her letter dated October 10, 2011, that the family will endure financial hardships and difficulties as a result of separation from the applicant. The applicant's wife indicates that she is currently unemployed, that she cares for her four children who are all pursuing a college education, and that the applicant is the "person in charge to pay for the majority of the bills, [such as] mortgage, utilities, and food." On appeal, counsel for the applicant submitted copies of the applicant's household's mortgage and utility bills for the month of December 2011. The AAO notes that for the month of December 2011, the applicant had monthly financial obligations totaling \$1,058.15 and that the record indicates the applicant is presently employed by [REDACTED]. However, the record does not contain sufficient financial documentation indicating the specific amount of financial support the applicant provides for his family's living expenses, medical bills or tuition costs. Additionally, the record does not contain affidavits or other documentation from the applicant's sons or daughter indicating that they depend entirely upon the applicant for financial support and that they are unable to work and contribute to their household in the event of separation from the applicant.

The applicant's wife asserts that she fears for her husband's safety in Sinaloa, Mexico. She states that she does not feel comfortable visiting a place that could increase the "risk of danger to her [family]." Here, the AAO notes that the U.S. Department of State updated its Travel Warning for United States citizens traveling to Mexico on November 20, 2012. The Travel Warning notes that since 2006, the Mexican government has engaged in an extensive effort to combat transnational criminal organizations (TCOs).

The Travel Warning further indicates that TCOs, meanwhile, engage in a wide-range of criminal activities that can directly impact United States citizens, including kidnapping, armed car-jacking, and extortion that can directly impact United States citizens. According to the Travel Warning, the number of U.S. citizens reported to the Department of State as murdered under all circumstances in Mexico was 113 in 2011 and 32 in the first six months of 2012. Regarding the state of Sinaloa, the Travel Warning indicates that U.S. citizens "should defer non-essential travel to the state of Sinaloa," as one of Mexico's most powerful TCOs is based in the state of Sinaloa. The travel warning further indicates that with the exception of Ciudad Juarez, since 2006 more homicides have occurred in the state's capital city of Culiacan than in any other city in Mexico. The U.S. Department of State warns that travel off the toll roads in remote areas of Sinaloa is especially dangerous and should be avoided. Based on the increased violence in Mexico and the Travel Warning issued to U.S. citizens, the AAO notes the risks U.S. citizens face when traveling to certain areas in Mexico, including the area where the applicant currently resides. Therefore, the AAO recognizes that the ability of the applicant's wife and children to visit the applicant in Sinaloa, Mexico may be limited. However, as the Board noted in *Matter of Monreal-Aguinaga*, "adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship." 23 I&N Dec. at 63-4.

Thus, when the evidence of hardship in the record is considered collectively, we find that the applicant has not shown that his spouse will endure "exceptional and extremely unusual hardship" if she remained in the United States without him. The AAO recognizes that the applicant's son [REDACTED] would experience emotional hardships upon separation from the applicant. Additionally, there is

evidence in the record indicating that adverse country conditions exist in Sinaloa, Mexico. However, the Board has found that these factors, by themselves, are insufficient to demonstrate exceptional and extremely unusual hardship. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. at 63. Accordingly, the applicant has not demonstrated that the medical, emotional and financial hardship to his qualifying relatives meets the “exceptional and extremely unusual hardship” standard as required in 8 C.F.R. § 212.7(d).

With regard to joining the applicant to live in Sinaloa, Mexico, the asserted hardship factors are her close familial ties in the United States, the applicant’s children’s community ties in the United States, and concern about her immediate family’s personal safety and that of the applicant. Though the AAO acknowledges that the applicant’s wife and children have lived their entire lives in the United States and accustomed to life here, the record reflects that three of the applicant’s four children are over the age of 21 and the youngest is 20 years old. However, the record does not reflect that any of the applicant’s children are unable to work or take care of themselves as legal adults. Additionally, with the exception of [REDACTED], none of the applicant’s children have asserted that relocation to Mexico would result in any type of hardship or difficulty to them. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the difficulties described by the applicant’s wife and children stemming from separation from the applicant’s wife’s family members, and as demonstrated by the evidence in the record, are the common results of removal or inadmissibility and do not rise to the level of exceptional and extremely unusual hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove the requisite hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The applicant’s wife states that life in the area where the applicant will be residing is unsafe. As previously noted, the United States Department of States has issued a Travel Warning advising of the risks of travel to Mexico. Regarding the specific area where she would be residing in Mexico in the event of relocation, the Travel Warning indicates that U.S. citizens “should defer non-essential travel to the state of Sinaloa.” Relocation to Mexico would thus require the applicant abandon her residence in the United States to move to a part of Mexico that has become unstable. Though we recognize that this factor, together with the additional asserted factors might be sufficient to find extreme hardship to the applicant’s qualifying relatives, the Board has noted that adverse country conditions, by themselves, are insufficient to demonstrate exceptional and extremely unusual hardship. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. at 63-4.

Thus, when the evidence of hardship in the record is considered collectively, we find that the applicant has not shown that his spouse and children will endure “exceptional and extremely unusual hardship” if they relocates to Sinaloa or some other part of Mexico to reside with him. Accordingly, the applicant has not demonstrated that the emotional hardships to his qualifying relative and the country conditions of the country of relocation meets the “exceptional and extremely unusual hardship” standard as required in 8 C.F.R. § 212.7(d).

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the

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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.