



U.S. Citizenship
and Immigration
Services

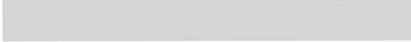
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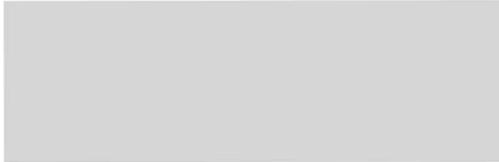
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APPLICATION RECEIPT #: 

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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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Hialeah, Florida, 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 Cuba 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)(I), for having been convicted of 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 stepson.

On October 30, 2012, the Field Office Director denied the application for a waiver (Form I-601), finding that the applicant failed to establish extreme hardship to a qualifying relative. Additionally, the Field Office Director found that the application would be denied as a matter of discretion.

On appeal, filed on November 28, 2012 and received by the AAO on December 3, 2014, the applicant states that he has established rehabilitation and that his admission would not be contrary to the national welfare, safety or security of the United States. He also states that he has established extreme hardship to a qualifying relative and merits a waiver of inadmissibility in the exercise of discretion.

In support of the waiver application, the record includes, but is not limited to: a brief from counsel for the applicant; letters from the applicant's spouse, family members, and community members; biographical information for the applicant, his spouse, and his stepchildren; a psychological evaluation of the applicant's spouse; medical records for the applicant; copies of the applicant's income tax returns and documentation of property ownership; country conditions information for Cuba, including information concerning the applicant's personal background in Cuba; and documentation concerning the applicant's criminal and immigration history.

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

Section 212(a)(2)(A)(i)(I) of the Act provides, in pertinent part, that an alien convicted of "a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime" is inadmissible.

The Act does not define the term "crime involving moral turpitude." In *Matter of Perez-Contreras*, the Board of Immigration Appeals (BIA or Board) provided:

[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.

20 I&N Dec. 615, 617-18 (BIA 1992) (citations omitted); *see also Matter of Solon*, 24 I&N Dec. 239, 240 (BIA 2007); *Matter of Ajami*, 22 I&N Dec. 949, 950 (BIA 1999); *Keungne v. U.S. Att’y Gen.*, 561 F.3d 1281, 1284 (11th Cir. 2009) (citing *Vuksanovic v. U.S. Att’y Gen.*, 439 F.3d 1308, 1311 (11th Cir. 2006)).

In assessing whether a conviction is for a crime involving moral turpitude, we must first “determine what law, or portion of law, was violated.” *Matter of Esfandiary*, 16 I&N Dec. 659, 660 (BIA 1979). We begin with a categorical inquiry, considering the “inherent nature of the crime as defined by statute and interpreted by the courts,” not the underlying facts of the criminal offense. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *see also Itani v. Ashcroft*, 298 F.3d 1213, 1215-16 (11th Cir. 2002); *Vuksanovic v. U.S. Att’y Gen.*, *supra*, at 1311 (citing *Taylor v. United States*, 495 U.S. 575, 600 (1990)); *Sosa-Martinez v. U.S. Att’y Gen.*, 420 F.3d 1338, 1342 (11th Cir. 2004); *Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009) (citing *Taylor v. United States*, 495 U.S. 575, 599-600 (1990)). This categorical inquiry focuses on whether moral turpitude necessarily inheres in the minimal conduct for which there is a realistic probability of prosecution under the statute. *See Matter of Short*, *supra*; *see also Matter of Louissaint*, *supra*; *Moncrieffe v. Holder*, 133 S.Ct. 1678, 1684-1685 (2013); *Gonzales v. Duenas-Alvarez*, 127 S.Ct. 815, 822 (2007).

Where the statute does not contain a single, indivisible set of elements but rather encompasses multiple distinct criminal offenses, “some . . . which involve moral turpitude and some which do not,” the analysis moves beyond the categorical inquiry. *Matter of Short*, *supra*, at 137-138. In applying the Supreme Court’s decision in *Descamps v. United States*, 133 S. Ct. 2276 (2013) to the immigration context, the Board stated that a criminal statute is divisible “only if (1) it lists multiple discrete offenses as enumerated alternatives or defines a single offense by reference to disjunctive sets of ‘elements,’ more than one combination of which could support a conviction; and (2) at least one, but not all, of those listed offenses or combinations of disjunctive elements is a categorical match” to the relevant generic offense (i.e. an offense involving moral turpitude). *Matter of Chairez-Castrejon*, 26 I&N Dec. 349, 353 (BIA 2014) (citing *Descamps*, *supra*, at 2283). For the purpose of determining whether a statute is divisible, an offense’s elements are those facts about the crime which “ ‘[t]he Sixth Amendment contemplates that a jury—not a sentencing court—will find . . . unanimously and beyond a reasonable doubt.’ ” 26 I&N Dec. at 353 (quoting *Descamps*, *supra*, at 2288). The Board indicated that absent a requirement for jury unanimity, the disjunctive language of the statute merely expresses alternative “means” of committing the crime, rather than alternative “elements” that render the statute divisible into distinct offenses. 26 I&N Dec. at 354.

If a statute is divisible, we conduct a modified categorical inquiry, reviewing the record of conviction to determine the offense within the statute for which the respondent was convicted. See *Matter of Short, supra*, at 137-38. The record of conviction is a narrow, specific set of documents which includes the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Matter of Louissant, supra*, at 757; see also *Shepard v. U.S.*, 544 U.S. 13, 16 (2005) (finding that the record of conviction is limited to the “charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.”)

On [REDACTED] 1984, before the Eleventh Circuit Court in and for [REDACTED] Florida, the applicant was convicted of: Resisting an Officer with Violence to his Person, in violation of Florida Statutes § 843.01, a third degree felony; Aggravated Assault with a Deadly Weapon in violation of Florida Statutes § 784.021(a), a third degree felony; and False Imprisonment in violation of Florida Statutes § 787.02, also a third degree felony. For these convictions, the applicant was sentenced to serve five years in prison. On [REDACTED] 1990, the applicant was convicted of prostitution in [REDACTED] Florida; however, the full record of conviction for this arrest is not included in the record.

Only one of the applicant’s convictions need qualify as a crime involving moral turpitude for the applicant to be found inadmissible. As such, the AAO will first look to the applicant’s conviction for Resisting an Officer with Violence, Florida Statutes § 784.021(a), which in 1999¹ stated that:

843.01. Resisting officer with violence to his or her person

Whoever knowingly and willfully resists, obstructs, or opposes any officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Parole Commission or any administrative aide or supervisor employed by the commission; parole and probation supervisor; county probation officer; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

¹ West Annotated Florida Statutes indicates that between the time of the applicant’s conviction in 1984 and 1999, the section under which the applicant was convicted was modified several times as follows: Laws 1985, c. 85-87, § 5, eff. Oct. 1, 1985, provided for “weight and safety officer of the department of transportation”; Laws 1988, c. 88-122, § 40, eff. July 1, 1988, substituted the commission name of “parole” for “parole and probation”; Laws 1988, c. 88-373, § 1, eff. Oct. 1, 1988, and Laws 1988, c. 88-381, § 50, eff. Oct. 1, 1988, modified provisions defining “law enforcement officer”; Laws 1989, c. 89-526, § 43, eff. Oct. 1, 1989, reenacted the section without amendment. The previous amendments do not appear to alter the analysis herein.

The Eleventh Circuit Court of Appeals, using the categorical approach, has held that Resisting an Officer with Violence under Florida Statutes § 843.01 is a crime involving moral turpitude. See *Cano v. U.S. Atty. Gen.*, 709 F.3d 1052 (11th Cir. 2013) (stating that Florida courts have found that Florida Statutes § 843.01 is a general intent crime, which includes the intent to offer or use violence and that it is a crime requiring violent force). The applicant does not contest his inadmissibility and we see no reason that a conviction under Florida Statutes § 843.01 is not categorically a crime involving moral turpitude.

The Eleventh Circuit Court of Appeals has also found that Resisting an Officer with Violence under Florida Statutes § 843.01 is categorically a crime of violence. *United States v. Romo-Villalobos*, 674 F.3d 1246, 1250 (11th Cir. 2012). This is relevant to informing our determination that even were the applicant to show that he had been rehabilitated under section 212(h)(1)(A) of the Act or to establish extreme hardship under section 212(h)(1)(B) of the Act, he would then need to show that his application for a waiver should be approved as a matter of discretion under the higher standard set forth in 8 C.F.R. § 212.7(d).

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.

We will first determine whether the applicant merits a waiver of inadmissibility under Section 212(h) of the Act, which provides, in pertinent part, that:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –

- (i) ... the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

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

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

...

Because the activities that are the basis for the applicant's criminal conviction occurred more than 15 years ago, the applicant is eligible for a waiver under section 212(h)(1)(A) of the Act. 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.

Evidence in the record to establish the applicant's eligibility under section 212(h)(1)(A)(ii) and (iii) of the Act consists of letters from the applicant's family, community members, a client, and a former employer, in addition to a business card showing the applicant's current employment. Also included is documentation of his property ownership in the United States.

The record indicates that the applicant's most recent contact with the criminal justice system was an arrest for cocaine possession on [REDACTED] 2006 in [REDACTED] Florida which did not lead to a conviction. The applicant states that this arrest should not be taken into consideration, because it did not lead to a conviction, citing *Matter of Arreguin*, 21 I&N Dec. 38, 42 (BIA 1995). He further states that the fact that he has only had one arrest in 21 years indicates that he has been rehabilitated and that his admission would not be contrary to the national welfare, safety, or security of the United States. We do not find that the Board's decision in *Matter of Arreguin* prevents us from considering the applicant's arrest record, but rather the Board's decision in that case rested on the facts of that particular case, where the applicant had presented evidence that the arrest report was not a reliable indicator of what had occurred on the occasion in question. *Id.* at 42 (finding that where the applicant testified that she engaged in no wrongdoing, that an apprehension report was given little weight without further corroboration).

Moreover, although it is being taken into account that the applicant has not been arrested since 2006 and his latest conviction for immigration purposes dates back to 1990, the applicant was incarcerated for much of his time in the United States between 1984 and late 2000. The applicant was convicted on [REDACTED] 1992, before the New Jersey Superior Court, [REDACTED] of Possession of Cocaine with Intent to Distribute in violation of New Jersey Statute §§ 2C:35—5a(1), 2C:35-5b(1), and 2C:2-6. The applicant was sentenced to serve 20 years in person; however, he was released in 2000 when his conviction was vacated as a result of the conviction being the product of racial profiling. That conviction is no longer a conviction for immigration purposes, but the applicant has not argued that the underlying facts of the case, that he possessed cocaine with the intent to distribute that cocaine, were not true. In fact, the record indicates that the applicant has admitted to engaging in the sale of controlled substances.² Moreover, it does not present a complete picture to state that the applicant has not engaged in criminal behavior for 21 years, as the applicant does, without mentioning that the applicant was incarcerated for part of that time.

In support of his claim that he is rehabilitated, the applicant obtained letters from individuals familiar with his character, including family members, his pastor (who notes that the applicant attends services “from time to time”), an individual who uses the applicant’s services as an electrician and a former employer. Those letters have been considered, however, there is no documentary evidence to back up the statements in the letters. For example, the applicant did not submit documentation to show his income as an electrician. It is not possible to decipher from the tax return transcripts submitted what income comes from the applicant’s work versus his spouse’s work. Additionally, there is only one letter from one client concerning the applicant’s work as an electrician. The other letter submitted is from a former employer. The most significant letter in the record is written by the applicant’s adult stepdaughter (not a stepchild as defined in the Act, as she was an adult at the time of the applicant’s marriage to her mother) who stated that the applicant took responsibility for his convictions in a conversation with her and her brother and believed in making a better life as a result. The record does not indicate any other community involvement by the applicant since his release from incarceration in 2000. Because of the violent and serious nature of the applicant’s conviction and because of the limited information concerning his employment, daily activities, and any community involvement, we do not find that the applicant has met his burden of proof to illustrate that he has been rehabilitated and that his admission to the United States would not be contrary to the national welfare, safety, or security of the United States as required by section 212(h)(1)(A)(ii) and (iii) of the Act.

The applicant is also eligible for a waiver of inadmissibility if he demonstrates that a qualifying relative would suffer extreme hardship if he were not admitted to the United States. A waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or

² We note that even though the applicant no longer has a conviction for Possession of Cocaine with Intent to Distribute, documentation related to the arrest as well as his statements that he was involved in selling drugs may be considered in determining whether the applicant is inadmissible under section 212(a)(2)(C) of the Act.

lawfully resident spouse, parent, or child of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's qualifying relatives include his U.S. citizen spouse and U.S. citizen stepson, who is now an adult. If extreme hardship to a qualifying relative is established, however, the applicant is statutorily eligible for a waiver, and the AAO must then assess whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative

experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Although the applicant states that his inability to obtain a waiver of inadmissibility would result in extreme hardship to his adult stepson, a qualifying relative, the record does not contain documentary evidence to support that assertion. In fact, the letter on record from the applicant's stepson speaks only to the hardship that would result to his mother, the applicant's spouse. As a result, we do not find that the applicant has established extreme hardship to his stepson.

The applicant's other qualifying relative is his U.S. citizen spouse of 13 years. The applicant states that his spouse would suffer extreme hardship if she were to be separated from the applicant or if she would relocate to Cuba with the applicant. In regard to the hardship she would experience if she were to be separated from the applicant, the applicant's spouse states that she does not know what she would do without the applicant, as "he is everything" to her. The applicant's spouse states that the applicant does the cooking in the house, helps her clean, and is the handyman for the house they own. She states that her adult children love the applicant. The record includes a psychological evaluation of the applicant's spouse where she recounts to the therapist that she became depressed when she learned that the U.S. was sending individuals back to Cuba who had trouble with the law. The therapist diagnosed the applicant's spouse with Major Depressive Disorder and stated that she meets the diagnostic criteria for Anxiety Disorder NOS and Panic Attacks, and that she believes that the applicant's spouse's symptoms are "the direct result of the fear and worry she has each day that she will lose her husband to deportation." The applicant's spouse recounts that her doctor put her on antidepressants, although the record does not establish that fact. That applicant states that even taking antidepressants, she is having heart palpitations, trouble sleeping, suffers from fatigue, has to fight to get out of bed in the morning, and has gained weight. She also stated that she fears losing her job because of missed work days and her inability to function like she used to at work. She also reports having panic attacks. There is no documentation in the record, however, from a medical professional establishing that the applicant's spouse has sought treatment for these symptoms.

Moreover, the record does not contain enough documentation to determine the degree of financial hardship that the applicant's spouse would suffer if she would no longer be able to rely on the applicant's financial contributions. The tax returns included do not provide sufficient evidence of

the applicant's income. Additionally, the record does not indicate the applicant's spouse's expenses. The record shows that the applicant's spouse would endure hardship as the result of separation from the applicant, but the record does not establish that the hardships she would face, considered in the aggregate, rise to the level of "extreme."

The applicant states that his spouse, also a native of Cuba, cannot return to that country as she has resided in the United States for over 31 years and her entire immediate family resides here. He also states that his spouse fled Cuba to escape the conditions there. The record, however, does not establish that the applicant's spouse is now unable to return to Cuba without being able to maintain contact with her family in the United States. The record also does not establish per se that she would suffer hardship as a result of the conditions in that country. More information would be necessary to make those determinations. For instance, the record does not indicate how frequently the applicant is in contact with her immediate family in the United States and what impact moving to Cuba would have on those contacts. Additionally, the record does not state what hardship exactly the applicant's spouse would experience in Cuba aside from stating that she fled the conditions there over 31 years ago. The burden of proof in this proceeding lies with the applicant, and "while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts." *Matter of Ngai*, 19 I&N Dec. at 247. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Cuba, would be beyond what is normally experienced by families dealing with removal or inadmissibility. See *Matter of O-J-O-*, 21 I&N Dec. at 383.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant also has not established that his admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated. As the applicant has not shown eligibility under section 212(h)(1), no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Further, even were we to conduct a discretionary analysis, the applicant would have to meet the heightened requirements of 8 C.F.R. § 212.7(d) due to having a conviction for a violent or dangerous crime.

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.