



U.S. Citizenship
and Immigration
Services



H6

DATE: DEC 05 2012

OFFICE: MONTERREY, MEXICO

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. §§1182(a)(9)(B)(v) and 1182(h), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A), 8 U.S.C. § 1182(a)(9)(A)

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 motion 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,

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DICUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied by the Field Office Director, Monterrey, Mexico, who also denied the Form I-212, Application for Permission to Reapply for Admission After Deportation or Removal. Both are 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 committed a crime involving moral turpitude; 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 section 212(a)(9)(A)(ii) of the Act, 8 C.F.R. § 1182(a)(9)(A)(ii), for seeking admission within ten years of having been ordered removed from the United States.¹ He is the spouse of a U.S. citizen and seeks waivers under sections 212(a)(9)(B)(v) and 212(h) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(h), and an exception under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States.

The Field Office Director determined that the applicant had failed to establish that the bars to his admissibility would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability, accordingly. Based on his denial of the Form I-601, the Field Office Director denied the Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, as a matter of discretion. *Decision of the Field Office Director*, dated June 11, 2010.

On appeal, the applicant's spouse asserts that she will experience extreme hardship if the applicant is removed from the United States. *Notice of Appeal or Motion*, dated July 7, 2010.

The evidence of record includes, but is not limited to: statements from the applicant's spouse; medical documentation relating to the applicant's spouse and daughters; and documentation relating to the applicant's arrests and convictions. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(2)(A)(i)(I) of the Act provides:

- (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.

A waiver of a section 212(a)(2)(A)(i)(I) inadmissibility is provided by section 212(h) of the Act, which provides, in pertinent part:

¹ Although the Field Office Director also found the applicant to be inadmissible pursuant to section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(B), for having failed to attend his 2004 removal proceeding, the applicant's period of inadmissibility expired in September 2011, five years after his September 2006 departure from the United States. Accordingly, he is no longer subject to section 212(a)(6)(B) of the Act.

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

Although the Field Office Director stated in his decision that the applicant had been convicted of only one offense, False Information, Denver Revised Municipal Code (DRMC) § 38-40, on February 18, 1999, the AAO finds the record to also reflect that on August 31, 1997, the applicant pled guilty to Assault, DRMC § 38-93, in Denver County Court and was given a 90-day suspended sentence. On March 12, 2003, he pled guilty to Assault/Battery, Aurora Municipal Code (AMC) § 94-37, in Aurora Municipal Court and was given a 45-day suspended sentence. The record also indicates that the applicant has numerous arrests and convictions for driving-related offenses.

At the time of the applicant's 1999 conviction for False Information, DRMC § 38-40 stated:

It shall be unlawful for any person knowingly and willfully to give false information to an officer or employee of the city when such officer or employee is acting in their official capacity, concerning the identity of any person participating in, connected with, or responsible for, or concerning the manner of the commission of, any act, when, as part of their official duties or employment, such officer or employee is investigating:

- (1) The legality of such act; or
- (2) The identity of the person participating in, connected with, or responsible for the commission of such act.

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. 24 I&N Dec. at 699-704, 708-709.

The applicant does not contest the Field Office Director’s determination that his conviction for False Information, DRMC § 38-40, is a conviction for a crime involving moral turpitude and that he is, therefore, inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. We observe, however, that the maximum sentence for a violation of DRMC § 38-40 is one year in jail and that the applicant was fined \$50 for his offense, but not incarcerated. While the applicant’s conviction for False Information would, therefore, appear to fall under the petty offense exception found in section 212(a)(ii)(II) of the Act, the AAO notes that, as previously indicated, the applicant has also been convicted of a 1997 Assault under DRMC § 38-93 and a 2003 Assault/Battery under AMC § 94-36.

At the time of the applicant’s 1997 conviction for Assault, DRMC § 38-93 stated:

It shall be unlawful for any person to intentionally or recklessly assault, beat, strike, fight or inflict violence on any other person.

At the time of the applicant’s 2003 conviction for Assault/Battery, AMC § 94-36 stated:

An assault is an attempt coupled with a present ability to commit a battery, as defined in section 94-37, upon the person of another, and it shall be unlawful for any person to commit an assault in the city.

AMC § 94-37 stated:

Battery is the knowing or reckless use of force or violence upon the person of another. Every battery shall be deemed to include a violation of assault, as defined in section 94-36. It shall be unlawful to commit a battery in the city

Although simple assault and battery have generally not been found to involve moral turpitude for purposes of immigration law, even if the intentional infliction of physical injury is an element of the crime, this rule does not apply where an assault or battery 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 Matter of Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996; *see also Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988). The applicant, however, does not address his assault convictions and no evidence in the record allows the AAO to reach a determination under *Silva-Trevino* as to whether they constitute crimes involving moral turpitude. Accordingly, the AAO cannot find the applicant to be eligible for the petty offense found in section 212(a)(2)(ii)(II) of the Act and will not disturb the Field Office Director's finding of inadmissibility under section 212(a)(2)(i)(I) of the Act.

Section 212(a)(9)(B) states in pertinent part:

(B) Aliens Unlawfully Present.-

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

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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 Homeland Security] 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 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 entered the United States without inspection in 1998² and did not depart until he was removed to Mexico on September 1, 2006. Based on this history, the AAO finds the record to establish that the applicant accrued unlawful presence in excess of one year, from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until his September 1, 2006 departure. As he is seeking admission to the United States within ten years of his 2006 departure, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act.

The AAO now turns to a consideration of the record and the extent to which it establishes the applicant's eligibility for waivers of his section 212(a)(2)(i)(I) and section 212(a)(9)(B)(i)(II) inadmissibilities.

Waivers of inadmissibility under sections 212(h)(1)(B) and 212(a)(9)(B)(v) of the Act are dependent on a showing that the bars to admission impose extreme hardship on a qualifying relative. A qualifying relative under section 212(h)(1)(B) of the Act may be the U.S. citizen or lawfully resident spouse, parent or child of an applicant. However, under section 212(a)(9)(B)(v) of the Act, a qualifying relative is limited to the applicant's U.S. citizen or lawfully resident spouse or parent. As the applicant must satisfy the requirements of both section 212(h)(1)(B) and section 212(a)(9)(B)(v) of the Act, he must establish extreme hardship to his U.S. citizen spouse as she is his only qualifying relative under the more restrictive waiver requirements of section 212(a)(9)(B)(v) of the Act. Should the record address hardship to the applicant or other family members, it will be considered only to the extent that it results in hardship to the applicant's spouse. If extreme hardship to the applicant's spouse is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) will then assess whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the BIA 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.

² The record also indicates that the applicant entered the United States without inspection in 1991, but fails to reflect the date of his subsequent departure.

Id. The BIA 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 BIA 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 BIA 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, the applicant's spouse submits a July 8, 2010 statement in which she asserts that she is the primary caretaker for her three children and that she is financially dependent on the applicant. Without him, she states, she and her children would not be able to survive. She further contends that her oldest daughter is in her senior year of high school and that without the applicant's financial support, she would have to put her children through college by herself. The applicant's spouse also asserts that she would like to return to college to obtain a bachelor's degree in nursing, which would place an additional economic burden on her. She also maintains that the applicant's removal has taken an emotional toll on her three children as they have formed an attachment to him.

In an earlier statement, dated October 29, 2008, the applicant's spouse indicated that she was suffering emotionally and financially in the applicant's absence. She stated that she had been diagnosed with depression and anxiety, and also asserted that she was unable to provide for her children and was struggling to make mortgage payments. She further reported that her older daughter needed a corneal transplant, her younger daughter was in the process of having dental work done and that her son had allergies and asthma. She also stated that while she was a certified medical assistant, she hoped to become a registered nurse. To achieve this goal, the applicant's spouse stated, she required the applicant's help as she could not do so as a single parent supporting three children.

In support of the applicant's spouse's claims, the record contains an April 21, 2010 statement from [REDACTED] [REDACTED] indicates that, at the time of her April 21 appointment, the applicant's spouse was experiencing increased levels of stress as a result of her relationship with her older daughter and that her daughter had run away the previous weekend. [REDACTED] states that the applicant's spouse also told her that she had suffered from anxiety and depression approximately five years previously and had been successfully treated with medication, which she wished to restart. She also notes that the applicant's spouse reported pain in her right breast, but that an examination had found no masses, erythema or rash of the overlying skin. [REDACTED] indicates that she gave the applicant's spouse prescriptions for Lexapro and Xanax, as well as Ambien.

In a subsequent statement of April 28, 2010, [REDACTED] reiterates that she saw the applicant's spouse on April 21, 2010 for symptoms of depression and anxiety, precipitated by her older daughter running away from home, and that she provided the applicant's spouse with prescriptions for Lexapro, Xanax and Ambien.

An August 5, 2009 medical statement from [REDACTED] indicates that she saw the applicant's spouse's older daughter for a "Well-Child Check and Initial Office Visit," providing her with a prescription for contraceptives. A December 29, 2008 statement from [REDACTED] reflects that he treated the applicant's spouse's younger daughter following a fainting episode of unknown origin. In a March 5, 2009 statement, a [REDACTED] reports that he treated the applicant's spouse's younger daughter for a puncture wound to her right thumb.

While the AAO acknowledges that the applicant's spouse has experienced hardship in his absence, we do not find the record before us to contain sufficient evidence to establish that her hardship exceeds that normally created by the separation of families. Although the applicant's spouse asserts that she is financially dependent on the applicant and has experienced financial hardship in his absence, the record provides no documentary evidence in support of this claim. The applicant has submitted no evidence of his income prior to his departure from the United States or of his spouse's income or financial obligations in his absence, including that of a mortgage she indicates that she is struggling to pay. We also find no documentation in the record that supports the applicant's spouse's claims regarding her children's medical problems or that demonstrates how she has been affected by their conditions. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

The record also fails to establish the level of the applicant's spouse's emotional hardship in the applicant's absence or its impacts. While we note the April 21, 2010 statement from [REDACTED] which indicates that she prescribed medication to help the applicant's spouse deal with depression and anxiety, [REDACTED] specifically links both mental states to the applicant's spouse's relationship with her older daughter and the fact that this child had just run away from home. Based on the applicant's spouse's July 8, 2010 statement in which she indicates she is caring for all three of her children and that her older daughter is in her senior year of high school and preparing to enter college, it appears that the applicant's spouse's relationship with her older daughter is no longer as problematic as it was at the time of her appointment with [REDACTED]. Accordingly, we do not find [REDACTED] statement to reflect the applicant's spouse's mental or emotional state at the time the appeal was filed.

We also note the applicant's spouse's claims regarding the emotional hardship her children would experience if they continue to be separated from the applicant. Again, however, the record fails to document the nature or extent of the emotional hardship being experienced by the applicant's spouse's children, as well as the impact of their emotional hardship on their mother, the only qualifying relative. We also note that the record contains no documentation, e.g., birth certificates, to establish that the applicant's spouse is the mother of three children.

For the reasons just noted, the AAO finds the record to lack the evidence necessary to establish the impacts of separation on the applicant's spouse. Accordingly, the applicant has not established that his spouse would suffer extreme hardship if the waiver application is denied and she continues to reside in the United States.

On appeal, the applicant's spouse asserts that Mexico has been in a state of war since 2006 as a result of the Mexican government's efforts to combat drug-trafficking and that the country is no longer safe for U.S. citizens. She also states that the U.S. Department of State has issued traveling warnings for Mexico to advise U.S. citizens of the security situation in Mexico. She contends that the applicant left Mexico so long ago that he would face the same dangers as any U.S. citizen. The applicant's spouse further indicates that it is unlikely that she would move her children to Mexico in light of the dangers identified in the travel warnings and that her prior husband and the father of her two older children would not allow her to take them outside the United States.

The applicant's spouse also contends that Mexico has a terrible economy, that its per capita income is one-third of that in the United States, that its unemployment rate keeps increasing and that underemployment may be as high as 25 percent. She further asserts that Mexico has a high crime rate and that crime in Mexico can often be violent, particularly in Mexico City, where the applicant is planning to live.

In her October 29, 2008 statement, the applicant's spouse asserts that moving to Mexico would not be an option for her family as her children have lived in the United States all their lives and primarily speak English. She also asserts that her older daughter needs a corneal transplant, her younger daughter is in the midst of dental work and her son suffers from allergies and asthma, and that she wants her children to continue seeing the same doctors.

The AAO acknowledges the applicant's spouse's claims regarding drug-related violence in Mexico, which are supported by U.S. Department of State travel warnings, the most recent of which was

issued on February 8, 2012. However, this most recent travel warning also indicates that no travel advisory is in effect for Mexico City, the location where the applicant's spouse indicates the applicant resides or will reside. We have also taken note of the applicant's spouse's assertions regarding the hardship imposed by the general economic conditions in Mexico, but observe that general economic or country conditions in an alien's native country do not establish hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. *See Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996) (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985)). We have further considered the applicant's spouse's claim that relocation to Mexico would result in her separation from her two older children as their father would not allow them to be taken outside the United States. However, the record contains no custody agreement relating to the applicant's spouse's daughters that establishes the rights of the applicant's spouse's former husband regarding them or a statement from this individual indicating his unwillingness to allow his children to relocate to Mexico.

The AAO also notes the applicant's spouse's assertions that her children would have difficulty in adjusting to life in Mexico as they have lived their entire lives in the United States and are primarily English speakers, and that they would be subjected to drug-related violence. However, as previously discussed, the applicant's spouse's children are not qualifying relatives in this proceeding, and the record does not indicate the impact of any hardship they might experience in Mexico on their mother, the only qualifying relative. We also note the applicant's spouse's claims regarding her older daughter's need for a corneal transplant, her younger daughter's dental treatment and her son's allergies and asthma, but do not find the record to contain the documentation necessary to establish their need for medical treatment or that such treatment would not be available to them in Mexico. Finally, as previously noted, the record includes no documentation that establishes the applicant's spouse has three children.

Without further evidence of the hardships claimed by the applicant's spouse, the AAO is unable to find that relocation to Mexico would result in extreme hardship for his spouse.

As the record fails to demonstrate that the applicant's inadmissibility would result in extreme hardship for a qualifying relative, he has not established eligibility for a waiver under section 212(h)(1)(B) or section 212(a)(9)(B)(v) of the Act. 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.

In his June 11, 2010 decision, the Field Office Director also denied the applicant's Form I-212 based on his denial of the Form I-601. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964) held that an application for permission to reapply for admissions is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act. As the applicant remains inadmissible under sections 212(a)(2)(i)(I) and 212(a)(9)(B)(i)(II) of the Act, the AAO finds no purpose would be served in granting the applicant's Form I-212.

In proceedings for an application for a waiver of grounds of inadmissibility under the Act, the burden of establishing that the application merits approval 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.