

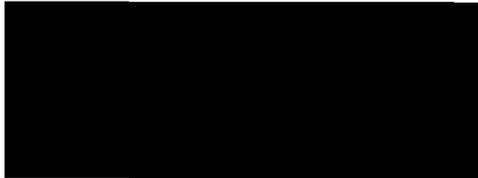
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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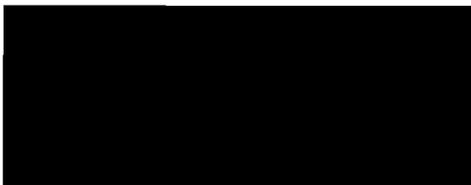
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of Paraguay who presented false bank documents when applying for a non-immigrant visa in 2004. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). She is the wife of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Acting Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) March 31, 2009.

On appeal, counsel for the applicant asserts that Acting Field Office Director's decision is clearly erroneous and contrary to the weight of the evidence. *Form I-290B*, received May 4, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) In general. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

The record indicates that the applicant presented false bank documents when applying for a non-immigrant visa in 2004. The consular officer denied her application and required her to submit a waiver.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

The Acting Field Office Director states in his decision "On July 6, 2004, you presented fake bank documents to the American Embassy in Asuncion, Paraguay. The documents were confirmed fake by Banco Nacional De Fomento."

The applicant asserts that she did not commit fraud, and that she had a bank account with the bank but that they had given her the wrong documents to present to the consular office to demonstrate she had a bank account with the bank. *Statement of the Applicant*, dated May 28, 2008. The record does not contain any documentation from the bank in question corroborating the applicant's assertion, or any other documentation which supports the applicant's assertion. Presenting fake bank documents as evidence of ties to Paraguay in order to obtain a B1/B2 visa shut off a line of inquiry with the consular officer regarding her intent in travelling to the United States and constitutes misrepresentation. As such, the applicant is inadmissible under section 212(a)(6)(C)(i).

The record contains, but is not limited to, the following evidence: statements from counsel for the applicant; a statement from the applicant's spouse; a statement from the applicant; country conditions materials; copy of a translated statement from a Paraguayan lawyer, [REDACTED]; a psychological evaluation of the applicant's spouse by [REDACTED] dated May 18, 2009; copy of a bank account statement for the applicant's spouse showing money transfers; an employment letter for the applicant's spouse; and a copy of the applicant's spouse's passport.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) 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 lawfully resident spouse or parent of the applicant. Hardship to an applicant or their children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

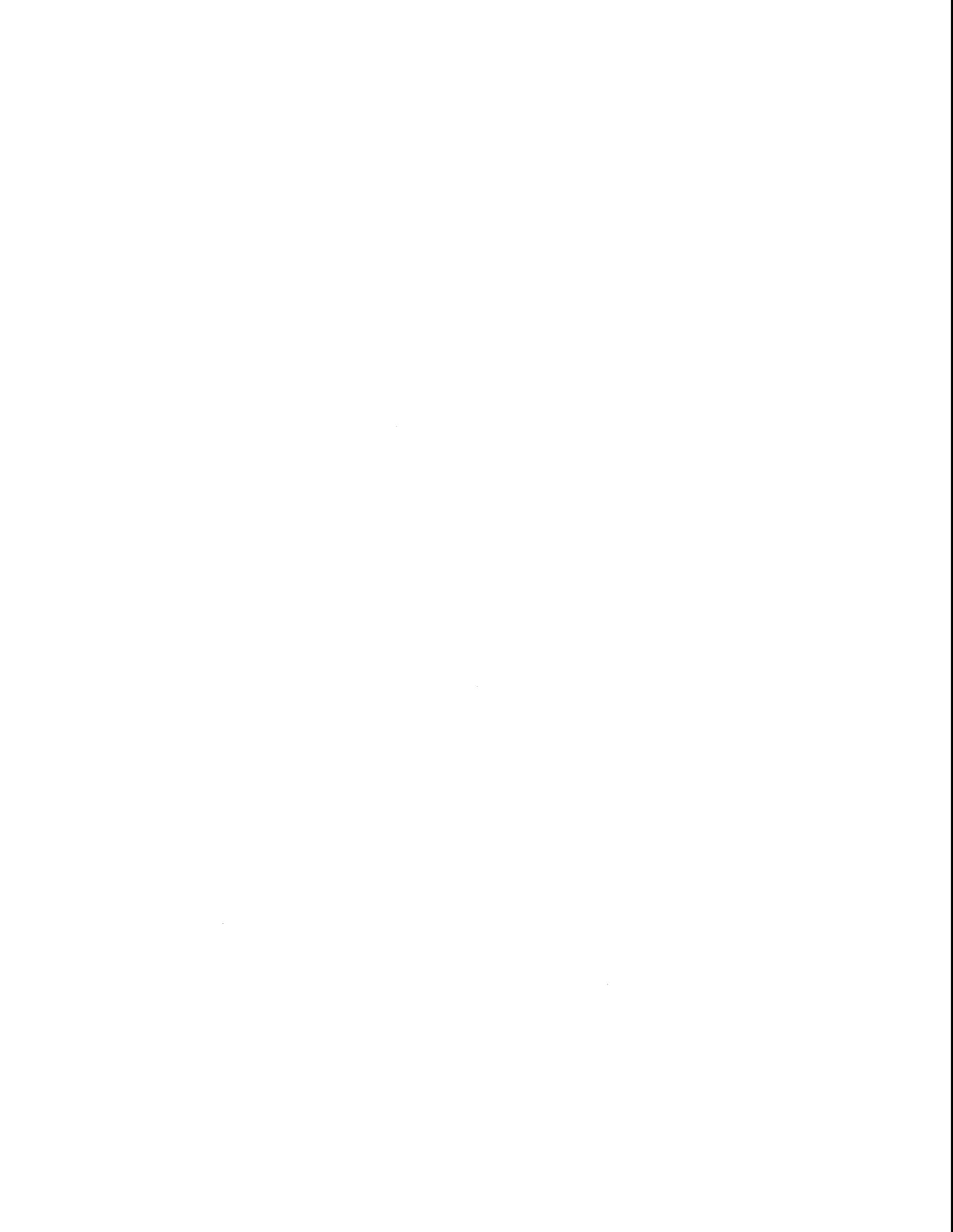
Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed 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 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 appeal, counsel for the applicant asserts that the applicant's spouse would experience extreme hardship if he were to relocate to Paraguay with the applicant and his daughter. *Brief in Support of Appeal*, May 25, 2009. He refers to submitted country conditions materials asserting that Paraguay is a dangerous country and that the applicant's spouse, as a U.S. citizen, would be in danger as a target of crime due to perceptions of Americans as wealthy and prosperous. He states that medical facilities, services and supplies are limited or non-existent in the country and that Paraguay's Civil Aviation Organization does not meet international aviation standards. He further notes that, since the applicant's spouse has become a U.S. citizen, he has lost his Paraguayan citizenship and would have to apply for a visa to live in the country and cites to a statement from a Paraguayan attorney detailing the requirements for obtaining an immigrant visa. He states that the applicant's spouse has had a stable job in the United States which includes health benefits, and that if he relocated to Paraguay he would not be able to find comparable employment, income or benefits.

The record includes country conditions materials on Paraguay, including the section on Paraguay from the U.S. State Department's 2008 Human Rights Report, a Paraguay 2007 Crime and Safety Report from the Overseas Security Advisory Council (OSAC), a State Department Travel Advisory and the section on Paraguay from the CIA World Factbook. While these documents generally demonstrate that Paraguay has a lower standard of living than the United States based on national statistics, they do not support counsel's characterization that having to reside in Paraguay, the applicant's spouse's native country, would result in extreme hardship to the applicant's spouse. A general report on human rights conditions in the country is not sufficient to demonstrate that the applicant's spouse would be a victim of human rights violations, nor do these materials indicate that the applicant's spouse would not have access to medical care or health facilities. Counsel has not articulated any specific medical need or hardship on the part of the applicant's spouse or his family.

The State Department travel advisory that has been submitted states that it is not aware of any specific threat to U.S. citizens, and that U.S. embassy employees are only required to report their travel itineraries in limited instances. The OSAC report mentions that many U.S. citizens may be perceived as wealthy, but it also states that most crime in Paraguay is nonviolent, and as noted above, the applicant's spouse is a native of Paraguay, and is therefore familiar with its language and culture. The record does not support that the applicant's spouse would experience uncommon impacts upon relocation to Paraguay based on the conditions there.

The record does contain an employment letter for the applicant's spouse indicating that he has had stable employment while in the United States. However, it is not uncommon for a relative to lose their U.S. employment upon relocation, and in this case the general country conditions materials submitted do not establish that the applicant's spouse would be unable to find employment upon relocation. While the AAO accepts that the applicant's spouse may experience a decline in the standard of living, this is not considered an uncommon hardship factor. *Matter of Anderson*, 16 I&N Dec. 596, 598 (BIA 1978)(reasoning that the United States enjoyed a higher standard of living than most countries of the world and that "most deported aliens will likely suffer some degree of financial

hardship” and concluding that Congress did not intend to “remedy this situation by suspending deportation of all those who will be unable to maintain the standard of living at home which they had managed to achieve in this country”).

The AAO recognizes that the applicant’s spouse has become a U.S. citizen, and that he would have to obtain immigrant visas to reside in Paraguay. However, it is not clear from the record what the process would be for obtaining such a visa, how long the process would take or the cost involved, especially considering that the applicant’s spouse is a native of Paraguay.

Even when the hardships upon relocation are considered in aggregate, there is insufficient evidence to establish that they rise above the common hardship impacts of relocation to a level of extreme hardship.

Counsel also asserts on appeal that the applicant’s spouse would experience extreme emotional hardship upon separation if he were to remain in the United States. Brief in Support of Appeal, May 25, 2009. Counsel refers to a psychological evaluation of the applicant’s spouse by [REDACTED]. In his report [REDACTED] diagnoses the applicant’s spouse with Adjustment Disorder with Mixed Anxiety and Depressed Mood and concludes that it would be in his best interest if the applicant and his daughter were able to join the applicant’s spouse in the United States. While the AAO acknowledges and appreciates [REDACTED] testimony, it would note that the report provides no basis on which to distinguish the emotional impacts on the applicant’s spouse from those which commonly impact relatives separated from inadmissible family members. Nonetheless, the AAO will consider the emotional impact on the applicant’s spouse due to separation.

The applicant has not identified any other elements of hardship her spouse may face should he remain in the United States without her.

The AAO acknowledges that the applicant’s spouse will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.