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

U.S. Citizenship and Immigration Services

46

[redacted]

DATE: JAN 03 2012 OFFICE: VIENNA FILE: [redacted]

IN RE: [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) and 1182(a)(9)(B)(v).

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 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,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the Field Office Director, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Romania. He was found to be inadmissible to the United States under 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 a crime involving moral turpitude (Theft). The applicant was additionally found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. §1182(a)(9)(B)(i)(II), for having been unlawfully in the United States for more than one year and seeking admission within ten years of departure. The applicant is married to a U.S. citizen and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of his inadmissibility pursuant to sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§1182(h) and 1182(a)(9)(B)(v), so that he may live in the United States with his spouse.

In a decision dated April 1, 2009, the director determined the applicant failed to establish that his spouse would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.[1]

On appeal the applicant asserts that his U.S. citizen wife will experience extreme hardship if she continues to live with him in Romania, or if she returns to the U.S. and lives separately from him. In support of his assertions the applicant submits affidavits written by himself and his wife, and medical and psychological report evidence. The applicant does not contest that he is inadmissible under sections 212(a)(2)(A)(i)(I) and 212(a)(9)(B)(i)(II) of the Act.

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

[1] It is noted that the applicant filed a previous waiver application with the Vienna Field Office in 2007. The waiver was denied by the director on November 28, 2007. The applicant did not appeal the decision.

> 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.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a 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. 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. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007). 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. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, 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." *Matter of Silva-Trevino,* 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the "record of conviction" to determine if the

conviction was based on conduct involving moral turpitude. *Id.* 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.

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. *Matter of Silva-Trevino,* 24 I&N Dec. 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.

In the present matter, the record contains court disposition evidence reflecting that on April 15, 2003, the applicant was convicted in the Circuit Court of Cook County, Illinois of the offense of theft. The applicant was sentenced to a period of twelve months supervision and ordered to pay fines. The court disposition evidence does not specify or discuss the specific statutory provision under which the applicant was convicted. The AAO must therefore review whether the crime of theft in Illinois is categorically a crime involving moral turpitude.

720 Illinois Compiled Statutes (ILCS) 5/16-1 defines the crime of "Theft" in the following manner:

> Sec. 16-1. Theft
>
> (a) A person commits theft when he knowingly;
>
> 1) Obtains or exerts unauthorized control over property of the owner; or
> 2) Obtains by deception control over property of the owner; or
> 3) Obtains by threat control over property of the owner; or
> 4) Obtains control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce him to believe that the property was stolen; or
> 5) Obtains or exerts control over property in the custody of any law enforcement agency which is explicitly represented to him by any law enforcement officer or any individual acting in behalf of a law enforcement agency as being stolen, and
>
> A) Intends to deprive the owner permanently of the use or benefit of the property; or
> B) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or
> C) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

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."). In addition, the Seventh Circuit Court of Appeals stated in *Hashish v. Gonzales,* 442 F.3d 572, 576 (7th Cir. 2006):

> This court, and other courts of appeals, repeatedly have held that "theft" is a crime of moral turpitude. *Soetarto v. INS,* 516 F.2d 778, 780 (7th Cir.1975) ("Theft has always been held to involve moral turpitude, regardless of the sentence imposed or the amount stolen."); *see also Cuevas-Gaspar,* 430 F.3d at 1020 ("We have held that crimes of theft or larceny are crimes involving moral turpitude."); *Nugent v. Ashcroft,* 367 F.3d 162, 165 (3d Cir.2004) (holding that the alien's convictions for thefts involved crimes of moral turpitude); *Okoro v. INS,* 125 F.3d 920, 926 (5th Cir.1997) (following interpretation of BIA and other circuit courts in holding that "the crime of theft is one involving moral turpitude"); *Chiaramonte v. INS,* 626 F.2d 1093, 1097 (2d Cir.1980) ("It has been long acknowledged by this Court and every other circuit that has addressed the issue that crimes of theft, however they may be technically translated into domestic penal provisions, are presumed to involve moral turpitude.").

The AAO finds that the offense of "theft" under 720 ILCS 5/16-1 is categorically a crime involving moral turpitude. It is noted that the subsections contained in 720 ILCS 5/16-1 are indistinguishable with respect to the state of mind required for conviction in that each involves the *knowing* exertion of authority or control over the property of another. Each subsection additionally involves the conscious or intentional permanent deprivation of property from the owner. The applicant's theft conviction therefore constitutes a crime involving moral turpitude pursuant to section 212(a)(2)(A)(i) of the Act.

Under the exception clause contained in section 212(a)(2)(A)(ii)(II) of the Act, the crime involving moral turpitude inadmissibility provision shall not apply to an alien who has been convicted of only one crime, if the maximum penalty possible for the crime of which the alien was convicted 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 record fails to demonstrate that the applicant qualifies for the exception contained in section 212(a)(2)(A)(ii)(II) of the Act. It is noted that sentences for a theft conviction under 720 ILCS 5/16-1 range from a Class A misdemeanor for theft of property not from a person and not exceeding $300 in value (720 ILCS 5/16-1(b)(1) to a Class 4 felony. The sentence for a Class A misdemeanor shall be a determinate sentence of less than one year. *See* 730 ILCS 5/5-4.5-55(a). The sentences for a Class 1 through 4 felony range from 1-15 years. *See* 730 ILCS 5/5-8-1(a)(3) through (a)(7).

In the present matter, the court disposition record reflects that the applicant was sentenced to a period of twelve months of supervision, however the record does not otherwise clarify or discuss the specific statutory provision under which the applicant was convicted of theft. The AAO is therefore unable to determine whether the applicant's conviction for a crime involving moral turpitude qualifies for the exception contained in section 212(a)(2)(A)(ii)(II) of the Act. The AAO notes that it is the applicant's burden to establish that he is not inadmissible. *See* Section 291 of the Act, 8 U.S.C. § 1361. *See also Silva-Trevino,* 24 I&N Dec. at 790. Here, the applicant has not met that burden. It is further noted that the applicant does not contest his inadmissibility under section 212(a)(2)(A)(i). Based on the evidence in the record, the AAO therefore finds that the applicant is inadmissible under section 212(a)(2)(A)(i) of the Act for having been convicted of a crime involving moral turpitude.[2]

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

> The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (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 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 . . .

The applicant is married to a U.S. citizen. The applicant's spouse is thus a qualifying relative for section 212(h) of the Act, waiver of inadmissibility purposes.

The record reflects the applicant is additionally inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B) of the Act provides in pertinent part:

> (i) [A]ny alien (other than an alien lawfully admitted for permanent residence) who-
>
> . . .

[2] The exception contained in section 212(a)(2)(A)(ii)(I) does not apply in the present case, as the applicant was over the age of 18 when the crime was committed.

> (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.
>
> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

The applicant does not contest that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Furthermore, the record supports a finding of inadmissibility under this section of the Act. The record reflects that in August 2001, the applicant was admitted into the U.S. with a B2 visitor visa valid for three months. The applicant did not depart the U.S. when his visitor visa expired, and he remained in the country until April 18, 2003. It is noted that the applicant was under the age of eighteen when he was admitted into the U.S., and when he first began to accrue unlawful presence in the United States.

Under section 212(a)(9)(B)(iii)(I):

> No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

The applicant's unlawful presence prior to April 10, 2002, when he turned eighteen, will thus not be used in calculating his unlawful presence in the U.S. Accordingly, the applicant was unlawfully present in the U.S. from April 10, 2002 through April 18, 2003 (372) days. Because he was unlawfully present for over one year prior to departing the United States, and he is applying for admission within ten years of his departure, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides:

> Waiver.-The Attorney General 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 to the satisfaction of the Attorney General 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant's U.S. citizen spouse is a qualifying relative for section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility purposes.

Sections 212(h) and 212(a)(9)(B)(v) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 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,* 22 I&N Dec. 560, 565 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 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.

The applicant asserts on appeal that his wife will experience extreme emotional and financial hardship if she remains in Romania with him, or if she returns to the U.S. and lives separated from him. In support of his assertions the applicant submits affidavits written by himself and his wife, as well as medical and psychological report evidence.

The affidavits written by the applicant and his wife reflect that the two met in the U.S. in 2002, and that the applicant returned to Romania in April 2003. The affidavits reflect the applicant's wife is originally from Romania, but moved with her parents to the U.S. in 2000, at the age of 17. The applicant's wife became a naturalized U.S. citizen in January 2006, and her parents continue to live in the U.S. According to the affidavits, the applicant's wife went to Romania in March 2006, and she has lived with the applicant in Romania since that time. She and the applicant married in Romania in April 2006. The affidavits indicate that the applicant's wife feels the U.S. is her home, that it is her dream to live with her husband and raise a family in the U.S., and that she feels sad and hopeless in Romania. The affidavits also indicate that the applicant's wife has a year of university studies left in the U.S., and that she wishes to finish her studies. They indicate further that the applicant's wife suffers from a genetic medical condition that affects her ability to have children, and that she suffered a miscarriage in March 2009. The applicant's wife believes the miscarriage was due, in part, to the stress and anxiety of living in Romania. The affidavits also state that the applicant's wife needs to follow a fertility treatment program in the U.S. In addition, the affidavits state it is difficult to live and find work in Romania, that the applicant is the sole provider and that the couple is experiencing financial hardship.

In addition to the affidavits discussed above, the record contains a March 2007, medical letter reflecting the applicant's wife was diagnosed with Infertility and Anxiety with panic attacks. The record also contains an April 2008 psychological evaluation which states that the applicant's wife shows severe symptoms of depression and panic attacks, and that her symptoms would improve if she could live with her husband in the U.S. A second, March 2007, psychological report, submitted with a previously filed Form I-601, indicates the applicant's wife could experience anxiety and stress if she relocated to Romania to be with her husband, or if she remained in the U.S.

The record contains a copy of a student ID reflecting the applicant's wife was a student in the U.S. at DePaul University. In addition, the record contains a letter from the Reverend of the applicant's parent-in-law's church asking that he be allowed to return to the U.S. as well as copies of phone bills reflecting numerous calls made by the applicant's wife to Romania in early 2006.

Upon review, the AAO finds the evidence in the record fails to show that the hardships faced by the applicant's wife, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

The psychological evaluations contained in the record indicate that the applicant's wife suffers from symptoms of depression and anxiety with panic attacks due to the applicant's inability to live with her in the U.S. It is noted, however, that the evaluators take into account only information gathered from the applicant's wife's own discussion of her situation. No reference is made to documentary or other evidence reviewed in assessing the applicant's wife's condition. There is also no indication that independent diagnostic testing was conducted and the evaluations contain no actual diagnosis for the applicant's wife. Although the input of a mental health professional is respected and valuable, the record fails to reflect an ongoing patient-doctor relationship between the evaluators and the applicant's spouse, or any history of treatment for the symptoms experienced by the applicant's spouse. Because the conclusions reached in the evaluations do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, their value to a determination of extreme hardship is diminished.

In addition, the medical information contained in the record fails to establish that the applicant's wife suffers from a medical condition that would cause her to suffer extreme physical hardship if the applicant were not near her. The record also lacks evidence to establish that the applicant's wife would be unable to obtain fertility or other medical treatment in Romania.

The student ID contained in the record is undated, and does not establish when the applicant's wife was a student at DePaul University, or that she has only one year remaining to complete her undergraduate degree at the university. Furthermore, the record contains no evidence to demonstrate the applicant's financial situation, to corroborate the assertion that the applicant wife is experiencing financial hardship in Romania, or to demonstrate that she would experience financial hardship if she returned to the U.S. It is additionally noted that the applicant's wife is originally from Romania and that she lived there until 2000, when she was seventeen years old. She is thus familiar with the language and culture of the country, and the record contains no evidence to corroborate the assertion that she would be unable to find work in Romania.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or relocation nearly always

results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship" Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(h) of the Act, be above and beyond the normal, expected hardship involved in such cases. In the present matter, the applicant has established only that his wife would experience the type of emotional and financial hardship commonly associated with removal or inadmissibility, if the applicant is denied admission into the United States.

Upon review of the totality of the evidence, the AAO finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under sections 212(h) and 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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.