U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 2 4 2013 Office: NEBRASKA SERVICE CENTER

IN RE: I

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO**. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation; section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having resided unlawfully in the United States for more than one year; and 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. He seeks a waiver of inadmissibility pursuant to sections 212(h) and (i) of the Act, 8 U.S.C. §§ 1182(h) and (i), in order to reside in the United States with his U.S. citizen spouse and children.

The director concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of the Director*, dated August 30, 2012.

On appeal, the applicant asserts that he was deported from the United States 12 years ago and that his family has been suffering hardship since then. He states that he regrets his past mistakes and that he has changed, and he hopes to be able to provide for his family in the United States. Additionally, the applicant's qualifying spouse contends that the director erred in finding that she would not experience extreme hardship if the waiver application were denied. She states that she has been suffering extreme hardship because she is alone in the United States without the applicant and her children, and that she and her family will continue to face such hardship if the applicant is not permitted to reside in the United States.

The record includes, but is not limited to: statements from the applicant and the qualifying spouse; medical and educational records relating to the qualifying spouse; loan statements and credit reports documenting the qualifying spouse's debts; photographs of the applicant and his family; country conditions information; a letter from the applicant's daughters; a letter from the applicant's friend; documentation relating to the applicant's criminal history; a letter from the qualifying spouse's employer; and a Pakistani police clearance certificate. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant entered the United States on November 28, 1993, at the age of 15, as a B-2 visitor with authorization to remain in the country for six months. He remained in the United States beyond the expiration of his visa. On August 19, 1998, the applicant failed to appear for a hearing and was ordered removed in absentia. In a letter dated September 28, 1998, the applicant was ordered to appear on November 2, 1998 for removal. He did not appear. He was removed from the United States at government expense on May 17, 2000.

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.

The applicant accrued more than one year of unlawful presence in the United States from April 1, 1997 to the date of his removal on May 17, 2000. However, more than ten years have passed since his last departure from the United States. Therefore, the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II) of the Act. However, we still must determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of a crime involving moral turpitude, or section 212(a)(6)(C)(i) of the Act, for attempting to gain admission or a benefit through misrepresentation.

Section 212(a)(2) of the Act states in pertinent part:

Criminal and related grounds. —

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

(Citations omitted.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. The methodology adopted by the Attorney General consists of a three-pronged approach. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to reach conduct that does not involve moral turpitude. 24 I&N Dec. at 698 (citing *Duenas-Alvarez*, 549 U.S. at 193). If a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, "the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude." 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage or "modified categorical" inquiry in which the adjudicator reviews the "record of conviction" to determine if the conviction was based on conduct involving moral turpitude. 24 I&N Dec. at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

Finally, if review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. *Id.* at 699-704, 708-709. However, this "does not mean that the parties would be free to present any and all evidence bearing on an alien's conduct leading to the conviction. The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself." *Id.* at 703 (citation omitted).

The record reflects that the applicant's criminal history is as follows:

On May 9, 1996, he was convicted of larceny in New York. He was 18 years old at the time of his conviction.

On September 27, 1996, he pled guilty to disorderly conduct in violation of N.Y. Penal Law § 240.20. He was sentenced to conditional discharge for one year and ten days of community service.

On May 10, 1997, he again pled guilty to disorderly conduct in violation of N.Y. Penal Law § 240.20. He was sentenced to imprisonment for time served.

On September 4, 1997, he again pled guilty to disorderly conduct in violation of N.Y. Penal Law § 240.20. He was sentenced to conditional discharge for one year and seven days of community service. On January 23, 1998, he was resentenced to ten days in prison.

On October 31, 1997, he pled guilty to harassment in the second degree in violation of N.Y. Penal Law § 240.26. He was sentenced to imprisonment for time served and an order of protection for one year was entered against him.

On April 14, 1998, he pled guilty to criminal contempt in the second degree in violation of N.Y. Penal Law § 215.50. He was sentenced to conditional discharge for one year. On that same date, he was also convicted of criminal contempt in the first degree in violation of N.Y. Penal Law § 215.51(b)(v). He was sentenced to six months of imprisonment and five years of probation, and was ordered to obey a permanent order of protection.

On September 2, 1999, he was convicted of disorderly conduct and sentenced to 15 days in prison.

On March 24, 2000, he pled guilty to disorderly conduct in violation of N.Y. Penal Law § 240.20. He was sentenced to imprisonment for 15 days.

The applicant also testified during a sworn statement with immigration officials on September 9, 1999 that he had been arrested on September 2, 1999 for "sodomy and sexual abuse of a female." At the time of his sworn statement, he stated that the case against him was still pending. The disposition of that case is not clear from the record.

We will first discuss the applicant's April 14, 1998 conviction for criminal contempt in the first degree in violation of N.Y. Penal Law § 215.51(b)(v). At the time of the applicant's conviction, N.Y. Penal Law § 215.51 stated, in pertinent part:

> A person is guilty of criminal contempt in the first degree when:
>
> . . .
>
> (b) in violation of a duly served order of protection, or such order of which the defendant has actual knowledge because he or she was present in court when such order was issued, he or she:
>
> . . .
>
> (v) with intent to harass, annoy, threaten or alarm a person for whose protection such order was issued, strikes, shoves, kicks or otherwise subjects such other person to physical contact or attempts or threatens to do the same . . . .

The AAO finds that a conviction under N.Y. Penal Law § 215.51(b)(v) is similar to assault. As a general rule, simple assault or battery is not deemed to involve moral turpitude for purposes of the immigration laws. *Matter of Fualaau,* 21 I&N Dec. 475, 477 (BIA 1996). However, this general rule does not apply where an assault or battery necessarily involved some aggravating dimension, such as the use of a deadly weapon or the infliction of serious injury on persons whom society views as deserving of special protection, such as children, domestic partners or peace officers. *See, e.g., Matter of Danesh,* 19 I&N Dec. 669 (BIA 1988); *Matter of Goodalle*, 12 I&N Dec. 106 (BIA 1967); *Matter of S-*, 5 I&N Dec. 668 (BIA 1954). Willful infliction of corporal injury on a spouse, cohabitant, parent or child of the perpetrator's constitutes a crime involving moral turpitude. *Matter of Tran*, 21 I&N Dec. 291 (BIA 1996). Assault and battery against a family or household member is not categorically a crime involving moral turpitude if the statute does not require intentional infliction of physical injury.

Because the statute pursuant to which the applicant was convicted encompasses actual violence as well as other physical contact and threats, it encompasses some behavior that constitutes a crime involving moral turpitude and some behavior that does not. Therefore, there is a realistic probability that the statute would be applied to reach conduct that does not involve moral turpitude. 24 I&N Dec. at 698. As a result, we must engage in a modified categorical inquiry, which involves examining the record of conviction, to determine whether the applicant was convicted for conduct involving moral turpitude. The record of conviction in this case includes the criminal complaint, a waiver of indictment, the information, a Sentence and Commitment form, and a Conditions of Probation form. However, the conviction records simply re-state the text of N.Y. Penal Law § 215.51(b)(v) and do not clarify whether the applicant was convicted for violence against the victim or other physical contact or threats. Because the record of conviction is inconclusive, *Matter of Silva-Trevino* instructs us to review other relevant evidence outside the record of conviction to determine whether the applicant's conviction was for a crime involving moral turpitude.

A sworn statement from the police officer who arrested the applicant indicates that the applicant physically assaulted his then-wife, , who had an order of protection against the applicant. The statement further notes that the applicant "did grab [ ] by the neck and push her into a pole, yelling and screaming[,] 'Why did you have me arrested[?]'" *Sworn Statement of* However, nothing in the record suggests that the applicant caused injury to Instead, the police officer's sworn statement reports that the applicant's actions "did cause annoyance, inconv[en]ience and alarm." *Id.* Therefore, the AAO finds that the applicant's conviction for criminal contempt in violation N.Y. Penal Law § 215.51(b)(v) is not a crime involving moral turpitude.

The applicant also has several convictions for disorderly conduct in violation of N.Y. Penal Law § 240.20, which states:

> A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:
>
> 1. He engages in fighting or in violent, tumultuous or threatening behavior; or
> 2. He makes unreasonable noise; or
> 3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
> 4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
> 5. He obstructs vehicular or pedestrian traffic; or
> 6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
> 7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.
>
> Disorderly conduct is a violation.

The crime of disorderly conduct encompasses offenses that vary greatly in nature. In this case, the record does not indicate whether the applicant's conviction involved fighting or violent, tumultuous or threatening behavior, with the intent either to cause public inconvenience, annoyance or alarm, or recklessly create a risk thereof. Although this offense could hypothetically encompass acts that involve moral turpitude in the similarity of certain subsections to assault or menacing, Article 120 of the New York Penal Law addresses these more serious crimes specifically. Therefore, we find that there is not a realistic probability that the statute under which the applicant was convicted encompasses morally turpitudinous behavior. Accordingly, we do not find that the applicant's convictions for disorderly conduct do not render him inadmissible.

However, the record also reflects that the applicant was convicted of larceny on May 9, 1996. The BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."); *see also Matter of Jurado-Delgado*, 24 I&N Dec. 29, 33 (BIA 2006) (stating that in determining whether theft is a crime involving moral turpitude, the BIA considers "whether there was an intention to permanently deprive the owner of his property.")

At the time of the applicant's conviction, N.Y. Penal Law § 155.05 provided, in pertinent part, the following definition of larceny:

> 1. A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof.

N.Y. Penal Law § 155.00 provided, in pertinent part:

> To "deprive" another of property means (a) to withhold it or cause it to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him, or (b) to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

New York courts have also indicated that larcenous intent is shown when the defendant intends to exercise control over another's property for so an extended period or under such circumstances as to acquire the major portion of its economic value or benefit. *People v. Jennings*, 69 N.Y.2d 103, 118-122, 504 N.E.2d 1079, 1086-89 (N.Y. 1986). In *People v. Hoyt*, 92 A.D.2d 1079, 461 N.Y.S.2d 569, 570 (N.Y. App. Div. 3d Dept. 1983) the court found that to warrant a larceny conviction, intent to permanently deprive the owner of his property must be established and that a temporary withholding of property, by itself, would not constitute larcenous intent.

In *Ponnapula v. Spitzer*, the Second Circuit Court of Appeals found that the acts covered by N.Y. Penal Law § 155.00 are permanent takings that manifest larcenous intent. 297 F.3d 172, 183-84 (2d Cir. 2002). The court observed that while the intent to temporarily deprive an owner of property does not constitute larcenous intent, such a temporary deprivation occurs only where a person borrows property without permission with the intent to return the property in full to the owner after a short and discrete period of time. *Id.* at 184. Thus, the AAO finds that the applicant's New York conviction for larceny required the intent to permanently take another person's property and is thus a conviction for a crime involving moral turpitude. The applicant does not contest his inadmissibility on appeal.

As noted above, the record also indicates that the applicant was arrested in 1999 for a crime involving sexual assault. The applicant has admitted that he was arrested for "sodomy and sexual abuse of a female." It is unclear whether the applicant was charged with or convicted of a crime as a result of this arrest and the record indicates that the disposition of the arrest is sealed to the public. However, because the applicant is inadmissible on other grounds, and we dismiss the appeal for other reasons, it is unnecessary for the AAO to determine at this time whether his 1999 arrest resulted in a conviction for a crime involving moral turpitude.

The record also indicates that the applicant provided false names and dates of birth to immigration officers in an effort to conceal his criminal history. The applicant concedes that he is inadmissible under section 212(a)(6)(C)(i) of the Act and the decision of the director regarding that ground of inadmissibility does not appear to be in error, so the AAO will not disturb the director's finding on appeal.

Section 212(h) states, in pertinent part:

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

. . .

(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 . . . .

Section 212(i) of the Act provides:

(1) The [Secretary] may, in the discretion of the [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 [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 under section 212(h) is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. However, a waiver under section 212(i) cannot be based on extreme hardship to the applicant's children. Because the applicant requires a waiver under both sections, the AAO will determine the applicant's eligibility for a waiver under the more restrictive section 212(i). Therefore, the applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant's children will be considered only to the extent that it results in hardship to his spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (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 of Immigration Appeals (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 U.S. 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 v. INS*, 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.

On appeal, the applicant states that his family has suffered hardship in the 12 years since he was deported from the United States. He asserts that he regrets his past actions and takes responsibility for the harm his behavior has caused his wife and children. He claims that he has become a better person and that he hopes he will be permitted to reside in the United States so that he can "give back all that [he has] taken from" his family. *Form I-290B*, dated October 26, 2012. He also notes that he cares for his daughters in Pakistan while his qualifying spouse works and studies in the United States.

The applicant's qualifying spouse contends that she has suffered extreme hardship since the applicant was deported and that she will continue to suffer such hardship if he is not permitted to join her in the United States. At the time of her most recent statement on October 28, 2012, she noted that she was 38 weeks pregnant and was alone in the United States. She also explains that her two U.S. citizen daughters, now aged 9 and 13, have been living in Pakistan with the applicant because they are attached to him and because the qualifying spouse struggled to care for them on her own while working to support the family and attending college. The qualifying spouse contends that she can only visit the applicant and their daughters in Pakistan for approximately three weeks per year and that the separation has been very difficult. She fears that her daughters experience sadness due to being separated from their mother. Additionally, the qualifying spouse claims that although the applicant made mistakes when he was young, he has been a good husband and father for the past 12 years.

The qualifying spouse also contends that she has health problems which have been affected by the applicant's absence. She states that she has postponed necessary treatment, including surgery for a deviated septum and dental work for "serious dental issues" which affect her diet, because she cannot take time off work and has no one to care for her during her recovery. She asserts that she suffers from migraine headaches, a vitamin D deficiency, and "aches all over [her] body." Additionally, she claims that she has been depressed, resulting in difficulty concentrating on work and college.

She also asserts that she is experiencing financial hardship because she must support herself while also supporting the applicant and their daughters in Pakistan. She contends that she has significant credit card debt and student loans and that she struggles to save money because visiting her family in Pakistan costs approximately $2500 per trip. Also, the qualifying spouse states that she does not have a car and fears for her safety while waiting for the bus or walking home alone late at night after attending classes for her Bachelor's degree.

Additionally, the qualifying spouse states that she would suffer extreme hardship if she were to relocate to Pakistan. She notes that the applicant and their daughters live in , where terrorist attacks have occurred. She states that her daughters' school has been closed due to violence and political unrest nearby and that she fears for their safety while they are away from home. She also asserts that education is expensive in Pakistan and that corporal punishment is used against the children. The qualifying spouse also states that as a woman of Indian birth, she

is subject to discrimination in Pakistan. Finally, she contends that she would be unable to repay her debts if living in Pakistan.

The record also contains a letter from the applicant's daughters. They state, in part:

> We live in Pakistan with our dad and grandmother but we always miss our mom[.] [S]he comes only to see us for a few weeks and goes back to [N]ew [Y]ork to work. We plan all year for her trip to do things with her. . . . [We] need our mom and dad both. When we are together we are so happy but when she leaves we are very sad. We go out only with our dad and go to school. It is not safe in parks and other places. It would be so nice to go to places to enjoy and not have to be scared of anything.

The record contains a letter from the qualifying spouse's doctor, who stated on June 20, 2012 that the qualifying spouse was 19 weeks pregnant, was alone in the United States, and would benefit from her husband's help. Medical records also indicate that the qualifying spouse has been treated for "varicose veins and venous insufficiency." *See* *General Surgery Referral,* Documentation in the record indicates that venous insufficiency can cause pain, cramping, and tingling in the legs, as well as other symptoms. Documentation regarding varicose veins also lists symptoms as pain, tenderness, swelling, and burning in the legs. A letter from another doctor states that the qualifying spouse has been diagnosed with "thrombocytopenia, supraventricular tachycardia, trigger finger, vitamin D deficiency, migraine headaches, and gastritis." dated September 22, 2011. The doctor also states that the qualifying spouse takes six medications and notes that she "is overall in excellent health." *Id.* Documentation from the qualifying spouse's neurologist indicates that the qualifying spouse has suffered frequent headaches for four years. dated April 23, 2010 and December 3, 2010. Additionally, the record shows that the qualifying spouse has been treated for "gastroesophageal reflux disease and supraventricular tachycardia responding to medical therapy." dated September 20, 2011.

The record also contains documentation of the qualifying spouse's financial situation. A letter from her employer states that she has worked full time as a medical office representative since October 2005 and that she earns $41,219.67 per year. Student loan statements indicate that the qualifying spouse has a debt of $53,467.58. *Direct Loans Statement*, dated June 16, 2012. Her credit reports also show that she owes $17, 963 in credit card debt and that her payments are past due on at least six credit cards. *Credit Report,* dated June 13, 2012.

The qualifying spouse has also submitted verification of her enrollment in a Bachelor's degree program at College. The verification shows that she began attending in June 2009 and has an expected graduation date of May 2013. , dated June 12, 2012.

The AAO finds that the qualifying spouse would suffer extreme hardship if she were to relocate to Pakistan. The U.S. Department of State warns U.S. citizens to "defer all non-essential travel to Pakistan" due to the risk of harm from terrorist groups. *U.S. Department of State, Travel Warning: Pakistan*, dated April 9, 2013. The Department of State explains that, "Across the country, terrorist attacks frequently occur against civilian, government, and foreign targets. . . . Threat reporting indicates terrorist groups continue to seek opportunities to attack locations where U.S. citizens and Westerners are known to congregate or visit. Terrorist and criminal groups regularly resort to kidnapping for ransom." *Id.* The Department of State indicates in another report that "[c]rime is a serious concern for foreigners throughout Pakistan." *U.S. Department of State, Country Specific Information: Pakistan*, dated May 23, 2013. Additionally, the qualifying spouse has submitted a report indicating that "[d]ecades of internal political disputes and low levels of foreign investment have led to slow growth and underdevelopment in Pakistan." *CIA World Factbook, Pakistan*, dated June 26 2012. The qualifying spouse has significant debt in the United States, including over $53,000 in student loans and nearly $18,000 in credit card debt, which she may struggle to repay while in Pakistan. She is also pursuing a Bachelor's degree in the United States and has been steadily employed with the same employer since at least 2005. Furthermore, the qualifying spouse was born in India and has lived in the United States since childhood. She is unfamiliar with the culture in Pakistan and adjustment to life there would likely be very difficult for her. Finally, the qualifying spouse has an established relationship with several doctors for her various medical conditions and her treatment may be interrupted if she were to relocate. In the aggregate, these factors would create extreme hardship for the qualifying spouse.

However, to qualify for a waiver, the applicant must also show that his qualifying spouse would suffer extreme hardship if she continued to be separated from the applicant. The AAO finds that the applicant has failed to make such a showing. First, the record indicates that the applicant and the qualifying spouse were married on March 26, 2000, less than two months prior to the applicant's removal to Pakistan on May 17, 2000. It is unclear whether the applicant ever lived with or supported the qualifying spouse prior to his removal. Additionally, the applicant had been ordered to report for removal in 1998 and was again arrested by immigration officials in 1999. These facts go to the applicant's spouse's expectations and diminish her hardship claims.

Furthermore, there is no evidence to support the qualifying spouse's claim that she is financially supporting the applicant and her children in Pakistan. The record lacks evidence that the qualifying spouse has sent any money to her family in Pakistan. Similarly, there is no evidence of the monthly expenses of the qualifying spouse or the applicant to show that their income is insufficient to meet their needs. Additionally, while the qualifying spouse has student loan debt,

her loans are currently in forbearance and it is unclear when she will become responsible for making payments, how much those payments will be, or whether she will be able to afford them.

While the record demonstrates that the qualifying spouse has several medical conditions, there is no evidence that her conditions are so severe that she requires daily assistance or cannot care for herself. Despite her medical conditions, the qualifying spouse continues to work full time, attend school, live alone, and travel to Pakistan on an annual basis. Her medical records suggest that her health conditions are being properly managed and one of her doctors notes that she "is overall in excellent health."
2011.

Finally, the AAO recognizes that the qualifying spouse has been separated from her daughters for many years. However, the qualifying spouse's statements indicate that she made a voluntary decision to leave her daughters in the care of the applicant and his mother in Pakistan. She notes that she does not want to separate her daughters from the applicant because they are attached to him. She also explains that she had difficulty finding a suitable babysitter for her daughters in the United States so she prefers that they be in the care of the applicant and his mother. However, she states that it is dangerous for her daughters to live in Pakistan, that the educational system is expensive and inferior, and that the separation of the family is difficult for them. Nevertheless, her daughters are U.S. citizens and could join her in the United States. The qualifying spouse has chosen to leave her daughters in Pakistan since they were very young. Additionally, while she has stated that it would be difficult for her to care for her daughters while working and attending college, her education records indicate that she was scheduled to complete her Bachelor's degree in May 2013. The AAO acknowledges that the separation of the family is difficult for the qualifying spouse and that she worries about the effects of the separation on her daughters. However, even when considered in the aggregate with the other hardships the qualifying spouse has alleged, the separation is insufficient to establish extreme hardship for purposes of a waiver.

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 relatives in this case.

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 proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.