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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JUL 11 2014 Office: LOS ANGELES 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Los Angeles, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Russia 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 and U.S. citizen stepson.

On December 6, 2013, the Field Office Director denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, finding that the applicant failed to establish extreme hardship to a qualifying relative.

On appeal, counsel for the applicant states that the Field Office Director made substantial errors and that the evidence establishes that the applicant's U.S. citizen spouse and stepson will suffer extreme hardship as a result of the applicant's inadmissibility. Counsel also states that the applicant merits a waiver of inadmissibility because the sentence for his criminal conviction was suspended and later reduced *nunc pro tunc* to 364 days.

In support of the waiver application, the record includes, but is not limited to: briefs from counsel; psychosocial reports concerning the applicant's spouse; declarations from the applicant; declarations from the applicant's spouse; biographical information for the applicant and his spouse; financial records for the applicant and his spouse; health insurance records for the applicant and his spouse; residential leases for the applicant and his spouse; country-conditions information for Russia; and documentation concerning the applicant's criminal and immigration history. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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....
>
> 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.)

For cases arising in the Ninth Circuit, as does the applicant's, the determination of whether a crime is a crime involving moral turpitude first requires the categorical inquiry 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). 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 probably 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*, 716 F.3d 1199, 1203 (9th Cir. 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 shows that on May 10, 2007, the applicant pled guilty before the Judicial District Court, County, Nevada, to "attempt battery constituting domestic violence resulting in substantial bodily harm," in violation of Nevada Revised Statutes (NRS) §§ 33.018, 193.330, 200.481, and 200.485, in his case a gross misdemeanor. He was sentenced to 12 months in jail suspended, placed on probation for an indeterminate period not to exceed 18 months, and ordered to pay a fine and fees. The applicant's sentence was later reduced *nunc pro tunc* to 364 days in response to a motion to withdraw guilty plea. The criminal complaint associated with this conviction states that the applicant was originally charged with "invasion of the home," "burglary while in possession of a deadly weapon," "assault with a deadly weapon," and "battery constituting domestic violence." Although the Field Office Director states that the applicant was convicted of these charges on April 18, 2007, the record does not clearly indicate the result of those charges. It indicates that the applicant pled guilty to "attempt battery constituting domestic violence resulting in substantial bodily harm" as a result of a plea deal. On August 2, 2008, the applicant was arrested again and charged with "battery which constituted domestic violence," in violation of NRS § 33.018. The record indicates that charge was dismissed on March 1, 2010.

In determining whether a crime is a crime involving moral turpitude, "there is no distinction between the commission of the substantive crime and the attempt to commit it. . . . An attempt involves the specific intent to commit the substantive crime, and if commission of the substantive crime involves moral turpitude, then so does the attempt, because moral turpitude inheres in the intent." *Matter of Vo*, 25 I&N Dec. 426, 428 (BIA 2011) (citing *Matter of Katsanis*, 14 I&N Dec. 266, 269 (BIA 1973)); *see also Matter of Awaijane*, 14 I&N Dec. 117, 118-19 (BIA 1972); *Matter of Davis*, 20 I&N Dec. 536, 545 (BIA 1992), *modified on other grounds*, *Matter of Yanez*, 23 I&N Dec. 390, 396 (BIA 2002).

NRS § 33.018 stated in pertinent part at the time of the applicant's conviction:

> 1. Domestic violence occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom he is related by blood or marriage, person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom the person has a child in common, the minor child of any of those persons or his minor child:
>
> (a) A battery.
>
> . . . .
>
> (g) Unlawful entry of the others residence, or forcible entry against the others will if there is a reasonably foreseeable risk of harm to the other person from the entry [sic].

NRS 193.330 stated in pertinent part at the time of the applicant's conviction:

> 1. An act done with the intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime. A person who attempts to commit a crime, unless a different penalty is prescribed by statute, shall be punished as follows:
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> . . . .
>
> (b) If the person is convicted of attempt to commit a misdemeanor, a gross misdemeanor or a felony for which a category is not designated by statute, by imprisonment for not more than one-half the longest term authorized by statute, or by a fine of not more than one-half the largest sum, prescribed upon conviction for the commission of the offense attempted, or by both fine and imprisonment.

NRS § 200.481 stated in pertinent part at the time of the applicant's conviction:

> 1. As used in this section:
>
> (a) Battery means any willful and unlawful use of force or violence upon the person of another.
>
> . . . .
>
> 2. Except as otherwise provided in NRS 200.485, a person convicted of a battery, other than a battery committed by an adult upon a child which constitutes child abuse, shall be punished:
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> . . . .
>
> (e) If the battery is committed with the use of a deadly weapon, and:
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> . . . .
>
> (2) Substantial bodily harm to the victim results, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than $10,000.

NRS § 200.485 stated in pertinent part at the time of the applicant's conviction that:

> 1. Unless a greater penalty is provided pursuant to NRS 200.481, a person convicted of a battery which constitutes domestic violence pursuant to NRS 33.018:
>
> > (a) For the first offense within 7 years, is guilty of a misdemeanor and shall be sentenced to:
> >
> > > (1) Imprisonment in the city or county jail or detention facility for not less than 2 days, but not more than 6 months; and
> > >
> > > (2) Perform not less than 48 hours, but not more than 120 hours, of community service.
>
> . . . .
>
> 8. As used in this section:
>
> > . . . .
> >
> > (b) Battery has the meaning ascribed to it in paragraph (a) of subsection 1 of NRS 200.481.
> >
> > . . . .
> >
> > (c) Offense includes a battery which constitutes domestic violence pursuant to NRS 33.018 or a violation of the law of any other jurisdiction that prohibits the same or similar conduct.

Simple assault or battery does not generally involve moral turpitude unless there is some aggravating factor indicative of moral depravity. *See Matter of Fualaau,* 21 I&N Dec. 475, 477 (BIA1996); *Matter of Short,* 20 I&N Dec. 136, 139 (BIA1989). This requisite element is satisfied where the offense involves the infliction of serious injury upon a person deserving special protection, such as a family member or a peace officer. *See Matter of Sanudo,* 23 I&N Dec. 968, 970–72 (2006). Here, the statutes involved encompass activity which can and cannot constitute moral turpitude. The modified categorical approach may be applied here because the statutory sections under which the applicant was convicted are divisible. *Descamps v. United States,* —— U.S. ——, 133 S.Ct. 2276, 2281, 186 L.Ed.2d 438 (2013); *see also Rodriguez–Castellon v. Holder,* 733 F.3d 847, 852–53 (9th Cir.2013) (applying *Descamps* in the immigration context).

In this case, the judgment of conviction indicates that the applicant was convicted of "attempt battery constituting domestic violence resulting in substantial bodily harm," a gross misdemeanor. The record of conviction makes clear that the applicant's conviction involved "substantial bodily harm" and that the victim was a "person with whom the [applicant] had or is having a dating relationship." As a result, the applicant's conviction involved battery against a person deserving of special protection and is a crime involving moral turpitude. *See e.g. Matter of Sanudo,* 23 I&N Dec. at 971.

Counsel asserts that we should consider the fact that the applicant's sentence and judgment were modified *nunc pro tunc,* "as if [the applicant] "was never sentenced to [a year] and instead was sentenced to a suspended 364 days." The Act defines a conviction for immigration purposes under section 101(a)(48) as follows:

> (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-
>
> > (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
> >
> > (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.
>
> (B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

Thus, the suspension of the imposition of the applicant's sentence is of no consequence to his conviction for immigration purposes, and we find that the applicant has been convicted as defined by the Act in section 101(a)(48). Moreover, the applicant does not contest his inadmissibility on appeal and the record does not show the determination that the applicant is inadmissible under section 212(a)(2)(A)(i) to be in error.

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

> The Attorney General [now the Secretary of Homeland Security, "Secretary"] 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 [Secretary] that –

> (i) … the activities for which the alien is inadmissible occurred more than 15years 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 [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 [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.

As 15 years have not passed since the occurrence of the activities that led to the applicant's inadmissibility, a waiver under 212(h) of the Act is dependent on a showing that the bar to the applicant's 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 is a qualifying relative. The record does not contain evidence of the applicant's stepson's nationality or documentation concerning hardship to the applicant's stepson, other than statements made by the applicant's spouse and counsel. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996). Moreover, 8 C.F.R. § 212.7(d) states:

> The [Secretary], 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.

If the applicant's conviction is determined to be for a violent or dangerous crime under 8 C.F.R. § 212.7(d), the applicant would, at a minimum, need to also 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. We do not need to make a determination on this matter at this time, as the applicant must first establish eligibility for a waiver of inadmissibility by showing that a qualifying relative would suffer from extreme hardship as a result of his inadmissibility.

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.

Counsel states that separation from the applicant would have a "drastic, negative effect" on his spouse's mental health. He states that the Field Office Director erred in her assessment of the mental harm to the applicant's spouse and asserts that the denial of the applicant's immigration waiver retriggered the applicant's spouse's depression, post-traumatic stress disorder (PTSD) and "symptoms of significant trauma, anxiety and depression" related to her experiences in the former Soviet Union and abuse and neglect in her first marriage. Counsel states that those symptoms include "trouble concentrating, loss of appetite, night terrors, and panic episodes." Furthermore, counsel states that the applicant has been an integral part of his spouse's recovery by providing the stability of a positive and supportive environment. In support of these statements the record contains two psychosocial reports prepared by a professional marriage and family therapist and country-conditions reports concerning Russia. The applicant and his spouse were married on February 12, 2012 and were married for 10 months at the time of submission of the waiver application. The record indicates that the applicant's spouse is Jewish by ancestry and her faith was Judaism when her family came to the United States as refugees from the former Soviet Union when she was 19 years old. The applicant's spouse states that she converted to Christianity recently as a result of her relationship with the applicant but her past experiences make her fear returning to the region.

The psychosocial reports prepared concerning the applicant's spouse provide a clinical presentation of the applicant's spouse, a history of events relayed by the applicant's spouse to the therapist, and conclusions by the therapist. There are two reports in the record, the first is undated and the second is dated July 19, 2013. The record does not make clear whether the therapist served in a treating role or evaluated the applicant's spouse solely for purposes of the waiver application. Though the therapist's July 2013 report states that the applicant's spouse sought treatment "to consolidate her desire to be a good wife, mother and citizen" and "to resolve recurring cumulative trauma resulting from the past persecution she suffered in the Soviet Union and the abuse she endured at the hands of her ex-husband," the record lacks corroborating documentation of the applicant's spouse's treatment for anxiety, depression, or PTSD.

The therapist in her July 2013 report states that the applicant's spouse "has made substantial strides toward recovery of her trauma since marrying [the applicant.]" It is unclear, however, on what the therapist bases that conclusion, as the record does not contain any documentary evidence of the applicant's spouse's mental state prior to meeting the applicant. The therapist also states that "[t]he effects of her prior abuse suffered in the Soviet Union and her former husband dissipated once [the applicant] provided her with a positive and supportive environment." Again, however, there is no documentation of the effects of the prior abuse nor is there documentation of the positive and supportive environment that the applicant's spouse states the applicant provides.

The professional conclusions of the therapist are not questioned, but the record lacks supporting documentation of the assertions made by the applicant's spouse. There are no statements from family, friends, neighbors, clergy, or any other individuals concerning her assertions. This is particularly important where the applicant's spouse states that the applicant has helped her overcome past trauma. Moreover, the applicant's spouse states that her current mental state has affected her ability to be a good mother and to perform her work. The psychosocial assessment provided states that the applicant's spouse is "already on the brink of losing her business" as a result of her inability to work productively. No documentation in the record, however, reflects problems with the applicant's spouse's business. 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 does not contain documentation of physical or financial hardship that the applicant would experience as the result of separation from the applicant. Although the couple's 2012 tax returns list the applicant's occupation as entertainer, the tax returns do not report any net income for the applicant. There is no other indication of his financial or physical contributions to the household.

Moreover, although the applicant's spouse states that the applicant serves as a father figure to his stepson, the record does not contain documentation from the stepson's school, neighbors, friends, or family of the couple to corroborate her description of the role that the applicant plays in his stepson's life. Based on the limited information provided, it is not possible to determine the degree of financial or emotional hardship the applicant's spouse would suffer in the applicant's absence. While we recognize that the applicant's spouse would experience emotional hardship as result of separation from the applicant, the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case is extreme.

Concerning the hardship that the applicant would experience if she were to relocate to Russia to reside with the applicant, the record contains country-conditions reports, psychosocial reports of the applicant's spouse, and documentation of the applicant's spouse's pharmacy business in California. The applicant's spouse is a native of Ukraine and states that she immigrated to the United States at age 19, prior to the collapse of the Soviet Union. Additionally, the record documents the applicant's spouse's ties to the United States through her business ownership. Although few of her assertions are supported in the record[1], the record shows the applicant's spouse fears returning to the region she and her family fled as refugees. Here the applicant's spouse has conveyed her fear to a professional therapist who indicates that the applicant's spouse has suffered from PTSD as a result of her experiences in the former Soviet Union. Also, although the applicant' spouse states that she converted to Christianity as a result of her relationship with the applicant, counsel submits documentation to show that anti-Semitism is an issue in Russia. The applicant's spouse's emotional hardship as a result of her PTSD along with her long-term residence and established business ties in the United States amount to extreme hardship. As such, we find that the applicant's spouse would experience extreme hardship were she to relocate to Russia.

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 from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

As stated above, we cannot consider hardship to the applicant's stepson where the record does not contain supporting documentation concerning the claimed qualifying relative. There is no documentation of the applicant's stepson's nationality or place of residence, nor is there any indication of the applicant's role in his life stepson's life, aside from statements from the applicant's spouse. Again, 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. at 165.

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

[1] Counsel, paraphrasing the applicant's therapist, states that the applicant's spouse's skills are not transferable to Russia, but he provides no documentation to support this assertion or show that the applicant's spouse would experience financial hardship in Russia.

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 any of the qualifying relatives, each considered individually in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.