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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 0 3 2013 OFFICE: SAN SALVADOR File:

IN RE: Applicant:

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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of El Salvador who 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)(i)(I), for having been convicted of a crime involving moral turpitude, and 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 present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h) and 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse and children.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director,* dated September 27, 2011. The field office director further found that a favorable exercise of discretion is not warranted as the negative factors in the applicant's case outweigh the positive. *Id.*

On appeal the applicant asserts that an incorrect assumption was made that he has been convicted of a crime involving moral turpitude, insufficient attention was paid to evidence of his rehabilitation, and his family would suffer extreme emotional and financial hardship if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion*, received November 9, 2011.

The record contains, but is not limited to: Form I-290B and the applicant's statement thereon; an appeal brief; various immigration applications and petitions; hardship letters from the applicant's spouse; a letter from a priest; a letter from the applicant's mother and related documents concerning the death of the applicant's cousin; medical-related letters and records; school-related records for the applicant's children; financial and bankruptcy-related records; documents related to the applicant's removal proceedings and removal; and documents concerning the applicant's criminal record. The record also contains a number of Spanish-language documents which are not accompanied by full, certified English translations as required under 8 C.F.R. § 103.2(b)(3).[1] Because the required translations were not submitted for these documents, the AAO will not consider them in this proceeding. The entire record, with the exception of the Spanish-language documents that were not accompanied by full, certified English translations, was reviewed and considered in rendering this decision on the appeal.

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

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[1] 8 C.F.R. § 103.2(b)(3). Translations. Any document containing foreign language submitted to United States Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

(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.)

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. 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." 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. 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.

The record shows that the applicant was convicted in California on numerous occasions between June 2000 and March 2006 and committed multiple probation violations related thereto. The applicant was convicted on June 5, 2000 for Driving a Vehicle with a Blood Alcohol Content of More Than .08%, in violation of VC§ 23152(B); and No Proof of Car Insurance, in violation of VC§ 16028(A). He was sentenced to a total of 36 months of probation, 48 hours incarceration in county jail, monetary fines, costs and restitution totaling $1,308.28, and ordered to complete a 3-month licensed first-offender alcohol education and counseling program. For his conduct on or about July 21, 2000, the applicant was found to be in violation of his probation for which an additional 46 days incarceration in county jail and 45 days of CALTRANS service was imposed. He was convicted on October 27, 2000 for Driving with a Suspended-Revoked License, in violation of VC§ 14601.5(A) and sentenced to 36 months of probation and fines, costs and restitution totaling $1,054.00.

The applicant was convicted on August 16, 2004 for Under the Influence of Alcohol/Drug in a Vehicle, in violation of VC§ 23152(A) and sentenced to 36 months of probation, 10 days in county jail, a 12-month suspension of his driving privilege, and monetary fines, costs and restitution totaling $510.00, for his conduct on or about August 14, 2004. He was convicted on November 8, 2004 of (1) Under the Influence of Alcohol/Drug in a Vehicle, in violation of VC§ 23152(A); (2) Driving a Vehicle with a Blood Alcohol Content of More Than .08%, in violation of VC§ 23152(B); and (3) Driving with a Suspended-Revoked License, in violation of VC§

14601.5(A), for his conduct on October 16, 2004. The Court found that not only had the applicant violated his probation, but he had prior convictions on all counts. For violating probation, he was sentenced to an additional 120 days incarceration in county jail. For his November 2004 convictions, the applicant was sentenced on count one to 60 months of probation, 120 days incarceration in county jail, and a $500 fine. For count two he was sentenced to 60 months of probation, 150 days incarceration in county jail, and a $500 fine. The applicant was declared a habitual traffic offender for a period of three years and ordered to install an ignition interlock device. He chose an additional 30 days incarceration in lieu of completing an alcohol program. For count three the applicant was sentenced to 36 months of probation, 20 days incarceration in county jail, and a $500 fine. The Court noted that all sentences were to run consecutively.

For his conduct on or about September 17, 2005, while on probation for DUI and while his license was suspended for prior DUI convictions, the applicant was found to have again violated his probation and was convicted for Felony Driving Under the Influence .08% Blood Alcohol with Bodily Injury, in violation of VC§ 23153(B). On May 31, 2006 the Court denied the applicant's request for probation, and sentenced him to two years imprisonment in State Prison, the revocation of his driving privilege for five years, fines, costs and fees in the amount of $1,362.00 and ordered him to pay restitution to his victim in the amount of $47,319.32.

The AAO finds unpersuasive the applicant's assertion that an "incorrect assumption" was made in determining that he was convicted of a crime involving moral turpitude. While a "simple DUI" conviction does not ordinarily constitute a crime involving moral turpitude (CIMT) rendering one inadmissible under section 212(a)(2)(A)(i) of the Act, there are instances where a DUI conviction is indeed a CIMT. For example under Arizona statutes § 28-697(A)(1) and § 28-1383(A)(1), a person may be found guilty of aggravated DUI by committing a DUI offense while knowingly driving on a suspended, cancelled or revoked license or by committing a DUI offense while on a restricted license due to a prior DUI. *See In Re. Lopez-Meza*, 22 I&N Dec. 1188 (BIA Dec. 21, 1999). The Board of Immigration Appeals (BIA) held that a person who drives under the influence while knowing that he is prohibited from driving commits a crime "so base and so contrary to the currently accepted duties that persons owe to one another and to society in general" that it is a crime involving moral turpitude. *See Id.* In *Marmolejo Campos v. Gonzales*, 503 F.3d 922 (9th Cir. 2007), the Ninth Circuit Court of Appeals held that: "Driving while intoxicated is despicable, and when coupled with the knowledge that one has been specifically forbidden to drive, it becomes 'an act of baseness, violence or depravity in the private and social duties which a [person] shows to [a] fellowman or to society in general, contrary to the accepted and customary rule of right and duty'. *Jordan v. De George*, 341 U.S. 223, 235 n. 7, 71 S.Ct. 703, 95 L.Ed. 886 (1951) (citing Bouvier's Law Dictionary, Rawles Third Revision, p. 2247). The crime reflects a willful disregard for the law and a reckless indifference to the safety of others." The Court added: "Driving drunk with knowledge that one does not have a valid license to drive is one "innately reprehensible act" (*United States v. Barner*, 195 F.Supp. 103, 108 (N.D.Cal.1961)) involving two criminal offenses perpetrated at the same time with one willful and recklessly indifferent mental state. *See Matter of Medina*, 15 I. & N. Dec. 611, 613 (BIA 1976) (holding that criminally reckless conduct can constitute a crime of moral turpitude). One who commits the crime creates a substantial risk of harm or death to others, thereby breaching accepted rules of morality and duties owed to society. *Knapik v. Ashcroft*, 384 F.3d 84, 90 (3d Cir. 2004) (reckless conduct

endangering the safety of others can be a crime of moral turpitude); *Reitz v. Mealey*, 314 U.S. 33, 36, 62 S.Ct. 24, 86 L.Ed. 21 (1941) (noting the dangers posed by negligent drivers and the necessity of licensing laws as "a form of protection against damage to the public"), overruled on other grounds by *Perez v. Campbell*, 402 U.S. 637, 652, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971)." *cf. Silva-Trevino*, 24 I. & N. Dec. at 706 & n.5 (noting that a scienter element is a hallmark of a crime involving moral turpitude); *Danesh*, 19 I & N. Dec. at 673 (explaining that knowing violation of the law "exhibits a deliberate disregard for the law, which we consider to be a violation of the accepted rules of morality and the duties owed to society").

In the present case, while still on probation for his first DUI conviction in 2000, the applicant was convicted of Driving with a Suspended-Revoked License. While still on probation for his second DUI conviction in 2004, the applicant was convicted of yet another DUI as well as Driving a Vehicle with a Blood Alcohol Content of More Than .08%, and Driving with a Suspended-Revoked License. In 2006, while still on probation for both his second and third DUI convictions, the applicant was convicted of Felony DUI .08% Blood Alcohol with Bodily Injury. The Court refused to extend any further term of probation and instead sentenced the applicant as a habitual offender and felon to two years imprisonment in State Prison, other penalties and fees, and ordered him to pay restitution to his victim in the amount of $47,319.32.

At the time of the applicant's felony conviction, California VC§ 23153, Driving Under Influence of Alcohol or Drugs Causing Injury, stated in pertinent part:

> (b) It is unlawful for any person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver.
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> (c) In proving the person neglected any duty imposed by law in driving the vehicle, it is not necessary to prove that any specific section of this code was violated.

The record of conviction shows that in conjunction with each DUI conviction the applicant acknowledged to the court that he understands and accepts all probation conditions and agrees to abide by the same. These included, but were not limited to: (1) obey all laws and orders of the court; (2) not operate a motor vehicle with any measurable amount of alcohol in blood system; and (3) not drive without a valid driver's license in possession and insurance prescribed by law. The AAO finds that the applicant's conviction for Felony DUI, Causing Injury, in violation of CA VC § 23153(b), while still on probation for two other DUI convictions and while his driving privilege was suspended/revoked, reflects his willful disregard for the law and a reckless indifference to the safety of others through which he created a substantial risk of harm or death to others, thereby breaching accepted rules of morality and duties owed to society. The applicant repeatedly demonstrated disregard for each of these conditions and the laws of California and the safety of others. It is noted that a conviction under CA VC § 23153(b) is not a simple DUI, which is addressed by CA VC § 23152(a). The AAO finds that the applicant's conduct endangering the safety of others constitutes a crime involving moral turpitude, and that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. He requires a waiver under section 212(h) of the Act.

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

> (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 –
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> . . . .
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> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
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> (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,
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> (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.

Despite the applicant's contention that insufficient attention was paid to evidence of his rehabilitation, he does not meet the rehabilitation requirement of section 212(h)(1)(A)(i) of the Act because his conduct that led to inadmissibility under section 212(a)(2)(A)(i)(I) of the Act took place in September 2005, less than 15 years ago.

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

> (B) ALIENS UNLAWFULLY PRESENT.-
>
> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who- …

> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record reflects that the applicant entered the United States without inspection in or about 1999 and remained until he was removed in 2007 pursuant to an immigration judge's order. The applicant accrued unlawful presence his entire time in the United States, a period in excess of one year. As the applicant is seeking admission within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 and his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative. . If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang,* 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 568; *Matter of Pilch,* 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige,* 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai,* 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of*

Kim, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence 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's spouse is a 40-year-old native of El Salvador and citizen of the United States who has been married to the applicant since June 1999. The couple has two U.S. citizen children, 11-year-old and 9-year-old The applicant's spouse writes that in the applicant's absence she has begun an emotional and physical downward spiral. She states that since they met they had never before been separated. The AAO notes that prior to the applicant's removal he was incarcerated in state prison for more than one year and was earlier incarcerated in county jail for various durations on multiple occasions. The applicant's spouse explains that she has been diagnosed with hypertension, depression and anxiety disorder, all for which she has been prescribed strong medications. She indicates that she experiences high levels of stress and anxiety for which she undergoes therapy, and suffers headaches, back pains and insomnia which lead to depression and impede her from carrying out her functions as single parent, head of household, and employee. M.D. writes that the applicant's spouse has been a patient at his medical clinic since June 2007 and has been treated for major depression, anxiety and hypertension. He does not indicate whether she has been treated for all three conditions all along, but notes that since separating from the applicant her depression and anxiety have worsened, she is taking medications and has been referred for psychological counseling. No further details are provided. Psy.D. MFT writes on November 22, 2010 that the applicant's spouse's first session to "process her Adjustment Disorder" was on November 6, 2010 and she has

been seen "regularly once per week" since. Dr. indicates that the applicant's spouse's symptoms include significant impairment in social or academic functioning making some days difficult to go to work and provide for her children. He does not provide examples. A current or more recent letter from Dr. has not been submitted on appeal, nor has documentary evidence that the applicant's spouse continued therapy beyond November 2010 or demonstrating her current prognosis and treatment. The AAO recognizes that the applicant and his spouse have been married for more than 13 years and separated the last five. And while the AAO acknowledges the emotional and physical difficulties experienced by the latter, the evidence does not establish that the challenges described rise beyond those normally associated with separation due to a loved one's inadmissibility or removal.

The applicant's spouse maintains that her two children have also been emotionally affected by the applicant's absence and have only been able to see him twice in a five-year period. She states that her children are very sad and anxious, suffer from poor social skills, and their school development has been significantly affected. The latter is not corroborated by reports submitted for the record which show that both children are doing very well in school. Moreover, while has been diagnosed with a brain cyst, M.D. relays that the applicant's spouse told him is happy, active, and alert, is not having seizures, school is going fine and he is playing sports. Dr. further indicates that s medical condition is very stable. Dr. writes in November 2010 that and are experiencing sporadic symptoms of adjustment disorder. As discussed above, hardship to the applicant's children can be considered only insofar as it results in hardship to the applicant's qualifying relative – here the applicant's spouse. While the AAO recognizes the challenges inherent in children being raised in the absence of one parent, the evidence is insufficient to demonstrate that challenges to the applicant's children constitute extreme hardship to the applicant's spouse.

The applicant's spouse states that she will suffer greatly from losing the applicant's financial support. As noted by the field office director, the only evidence in the record showing that the applicant ever contributed financially to his family's household is a letter from of indicating that he worked "for and with" her from January 7 to July 15, 2005, a period of six months. The record shows that the applicant's spouse filed a Chapter 7 bankruptcy petition in September 2008, but there is no documentary evidence indicating that her indebtedness was a result of losing the applicant's financial support. 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)). Rather, as also noted by the field office director, prior to the applicant's removal he had spent well over a year incarcerated in state prison as a result of a felony DUI with bodily injury conviction, a sentence which also included court-ordered restitution to his victim in the amount of $47,319.32. While it is clear from the applicant's spouse's kind letters that she loves the applicant and wishes to be reunited with him in the United States, it is equally clear that his numerous convictions over a period of approximately six years and which brought with them multiple incarcerations of various periods and substantial fines, fees and costs, added to the family's economic difficulties. The AAO acknowledges that the applicant's spouse has experienced economic difficulties in the applicant's absence. However, the evidence in the record is insufficient to demonstrate that the she is unable to support herself and

her children in the applicant's absence, that her economic difficulties would be alleviated by his presence in the United States, or that these difficulties are distinguished from those ordinarily associated with the inadmissibility of a loved one.

The applicant contends in his brief that his spouse is extremely afraid for his life since one of his closest cousins was murdered in El Salvador and the applicant could also become a victim of a violent crime. The record contains no such assertion by the applicant's spouse. The applicant's mother writes that her nephew was killed and she fears the same will fate will befall her son. A forensic autopsy indicates that died as a result of gunshot wounds. No explanation has been provided or nexus articulated as to why the applicant risks a death similar to his cousin. A generalized fear attributed to the applicant's spouse that the applicant could become a victim of a violent crime is insufficient, even when considered in the aggregate with the factors above, to establish extreme hardship to the applicant's spouse.

The AAO acknowledges that separation from the applicant has and will likely continue to cause various difficulties for the applicant's spouse. The difficulties described, however, do not take the present case beyond those hardships ordinarily associated with removal of a family member, and the evidence in the record is insufficient to demonstrate that the challenges to the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that she and her children are prevented from living in El Salvador by "health, employment and educational opportunities, economic solvencies, and familial ties." She does not further elaborate or describe these concerns and the record contains no documentary evidence addressing country conditions of any kind in El Salvador. No other assertions of relocation-related hardship to the applicant's spouse have been made.

The AAO has considered cumulatively these assertions of relocation-related hardship to the applicant's spouse. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to El Salvador.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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. While the AAO commends the applicant for his efforts to address his alcohol addiction and previous alcohol-related conduct, without showing extreme hardship to a qualifying relative he is ineligible for a waiver under section 212(h) of the Act. Therefore, despite the applicant's protestations, evidence of his rehabilitative efforts will not be discussed.

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