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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
and Immigration
Services**

H6

Date: **AUG 30 2011** Office: WEST PALM BEACH, FLORIDA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), (a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[REDACTED]

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 District Director, West Palm Beach, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. He was also found inadmissible under section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days, but less than one year, and seeking readmission within three years of his last departure. He seeks waivers of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The district director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to his U.S. citizen wife, and to show that he warrants a favorable exercise of discretion. *Decision of the District Director*, dated July 1, 2008.

On appeal, counsel for the applicant asserts that the district director failed to conduct a proper analysis of the applicant's criminal history or the facts of the present matter, and that she applied an erroneous interpretation of the applicable legal standard. *Brief from Counsel*, dated August 28, 2008.

The record contains a brief from counsel; copies of medical records for the applicant's wife; documentation relating to some of the applicant's and his wife's expenses; letters from friends of the applicant; letters from the applicant's employers; a copy of the applicant's marriage certificate, and; records relating to the applicant's criminal convictions. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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.)

The record shows that, on December 5, 1996, the applicant pled guilty to Preparation to Commit Burglary under North Carolina General Statutes § 14-56. On December 5, 2000, the applicant pled guilty to Theft by Check Class B under Texas Penal Code § 31.06. As a result, the district director determined that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. On appeal, counsel asserts that the district director failed to conduct a proper analysis of whether the applicant's crimes involved moral turpitude. In a brief dated August 28, 2008, counsel alleges numerous other deficiencies in the district director's decision. However, as the AAO reviews appeals on a *de novo* basis, it will conduct appropriate analysis of the facts of the present matter in light of applicable law, irrespective of the district director's decision. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). The AAO will herein analyze the applicant's convictions to determine whether he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

In *Matter of Silva-Trevino* the Attorney General adopted the "realistic probability" standard articulated by the Supreme Court in *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183 (2007), as an approach for determining inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. See 24 I&N Dec. 687, 698 (2008).

The methodology articulated by the Attorney General for determining whether a conviction is a crime involving moral turpitude requires an adjudicator to review 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. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. at 193). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. . . .” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

Several U.S. Courts have distinguished the realistic probability test articulated in *Duneas-Alvarez* in cases where “a state statute explicitly defines a crime more broadly than the generic definition” and “no ‘legal imagination,’ is required to hold that a realistic probability exists that the state will apply its statute to conduct that falls outside the generic definition of the crime.” *United States v. Grisel*, 488 F.3d 844, 850 (9th Cir. 2007)(citing *Duenas-Alvarez*, 127 S.Ct. at 822). In *United States v. Vidal*, the Ninth Circuit Court of Appeals determined that a “realistic probability” that the theft statute under which the alien was convicted would be applied to conduct that falls outside the generic definition of theft could be found in the plain text of the statute. 504 F.3d 1072, 1082 (9th Cir. 2007). The Ninth Circuit noted that “when ‘[t]he state statute’s greater breadth is evident from its text,’ a defendant may rely on the statutory language to establish the statute as overly inclusive.” *Id.* (citing to *United States v. Grisel*, 488 F.3d at 850.).

In the instant case, the statute under which the applicant was convicted for theft by check, Texas Penal Code § 31.06(a), states:

If the actor obtained property or secured performance of service by issuing or passing a check or similar sight order for the payment of money, when the issuer did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding, it is prima facie evidence of his intent to deprive the owner of property under Section 31.03 (Theft)

The Board of Immigration Appeals (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.”). Texas Penal Code § 31.03(a) states “[a] person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.” The term “deprive” is defined by the Texas Penal Code as “to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner.” Texas Penal Code § 31.01(2)(A). The AAO finds that the term “deprive” under the Texas Penal Code contemplates withholding value or enjoyment of property from its rightful owner to a degree that cannot be deemed a temporary taking. Thus, offenses under Texas Penal Code § 31.06(a) constitute permanent takings for the purpose of assessing whether such acts involve moral turpitude. Accordingly, pursuant to the reasoning of the BIA, all theft offenses under Texas Penal Code § 31.06(a) are categorically crimes involving moral turpitude. As the

applicant was convicted of a crime involving moral turpitude, he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The AAO notes that the applicant's conviction under Texas Penal Code § 31.06 would meet the requirements of the "petty offense" exception found in section 212(a)(2)(A)(ii)(II) of the Act, yet he has been convicted of more than one crime involving moral turpitude, as discussed below.

On December 5, 1996, the applicant pled guilty to Preparation to Commit Burglary in North Carolina. The record of his conviction notes that his charge was described in North Carolina General Statutes § 14-56. However, at the time of the applicant's conviction, Preparation to Commit Burglary was defined at North Carolina General Statutes § 14-55 as follows:

If any person shall be found armed with any dangerous or offensive weapon, with the intent to break or enter a dwelling, or other building whatsoever, and to commit any felony or larceny therein; or shall be found having in his possession, without lawful excuse, any picklock, key, bit, or other implement of housebreaking; or shall be found in any such building, with intent to commit any felony or larceny therein, such person shall be punished as a Class I felon.

The text of North Carolina General Statutes § 14-55 is congruent with the applicant's conduct that led to his conviction, discussed below, and it appears that his conviction records contain an error in the section of law under which he pled. The indicated section, North Carolina General Statutes § 14-56, stated as follows:

If any person, with intent to commit any felony or larceny therein, breaks or enters any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind, containing any goods, wares, freight, or other thing of value, or, after having committed any felony or larceny therein, breaks out of any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind containing any goods, wares, freight, or other thing of value, that person is guilty of a Class I felony. It is prima facie evidence that a person entered in violation of this section if he is found unlawfully in such a railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft.

The applicant pled guilty to an inchoate offense under North Carolina General Statutes § 14-56. Yet, as provided in section 212(a)(2)(A)(i)(I) above, an applicant is inadmissible for having made "an attempt or conspiracy to commit" a crime involving moral turpitude, regardless of whether he in fact completed the intended criminal act. Thus, the AAO will examine whether a completed criminal act under North Carolina General Statutes § 14-55 constitutes a crime involving moral turpitude.

North Carolina General Statutes § 14-55 has a broad reach, including being found in an unoccupied building with an intent to commit a felony. Not all felonies are crimes involving moral turpitude. While burglary of an occupied dwelling has been found to be categorically a crime involving moral turpitude, an analysis of burglary of an unoccupied building turns on the act the perpetrator intends to commit inside. *Matter of Louissaint*, 24 I. & N. Dec. 754, 758-60 (BIA 2009). Burglary committed without

an intent to commit a crime involving moral turpitude has been found to not be a crime involving moral turpitude. *Matter of M*, 2 I&N Dec. 721 (BIA 1946). Thus, it appears that North Carolina General Statutes § 14-55 can be applied to conduct that involves moral turpitude and conduct that does not.

North Carolina General Statutes § 14-56, too, has a broad reach, including breaking and entering certain conveyances that contain things of value with “intent to commit any felony.” Again, not all felonies are crimes involving moral turpitude. As noted above, burglary without an intent to commit a crime involving moral turpitude has been found to not be a crime involving moral turpitude. Thus, it appears that North Carolina General Statutes § 14-56 can also be applied to conduct that involves moral turpitude and conduct that does not.

As the full range of conduct proscribed by the statutes in question does not constitute a crime involving moral turpitude, we will apply the modified categorical approach and engage in a second-stage inquiry by reviewing the record of conviction to determine if the conviction was based on conduct involving moral turpitude. *Silva-Trevino* 24 I&N Dec. at 698-699, 703-704, 708. The record of conviction in this case includes the “Information” filed a prosecutor which provides that the applicant “broke [and] entered into dwelling compartment of another at night [with] intent to commit felony therein.” There are no documents deemed part of the record of the applicant’s conviction that provide more detail regarding the applicant’s specific conduct that led to his conviction.

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. *Silva-Trevino* 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. (citation omitted). 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.

The record contains a warrant for the applicant’s arrest in connection with his conviction that describes in more detail his illicit conduct, including:

At the time of the breaking and entering, the dwelling house was actually occupied by [two individuals]. The [applicant] broke and entered with the intent to commit felony assault with a deadly weapon therein.

The BIA has found that burglary of an occupied dwelling constitutes a crime involving moral turpitude. *Matter of Louissaint*, 24 I. & N. Dec. at 758-60 (stating that “moral turpitude is inherent in the act of burglary of an occupied dwelling itself, and that the respondent’s unlawful entry into the dwelling of another with the intent to commit *any crime* therein is a crime involving moral turpitude.”). Thus, the applicant’s conviction for Preparation to Commit Burglary in North Carolina constitutes a crime involving moral turpitude. This conclusion is correct whether his conduct was proscribed by North Carolina General Statutes § 14-55 or § 14-56. Whether an error was made by the State of North Carolina in noting the section of law under which he was convicted does not impact the finding that he was convicted for a crime involving moral turpitude.

Based on the foregoing, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and he requires a waiver of inadmissibility under section 212(h) of the Act.

Section 212(h) of the Act 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.

A waiver of inadmissibility under section 212(h) 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 the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., *In re 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 states that the applicant's wife was born in the United States and she has never resided in Mexico. *Brief from Counsel* at 6. Counsel indicates that the district director conceded that the applicant's wife has diabetes and obesity, she had a hysterectomy, and she may have other health problems. *Id.* Counsel asserts that the evidence of extreme hardship in this case rises above the standard in *In Re Kao and Lin*, 23 I&N Dec. 45 (BIA 2001).

In a September 6, 2007 response to a request for evidence, counsel previously stated that the applicant's wife is under- or unemployed due to long-standing medical issues that date back to 2001. Counsel added that the applicant's wife was being cared for by someone else while the applicant is attempting to obtain a legal immigration status. Counsel indicated that the applicant's wife was attempting to secure evidence that she was a former battered spouse in a prior marriage. He provided that the applicant's wife has minimal family or linguistic ties outside the United States. Counsel stated that the applicant's wife would be virtually destitute and unable to receive her needed medical in Mexico should the applicant depart.

It is noted that the applicant has not provide a statement from his wife or himself, thus the AAO must assess other evidence in the record to ascertain his wife's particular circumstances. While counsel references hardship to the applicant's wife, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO has carefully examined the medical records submitted for the applicant's wife. However, the applicant has not provided a clear assessment of his wife's overall health from a medical professional. It is further noted that the most recent submitted medical records are dated May 7, 2007, yet the appeal was filed on or about July 28, 2008, and counsel supplemented the record on or about August 28, 2008. The record contains no evidence to show that the applicant's wife has required or received medical care in the approximately 15-month period between May 7, 2007 and the date the appeal was filed. We are not in a position to interpret the raw medical records provided by the applicant. While certain procedures can be readily identified, such as surgery to remove a gall bladder polyp on May 7, 2007, the AAO is unable to determine whether the applicant's wife requires additional medical care or the impact her medical conditions have on her ability to perform common tasks or to engage in employment. The records show that a doctor indicated on August 1, 2006 that the applicant's wife stated: "I take care of my diabetes myself." Thus, while the record shows that the applicant's wife has received medical treatment for multiple needs, the AAO is unable to conclude that she suffers from ongoing conditions that pose significant hardship for her.

Counsel stated that the applicant's wife is presently underemployed or unemployed due to her medical issues, and she would be virtually destitute and unable to receive her needed medical in Mexico. However, the record does not show that the applicant's wife is unable to work, due to her health or other reasons. Nor has the applicant presented any information or documentation on the economic conditions or employment prospects he and his wife would face in Mexico. The applicant has not presented any information on his or his wife's income or financial resources. Thus, the

applicant has not demonstrated that his wife requires ongoing medical care that would be unavailable to her should she reside in Mexico.

Counsel asserts that the applicant's wife was born in the United States and that she has never resided in Mexico. Counsel suggests that the applicant's wife does not speak Spanish, which would create difficulty for her in Mexico. However, the record contains no clear indication that the applicant's wife does not speak Spanish, and her birth and lengthy residence in the United States do not alone establish this as fact. Nor has the applicant presented a clear explanation of his and his wife's family and community connections, either in Mexico or the United States. Thus, the applicant has not shown that his wife would lack support in Mexico, or that she would suffer unusual emotional hardship due to severing close ties in the United States.

The applicant has not asserted that his wife would encounter other elements of hardship should she relocate to Mexico. Considering all stated hardship factors in aggregate, the applicant has not shown that his wife will suffer extreme hardship should she relocate to Mexico to maintain family unity.

Furthermore, concerning the possibility that the applicant's spouse will remain in the United States, as discussed above, the applicant has not established that his wife suffers from ongoing medical conditions that have a significant impact on her life or limit her ability to engage in employment. The applicant has not shown that his wife would lack access to any required medical care in his absence.

The record contains documentation of some of the applicant's and his wife's expenses, dated in May, June, and July 2007, including a \$1,000 per month rent expense and two debts for medical bills of \$776 and \$415. However, the applicant has not provided updated information on his and his wife's expenses, and the AAO is unable to determine if these debts have been paid or if the applicant's wife would continue to have such a rent obligation in the applicant's absence. Nor has the applicant indicated or documented his or his wife's present income or assets. Thus, the applicant has not established that his wife would endure unusual economic challenges should he depart the United States and she remain.

The AAO has examined the numerous letters of reference from the applicant's friends and employers. Yet, while they reflect positively on the applicant's and his wife's character, they do not identify additional elements of hardship the applicant's wife may face should she reside in the United States without the applicant.

The applicant has not asserted that his wife would encounter other elements of hardship should she reside in the United States. Considering all stated hardship factors in aggregate, the applicant has not shown that his wife will suffer extreme hardship should he depart the United States and she remain.

Based on the foregoing, the applicant has not shown that denial of his waiver application under section 212(h) of the Act "would result in extreme hardship" to his wife. Thus, he is not eligible for a waiver under section 212(h) of the Act. As such, no purpose would be served in assessing his inadmissibility and eligibility for a waiver under sections 212(a)(9)(B)(i)(I) and 212(a)(9)(B)(v) of the Act. Nor would a purpose be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *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.