



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF N-R-M-

DATE: OCT. 9, 2015

MOTION OF THE ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Argentina, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h), and 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). The Director, Nebraska Service Center, denied the application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before us on a motion to reopen and a motion to reconsider. The motions are denied.

The Applicant was found to be inadmissible to the United States 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 was also found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The Applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks waivers of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act in order to return to the United States.

In a decision dated November 4, 2013, the Director concluded that the Applicant's conviction was for a violent or dangerous crime, and consequently, that the Applicant had to demonstrate that a qualifying relative would experience exceptional and extremely unusual hardship given his inadmissibility. The Director further found that the Applicant did not demonstrate that a qualifying relative would experience exceptional and extremely unusual hardship, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the Applicant contended that he was not convicted of a violent or dangerous crime. The Applicant moreover asserted that he has shown that his spouse and children would experience extreme hardship if they continue being separated from him and if they relocate to Argentina.

We determined in a December 5, 2014, decision that the Applicant did not demonstrate a qualifying relative would experience extreme hardship due to his inadmissibility, and we also found that he would therefore not meet the heightened standard for a violent and dangerous crime. As such, we denied the application.

On motion, the Applicant asserts that we did not address whether his conviction was for a violent or dangerous crime, and that it appears to him that we analyzed the case using “a heightened standard.” The Applicant indicates that he believes his conviction was not for a violent or dangerous crime. Nonetheless, the Applicant indicates that he has satisfied his burden of proof whether we apply the extreme hardship or exceptional and extremely unusual hardship standard. Moreover, the Applicant indicates that he spent 21 years in the United States, and has strong family ties to the United States, including his wife, children, mother and twin brother. Further, the Applicant asserts that his spouse has no ties to Argentina, that her family and career are in the United States, and that she has safety concerns regarding relocation to Argentina. He states that the children know nothing of Argentina, have no connection to Argentina and are not sufficiently fluent in Spanish. The Applicant further contends that the spouse will suffer financially, emotionally and medically upon separation or relocation.

In addition to evidence already considered on appeal, the Applicant provides a brief, additional financial documentation, including proof of some expenses, a letter from the Applicant, an affidavit from his spouse and articles related to the Argentinian economy and healthcare. The entire record was reviewed and considered in rendering a decision on this motion.

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

We will first address the finding of inadmissibility of the Applicant for unlawful presence under section 212(a)(9) of the Act. Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission

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to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the Applicant attempted to procure admission into the United States on May 5, 1985. The Applicant was taken into custody by immigration officials and placed in exclusion proceedings that day. In the Applicant's exclusion order, dated [REDACTED], 1987, the immigration judge found that the Applicant was an intending immigrant without an immigrant visa, and noted that he had escaped from custody following the initiation of his exclusion proceedings. The Applicant's subsequent appeal was dismissed by the Board of Immigration Appeals on June 9, 1992. He was removed from the United States on [REDACTED], 2006, after his conviction.

The Applicant therefore accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions, until his departure in [REDACTED] 2006. As such, the Applicant remains inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking admission within ten years of his departure from the United States. The Applicant's qualifying relative for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is his U.S. citizen spouse. The Applicant does not contest his inadmissibility on this ground.

We will next address the Applicant's finding of inadmissibility under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having been convicted of a crime involving moral turpitude. Section 212(a)(2)(A)(i)(I) of the Act states, in pertinent parts:

(A) Conviction of certain crimes.-

(i) In general.-Except as provided in clause (ii), any 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.

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However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

(h) The [Secretary] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(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 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

(ii) 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 . . .

(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.

A section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the Applicant. Hardship to the Applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that on [REDACTED] 2005, the Applicant was arrested and charged with disseminating indecent material to minors in violation of New York Penal Code ("N.Y.P.C.") §235.22, and with endangering the welfare of a child in violation of N.Y.P.C. § 260.10. On

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2006, the Applicant was convicted of one count of attempting to disseminate indecent material to minors in violation of N.Y.P.C. §§110.00 and 235.22. The Applicant was sentenced to five years of probation.

With regard to this offense, N.Y.P.C. §110.00 provided, at the time of conviction:

A person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime.

N.Y.P.C. § 235.22 indicated:

A person is guilty of disseminating indecent material to minors in the first degree when:

1. knowing the character and content of the communication which, in whole or in part, depicts actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he intentionally uses any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person who is a minor; and
2. by means of such communication he importunes, invites, or induces a minor to engage in sexual intercourse, oral sexual conduct or anal sexual conduct with him, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his benefit.

The Applicant does not contest that he has been convicted of a crime involving moral turpitude, nor does he contend that our analysis on appeal in this matter was incorrect. Therefore, we affirm that the Applicant's 2006 conviction, for one count of attempting to disseminate indecent material to minors in violation of N.Y.P.C. §§110.00 and 235.22, is a conviction for a crime involving moral turpitude, and consequently, that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The Applicant's qualifying relatives for a waiver of this inadmissibility under section 212(h) of the Act are his U.S. citizen spouse and child.<sup>1</sup> As the Applicant has not contested his inadmissibility for committing a crime involving moral turpitude on motion, and the record does not show that determination to be in error, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) of the Act.

While the Applicant does not contest his inadmissibility on appeal under section 212(a)(2)(A), he believes that the Director erroneously found his conviction to be for a violent or dangerous crime. On motion, the Applicant, through counsel, asserts that we did not address whether the Applicant's

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<sup>1</sup> The Applicant claims his two daughters would experience extreme hardship given his inadmissibility; however, only one child and his spouse are listed on the Form I-601 application.

conviction was for a violent or danger crime, and notes that it appears that we analyzed the case using “a heightened standard because of the unsavory nature of the offense.”

We will examine whether N.Y.P.C. §§110.00 and 235.22 represents a crime involving moral turpitude that is also violent or dangerous.

The regulation at 8 C.F.R. § 212.7(d) provides:

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.

We note that the words “violent” and “dangerous” and the phrase “violent or dangerous crimes” are not further defined in the regulation, and we are 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). Black’s Law Dictionary, Tenth Edition

(2014), defines violent as “of, relating to, or characterized by strong physical force” and dangerous as “likely to cause serious bodily harm.” 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.

The Director provides no rationale for the finding that the Applicant's conviction was for a violent or dangerous crime. It is noted that violation of the statute under which the Applicant was convicted can occur even where no physical force or coercion is used. The evidence in the record does not show that the Applicant's crime was “characterized by strong physical force” or “likely to cause serious bodily harm.” The statute further does not require a physical violation. Moreover, although such an act could result in both physical and/or emotional harm, which the victim may be unable to prevent or adequately communicate to the perpetrator, the violation of this statute, without more, is not likely to cause serious bodily harm. Consequently, we find that the Applicant's conviction for violating sections N.Y.P.C. §§110.00 and 235.22 is not a “violent or dangerous” crime within the meaning of 8 C.F.R. § 212.7(d), and therefore the heightened discretionary standards found in that regulation are not applicable in this case.

Nonetheless, the Applicant requires waivers under both section 212(h) of the Act and section 212(a)(9)(B)(v) of the Act. Whereas a waiver under section 212(h) of the Act includes consideration of hardship to an alien's U.S. citizen or lawful permanent resident child, parent, and spouse, hardship to an Applicant's child cannot be considered in a waiver under section 212(a)(9)(B)(v) of the Act. As such, the Applicant's spouse is the only qualifying relative for waivers under both sections 212(a)(9)(B)(v) and 212(h) of the Act. Therefore, hardship to the Applicant's children will not be separately considered, except as it may affect the Applicant's spouse.

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 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, 883 (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 at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On motion, the Applicant asserts that the spouse will suffer financially, emotionally and medically upon relocation to Argentina.<sup>2</sup> The Applicant also indicates that we did not fully consider the spouse’s fears for her safety upon relocation to Argentina. With respect to the spouse’s financial hardships, she states in her affidavit provided on motion that she knows from her own research that the job opportunities for her in Argentina are seriously limited and that openings for an educator like her do not exist. In our prior decision, we indicated that the Applicant did not submit documentation to establish that a person with her skills and experience would not be able to find sufficient employment in Argentina. On motion, no further documents were provided to support her assertions

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<sup>2</sup> We noted in our prior decision that the Applicant also claims his spouse would experience extreme hardship upon relocation to Mexico, and that the Applicant submitted no documentation demonstrating that he or his spouse would be unable to relocate together in Mexico. No new documentation was provided regarding this issue. Therefore, only relocation to Argentina will be considered in this analysis of extreme hardship.

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aside from submitting general country condition information relating to the problems with the Argentinian economy.

With respect to the emotional and medical hardships of the spouse, the Applicant specifically indicates that, if his spouse were to relocate, she would experience emotional and psychological toll from separation from their children and states that it is highly unlikely that she will get proper medical care in Argentina. While the Applicant submits two articles that generally describe the healthcare in Argentina, one stating that there are many people in Argentina that are “not getting the best treatment” and the other concluding that there are deficiencies in health centers in Argentina, these articles only provide a general picture of the healthcare system in Argentina. The record does not sufficiently demonstrate the types of medical care that will be required by the spouse or that such treatment will not be sufficient. Further, as we stated prior, it is unclear from the record whether the children would relocate to Argentina or continue living in the United States. The record indicates that the eldest child was expected to graduate from [REDACTED] in May 2014. From the letter she provided on appeal, she indicated that she was planning to study abroad in Argentina during college. There was no documentation submitted to indicate where she currently lives or planned to live after graduation. Similarly, the youngest child currently studies at the [REDACTED] and the record does not indicate where she plans reside upon graduation.

On motion, the Applicant also indicates that we did not fully consider the spouse’s fears for her safety upon relocation to Argentina. The spouse also indicates on motion that her husband has been the victim of robberies. In our prior decision we did review the applicable country condition information, and found the assertions were unsupported. No additional documentation was provided on appeal, aside from additional assertions by the Applicant and spouse. Again, although the assertions regarding the spouse’s potential financial and emotional hardships, as well as safety concerns, 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)).

On motion, the Applicant indicates that his spouse has no ties to Argentina, that her family and career are in the United States, and that it would be unfair to uproot herself and her children. While we recognize that it would be a hardship for the spouse to leave behind her career and her ties to the United States, we do not find evidence of record to show that the spouse’s difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. Further, the record is silent regarding the Applicant’s family ties to Argentina, although he indicates in his letter that he currently resides in his parent’s home. As such, we again find that the record lacks sufficient evidence to demonstrate the financial, emotional, medical, or other impacts of relocation on the Applicant’s spouse are in the aggregate above and beyond the hardships normally experienced, and therefore we cannot conclude that she would experience extreme hardship if the waiver application is denied and the Applicant’s spouse relocates to Argentina.

On motion, the Applicant indicates that the spouse will suffer financially, emotionally and medically upon continued separation from the Applicant. With regard to the spouse's financial documentation, the Applicant has submitted documentation including the spouse's pay stubs indicating that her gross annual income is approximately \$140,000, banking information, other proof of expenses, a financial chart relating to the spouse's November and December of 2014 income and expenses, and student loan information relating to their children's undergraduate education. In our prior decision, we acknowledged that the spouse was experiencing financial difficulties as a result of refinancing and natural disasters. We indicated in our prior decision that the documentation, as of 2008, demonstrates that the mortgage exceeded the fair market value of the spouse's home. However, there is no indication whether the spouse would now be able to sell her home, the mortgage for which accounts for nearly half of her monthly gross income at approximately \$3,620 per month. Further, many of the expenses provided appear to detail those expenses related to the children, including expenses incurred in New York (where the spouse resides), Pennsylvania and Virginia, as well as cellular service bills for multiple phone lines. It is unclear whether it is necessary for the spouse to support her children financially, and no documentation regarding the children's income during November and December of 2014 was provided. For example, it is unclear whether the oldest child, who may now have graduated from college, would be able to contribute to alleviating some of the spouse's listed expenses, including her own student loans. The youngest child, likely still in college for another year, may also plan to contribute to her own student loans upon graduation. As such, although the Applicant's chart indicates that the spouse was unable to cover her expenses by \$300 during the time period analyzed, without further clarification, we cannot make further conclusions on the spouse's financial situation.

With regard to the spouse's emotional and medical hardships upon separation, she indicates in an affidavit that "the drastic emotional toll" of the situation "continues to affect [her] health and well-being." She also indicates that she was "full of grief" upon learning of the Applicant's waiver denial on appeal. In our prior decision, we acknowledged that the Applicant's spouse experiences emotional and psychological hardship without the Applicant present and that she would face difficulties as a result of the Applicant's inadmissibility. However, we did not find evidence in the record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. No additional evidence was provided on appeal to further demonstrate the emotional and medical hardships that the spouse may be experiencing. As the record does not contain sufficient evidence to establish that the financial, medical, emotional, or other impacts of separation on the Applicant's spouse are cumulatively above and beyond the hardships commonly experienced, we again cannot conclude that she would suffer extreme hardship if the waiver application is denied and the Applicant remains in Argentina without his spouse.

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. We therefore find that the Applicant has not demonstrated extreme hardship to his U.S. Citizen spouse as required under sections 212(a)(9)(B)(v)

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and 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 the Applicant 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 motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of N-R-M*, ID# 11352 (AAO Oct. 9, 2015)