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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

Date: **MAY 06 2013**

Office: MANILA

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching 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 "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Republic of Fiji who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. On January 23, 2012, 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 reside in the United States with his U.S. Lawful Permanent Resident (LPR) spouse and U.S. citizen son.

In a decision dated May 24, 2012, the field office director denied the Form I-601 application for a waiver, finding that the applicant's conviction constituted a violent or dangerous crime pursuant to section 8 C.F.R. § 212.7(d). The field office director further found that the applicant failed to demonstrate that his qualifying relatives would experience exceptional and extremely unusual hardship, which is the requisite hardship standard under the regulations, as a consequence of his inadmissibility.

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 the requisite hardship to his qualifying relatives. Counsel contends that the evidence outlining the family ties, as well as the asserted emotional, and financial difficulties to the applicant's spouse and son demonstrate hardship to his qualifying relatives.

The record contains, but is not limited to: counsel's brief; a statement by the applicant's spouse; statements by the applicant's sons; country conditions documentation; copy of the applicant's passport; a certificate of rehabilitation from the Fiji Police; the applicant's son's naturalization certificate; birth certificates; a marriage certificate; 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 [REDACTED] 1975 the applicant was convicted in the Nasouri Court, Fiji, of assault occasioning actual bodily harm, in violation of article 245 of the Fiji Penal Code. The applicant was fined and ordered "to keep the peace and be of good behavior" for 12 months. The record further shows that on or about [REDACTED] 1981, the applicant was convicted in the Nasouri Court, Fiji, of acts intended to cause grievous harm or prevent arrest in violation of article 224 of the Fiji Penal Code. For this offense, the applicant was sentenced to 18 months imprisonment, which was suspended for two years, and he was also 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.

On appeal, counsel for the applicant asserts that the applicant's November 18, 1981 conviction was expunged after a period of rehabilitation. The record of proceedings contains evidence indicating that the conviction was in fact expunged pursuant to the Rehabilitation of Offenders Act of 1997. However, the Board has held that generally, a criminal conviction remains valid for immigration purposes regardless of the effect of a post-conviction type of rehabilitative statute, unless the conviction was expunged or vacated because of a procedural or substantive defect in the underlying trial court proceedings. *See Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003) (noting that a conviction that has been vacated in a statute or the state or federal constitution, occurring to correct a violation or error of law is not a conviction for immigration purposes). Additionally, the AAO notes that foreign expungements are not given effect under federal immigration law. *See Matter of Adamo*, 10 I&N Dec. 593, 596-97 (BIA 1964).

A discretionary waiver of this criminal ground of inadmissibility is available under section 212(h) of the Act, 8 U.S.C. § 1182(h) if:

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General 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.

The AAO notes that the applicant's most recent conviction for a crime involving moral turpitude occurred on or about [REDACTED] 1981. As the conduct underlying the conviction took place over 15 years ago, he meets the requirement of section 212(h)(1)(A)(i) of the Act, the AAO will assess his eligibility for a waiver under the additional requirements of section 212(h)(1)(A) of the Act. An application for admission or adjustment is a "continuing" application, and inadmissibility is adjudicated on the basis of the law and facts in effect at the time of admission. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

Section 212(h)(1)(A) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated. If the foregoing requirements are 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 convictions indicate that he may be subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

The applicant was convicted of assault causing bodily injury and of acts intended to cause grievous harm or prevent arrest. 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 previously stated, the applicant was convicted on [REDACTED] 1975 of assault causing bodily harm, a misdemeanor, in violation of article 245 of the Fiji Penal Code. Article 245 of the Fiji Penal Code provides that:

Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanor, and is liable to imprisonment for five years, with or without corporal punishment.

Further, the record shows that the applicant was convicted on [REDACTED] 1981 of acts intended to cause grievous harm or prevent arrest in violation of article 224 of the Fiji Penal Code, which provides that:

Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person-

- (a) unlawfully wounds or does any grievous harm to any person by any means whatsoever; or
- (b) unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife, or other dangerous or offensive weapon; or
- (c) unlawfully causes any explosive substance to explode; or
- (d) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or
- (e) causes any such substance or thing to be taken or received by any person; or
- (f) puts any corrosive fluid or any destructive or explosive substance in any place; or
- (g) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person,

is guilty of a felony, and is liable to imprisonment for life, with or without corporal punishment.

From the plain language of these statutes, it can be concluded that the applicant has been convicted of “violent or dangerous” crimes pursuant to 8 C.F.R. § 212.7(d). Therefore, even if the applicant satisfied the rehabilitation requirement of section 212(h)(1)(A) of the Act, he would still be subject to the discretionary requirements of 8 C.F.R. § 212.7(d).

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 Board 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 Board 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 Board 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 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 an exclusive list. *Id.*

In *Monreal-Aguinaga*, the Board 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 Board 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 Board 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 Board 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 Board 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 Board found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The Board 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 Board 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 62 years old and his wife is 54 years old. The applicant married [REDACTED] a LPR, in Suva, Fiji, on May 14, 1981. The applicant and his spouse have two sons: [REDACTED] a U.S. citizen, and [REDACTED]. The applicant's spouse and their son [REDACTED] are qualifying members in these proceedings.

The applicant's wife indicates in her letter dated June 13, 2012 that the applicant's inadmissibility would bring extreme hardship to her family. The applicant's wife indicates that she has found a supportive, loving, and caring husband and to not have him at her side "is really difficult." The applicant's wife states that she has been married to the applicant for over 30 years and that they have been together in good and bad times. The applicant's wife indicates that if he is denied admission, their family will suffer mental and physical problems. With regard to financial difficulties, the applicant's wife states that traveling back and forth between the United States and Fiji is not the solution as they are both unemployed.

Here, the AAO acknowledges the close relationship between the applicant and his spouse. Consequently, the applicant's wife will experience emotional hardship if she 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).

Further, though the applicant's wife indicates that she is unemployed and that she would experience financial hardship in the event of separation, the record does not contain financial documentation indicating the specific amount of financial support the applicant would provide if he is allowed admission into the United States. 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)). Additionally, there is evidence in the record indicating that the applicant's wife spends part of the year in Fiji and resides the rest of the time in California with her son. Furthermore, as the applicant's spouse has not asserted, and the record evidence does not otherwise show, extreme hardship upon relocation to Fiji, the AAO cannot find that the applicant has established that his qualifying relative wife would experience extreme hardship should she relocate to that country.

The record includes a letter dated June 11, 2012 by the applicant's qualifying relative son, [REDACTED] in which he states that he would experience extreme hardship if the applicant is denied admission. The applicant's son states that family unity is important to him, given that all of his family members live in Fiji and he has no family relatives in the United States. With regards to psychological difficulties, the applicant's son asserts that being separated from his father for seven years has caused him to be depressed and has been a traumatic experience. Here, though the AAO acknowledges that applicant's statements regarding his mental state, we note that the record does not contain documentary evidence corroborating that he has been diagnosed with depression or that his

psychological state is such that the applicant's denial of admission would result in him experiencing exceptional and extremely unusual hardship. 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)).

The applicant's son indicates that he has a close relationship with his father and that he is a wonderful person who has always "been there for [him]." The AAO acknowledges the close and loving relationship between the applicant and his son, Shaneel. Though the AAO is sympathetic to the applicant's son's circumstances and his desire to reside in the United States with the applicant, the record evidence is insufficient to demonstrate the requisite hardship to the applicant's qualifying relative. Put another way, while it is understood that the separation of qualifying relatives often results in emotional challenges, the applicant's son has not distinguished his emotional hardship upon separation from the applicant from that which is typically faced by the qualifying relatives of those deemed inadmissible. *See generally Matter of Monreal-Aguinaga*, 23 I&N Dec. at 62 (requiring hardship that "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country.").

With regards to financial difficulties, the applicant's son states that he recently married, that his wife is unemployed, and that it is difficult for him to manage the household's monthly expenses and obligations. The applicant's son further indicates that he needs his father to support him financially. The applicant asserts that he has a mortgage loan of \$160,000, and owes approximately \$16,000 in credit cards and other loans. However, the record does not contain financial documentation evidencing his income or other documentation showing that his incomes from his employment at [REDACTED] are insufficient to cover his monthly obligations and expenses. That is, the record does not contain utility bills, pay stubs, or other financial documentation which would lead the AAO to determine that the applicant's son's income is insufficient to maintain the family household and cover their monthly obligations. Similarly, the AAO notes there is insufficient evidence in the record to show that without the applicant's financial support, the applicant's son would experience financial hardships. Lastly, as the applicant's son has not asserted, and the record evidence does not otherwise show extreme hardship upon relocation to Fiji, the AAO cannot find that the applicant has established that his qualifying relative son would experience extreme hardship should he relocate to that country.

Thus, when the evidence of hardship in the record is considered collectively, we find that the applicant has not shown that either his spouse or son will endure "exceptional and extremely unusual hardship" if he is denied admission to the United States. The AAO recognizes that the applicant's son and wife would experience emotional hardships upon separation from the applicant. 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 asserted emotional, psychological and financial hardship to his qualifying relatives meets the "exceptional and extremely unusual hardship" standard, and that he warrants a favorable exercise of discretion pursuant to 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 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.