(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

Date: JUN 0 4 2013 Office: NEW DELHI FILE: [redacted]

IN RE: Applicant: [redacted]

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

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 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 with the field office or service center that originally decided your case by filing a Form I-190B, 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 a 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, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the husband of a U.S. citizen. The applicant was further found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered removed under any provision of law and seeking admission within 10 years of the date of his departure or removal. On March 12, 2012, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) and Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212). The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. §§ 1182(h), in order to reside in the United States with his qualifying relative spouse and daughter.

In a decision dated July 31, 2012, the field office director denied the Form I-601 application for a waiver, finding the applicant statutorily ineligible for a Form I-601 waiver as an aggravated felon. The field office director further found that the applicant's two criminal convictions showed a disregard for the laws of the United States and denied the waiver application in the exercise of discretion.

On appeal, the applicant asserts that the field office director erred in finding him statutorily ineligible for a waiver, and states that his stalking conviction, for which he was sentenced to 360 days in jail, does not fall within the aggravated felony definition in section 101(a)(43)(F) of the Act. The applicant contends on appeal that the evidence outlining medical, financial, psychological, and emotional difficulties demonstrates extreme hardship to the applicant's qualifying relatives.

The record includes, but is not limited to: the applicant's statement on appeal; copies of income tax returns; medical documentation; a marriage certificate; hardship letters by the applicant's wife; a psychological evaluation; documentation regarding the applicant's administrative removal proceeding; copies of birth certificates; financial documentation; family photos; and documentation concerning the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, in pertinent part:

> (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, or

The Board of Immigration Appeals (Board) 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 on February 21, 2007, the applicant was convicted in the Prince William County District Court, Virginia, of stalking in violation of section 18.2-60.3 of the Virginia Code. The applicant was sentenced to 360 days in jail, with 330 days suspended, and was placed on probation for two years. The field office director found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude.

Virginia Code § 18.2-60.3 provides, in pertinent part, that:

> Any person, except a law-enforcement officer, as defined in § 9.1-101, and acting in the performance of his official duties, and a registered private investigator, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and acting in the course of his legitimate business, who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor.

The AAO is unaware of any published federal or administrative cases addressing whether the crime of stalking under Virginia law is a crime involving moral turpitude. However, stalking under Mich. Comp. Laws Ann. § 750.411i(2)(c) was held to involve moral turpitude in *Matter of Ajami*, 22 I&N Dec. 949, 952 (BIA 1999). That statute provided that an individual is guilty of stalking if the course of conduct includes the making of one or more "credible threats" against the victim, a member of the victim's family, or another individual living in the victim's household. A "credible threat" was defined as a threat to kill an individual or a threat to inflict physical injury upon another individual that is made in any manner that causes the individual hearing the threat to reasonably fear for his safety. Mich. Comp. Laws Ann. § 750.411i(1)(b). The Board found that "the intentional transmission of threats is evidence of a vicious motive or a corrupt mind." *Id.*

Virginia Code § 18.2-60.3 is similar to the statute under which the alien was convicted in *Matter of Ajami*. Both statutes require that a violator embark on a course of conduct as opposed to one act and both statutes have a *mens rea* of intentional conduct. Virginia courts have found that to convict under the statute, there must be proof of the defendant's intent or knowledge to cause fear. *See Bowen v. Comm.*, 499 S.E.2d 20 (Va. Ct. App. 1998). Additionally, both statutes require threatening behavior. In view of the holding in *Ajami* that stalking under Mich. Comp. Laws Ann. § 750.411i(2)(c) involves moral turpitude, the AAO finds the applicant's stalking offense under Virginia Code § 18.2-60.3 involves moral turpitude. Consequently, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The applicant has other criminal convictions. The record reflects that the applicant was arrested on June 13, 2007, and charged with the offense of stalking in violation of section 18.2-60.3. Pursuant to a plea agreement, the prosecutor moved to amend the criminal warrant from stalking, to simple assault without force, a misdemeanor in violation of section 18.2-57 of the Virginia Code. On May 18, 2009, the applicant pled guilty to the assault charge and was sentenced to 360 days in jail,

suspended, and was ordered to keep the peace and be of good behavior for a period of three years. The field office director found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude.

Virginia Code § 18.2-57 provides that:

> Any person who shall commit a simple assault or assault and battery shall be guilty of a Class 1 misdemeanor.

Crimes of assault and battery may or may not involve moral turpitude; an assessment of both the mental state and level of harm to complete the offense is required. *See, e.g., Matter of Solon*, 24 I&N Dec. 239 (BIA 2007). Intentional conduct resulting in a meaningful level of harm may be found to be morally turpitudinous, and aggravating factors are to be taken into consideration. *See id.* at 242. However, "[o]ffenses characterized as 'simple assaults' are generally not considered to be crimes involving moral turpitude . . . because they require general intent only and may be committed without the evil intent, depraved or vicious motive, or corrupt mind associated with moral turpitude." *Id.* at 241 (internal citations omitted); *see also Perez-Contreras*, 20 I&N Dec. at 617-18 (holding that Washington conviction for assault in the third degree is not a crime involving moral turpitude where statute required no intent nor any conscious disregard of a substantial and unjustifiable risk); *Matter of Fualaau,* 21 I&N Dec. 475, 478 (BIA 1996) (en banc) (holding that Hawaiian conviction for assault in the third degree was not a crime involving moral turpitude where the offense is similar to simple assault).

The Board has held that a conviction for assault and battery against a family or household member in violation of section 18.2-57.2 of the Virginia Code is not categorically a crime involving moral turpitude. *See Matter of Sejas*, 24 I&N Dec. 236 (BIA 2007). The Board found:

> A conviction for assault and battery in Virginia does not require the actual infliction of physical injury and may include any touching, however slight. *See Adams v. Commonwealth,* 534 S.E.2d 347, 351 (Va. App. 2000) (In Virginia, it is abundantly clear that a perpetrator need not inflict a physical injury to commit a battery.). While the Virginia law of assault and battery requires an intent or imputed intent to cause injury, the intended injury may be to the feelings or mind, as well as to the corporeal person. *Wood v. Commonwealth*, 140 S.E. 114, 115 (Va. 1927) (quoting 2 Am. & Eng. Ency. L. 953, 955); *see also Lynch v. Commonwealth,* 109 S.E. 427 (Va. 1921). Although some decisions have referred to an intent to do bodily harm, that term has been broadly construed to include offensive touching. *See, e.g., Gilbert v. Commonwealth*, 608 S.E.2d 509, 511 (Va. App. 2005) (stating that the requisite harm under the Virginia assault and battery statutes can include the slightest touching … in a rude, insolent, or angry manner (quoting Crosswhite v. Barnes, 124 S.E. 242, 244 (Va. 1924)).

Id. at 238 (internal quotation marks omitted).

Here, the applicant was convicted of misdemeanor assault without force under Virginia law, which does not require the actual infliction of physical injury. *Id.* The applicant was not convicted of assault with aggravating circumstances, such as assault with intent to maim, under Va. Code Ann. § 18.2-51, or assault and battery against a law enforcement officer under Va. Code Ann. § 18.2-57.1. Like the Board in *Matter of Fualaau,* the AAO concludes that the applicant's offense is "fundamentally different from those that have been determined to involve moral turpitude" because the statute does not require "the death of another person, the use of a deadly weapon, or any other aggravating circumstance." 21 I&N Dec. at 478 (internal quotation marks and citations omitted); *cf. Yousefi v. INS*, 260 F.3d 318, 326 (4th Cir. 2001) (per curiam) (stating that District of Columbia conviction for assault with a dangerous weapon is a crime involving moral turpitude); *Matter of Solon*, 24 I&N Dec. at 243 (holding that New York offense of assault in the third degree, which requires both specific intent and physical injury, is a crime involving moral turpitude). Accordingly, the AAO finds that the applicant's conviction for misdemeanor assault and battery is not a crime involving moral turpitude.

However, the applicant remains inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his February 21, 2007 stalking conviction, a crime involving moral turpitude. A discretionary waiver of this criminal ground of inadmissibility is available under section 212(h) of the Act, 8 U.S.C. § 1182(h) if:

> (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that--
>
> . . . .
>
> (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 . . . .
>
> . . . .
>
> No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

The field office director found the applicant ineligible for a section 212(h) waiver based upon his June 13, 2007 arrest for stalking, a Virginia class 1 misdemeanor which carries an authorized punishment of confinement in jail for not more than 12 months. Va. Code. Ann. § 18.2-11. The director found that the applicant's stalking charge amounted to an aggravated felony crime of violence under section 101(a)(43)(F) of the Act, given that she understood that the applicant was

sentenced to 12 months in prison with a 10 months suspension of sentence. However, the judicial record of conviction reflects that the charge was amended to a simple assault, and that the applicant pled guilty to assault in violation of Virginia Code § 18.2-57, not the original stalking charge. For this assault offense, the applicant received a suspended sentence of 360 days in jail.

Section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F), includes as an aggravated felony, "a crime of violence (as defined in section 16 of title 18, but not including a purely political offense), for which the term of imprisonment [is] at least one year." In *Matter of Song*, the Board found that where a criminal court imposes a definite sentence of less than one year of confinement, the alien does not have a conviction for an aggravated felony within the meaning of the statutory provisions of section 101(a)(43) of the Act requiring a term of imprisonment of at least one year. 23 I&N Dec. 173, 174 (BIA 2001). In *Song*, the alien who had been ordered removed as an aggravated felon returned to state court and successfully moved to vacate his sentence. *Matter of Song,* 23 I&N Dec. at 173-74. The state court subsequently entered a revised sentence of 360 days imprisonment, which was suspended. *Id.* at 174. The Board found that since the evidence submitted on appeal demonstrated a modified sentence of less than one year of imprisonment, the offense did not fall within the definition of "aggravated felony" in section 101(a)(43)(G) of the Act. *Id.*

In this case, as in *Matter of Song*, the applicant received a sentence of 360 days in jail, which was later suspended. As such, the AAO finds that the applicant's assault conviction, predicated upon his June 13, 2007 arrest, does not fall within the definition of aggravated felony under section 101(a)(43)(G) of the Act. Accordingly, the applicant remains eligible for consideration for a section 212(h) discretionary waiver.

The AAO begins its analysis by noting that a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the applicant asserts that denial of his admission will impose extreme hardship upon his U.S. citizen wife and daughter. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an 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 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 AAO now turns to the issue of whether the applicant has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

The hardship factors asserted in the instant case are family separation, medical difficulties, and financial hardship. With regard to the applicant's daughter and wife joining the applicant to live in India, the applicant's wife asserts that she will be unable to complete her education and find employment in that country, and states that both may face safety concerns there. However, the AAO finds that no documentary evidence was submitted to corroborate those assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of

proof in these proceedings. *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 applicant's wife indicates that their daughter has been diagnosed with a condition known as "failure to thrive." Medical documentation in the record from the KidsHealth Newsletter indicates that failure to thrive is defined as the failure "to meet expected standards of growth and are unable to take in, retain, or utilize the calories needed to gain weight and grow as expected." Documentary evidence in the record further establishes that the applicant's daughter was hospitalized for four days in 2012 for further tests and observation on her weight gain. Here, the AAO recognizes the concern that this medical diagnosis may cause, especially in the case of a young child. However, the current documentation submitted as part of the record is not sufficient to establish that the applicant's daughter will experience extreme hardship should they relocate to India. The record does not include documentary evidence on country conditions demonstrating that the applicant's daughter could not obtain treatment for her medical conditions abroad, that the applicant's wife would be unable to cover medical expenses abroad, that the availability of healthcare in the area where they would relocate is lacking, or that she would be unable to find a medical doctor who could communicate with her in the English language. That is, no evidence was provided to illustrate that the applicant's daughter could not obtain the care she needs in that country. Similarly, the record is insufficient to establish that the applicant's child's condition rises to a level where taking her away from her doctors in the United States would be detrimental to her health.

In statements received by the AAO on May 13, 2013, both the applicant and his wife assert that their daughter has been recently diagnosed with a seventy-five percent chance of having chronic leukemia, a slowly developing blood cancer. In support, the applicant submitted an online article about leukemia and its causes, symptoms, and treatments. The applicant also submitted a copy of what appears to be the results of their daughter's complete blood count (CBC) test administered on April 13, 2013. The applicant has highlighted certain sections of the test results; however, the AAO is unable to conclude from the documentation provided that the applicant's daughter has been diagnosed with leukemia. The CBC results submitted by the applicant reference no such condition, and we are unable to interpret the technical language contained in the CBC results report. Further, even though the applicant's wife states that [redacted] interpreted the results to mean that their daughter has been diagnosed with leukemia, the record contains no letters or statements from the attending physicians corroborating the applicant's wife's assertions. The AAO acknowledges the concern that such a diagnosis may cause to the applicant and his wife. However, from the record of proceedings as presently constituted, the AAO cannot conclude that the applicant's daughter has been diagnosed with leukemia.

The applicant's wife further states that she has lived her entire life in the United States, that all of her immediate relatives reside in the United States and that they have always had constant interactions with one another. She indicates that she shares a deep bond and dedication towards her family and that she will experience extreme hardship if this bond is taken away from her. The applicant's wife further asserts that it is her desire to have her family play a role in her daughter's life and upbringing. The AAO acknowledges that the applicant's spouse would experience emotional difficulties as a result of separation from her family, but finds that the evidence does not demonstrate that this hardship is extreme. The record evidence as presently constituted indicates that the applicant's

qualifying relative faces no greater hardship than the unfortunate but common difficulties arising whenever a spouse is denied admission. The Board has long held that the common or typical results of inadmissibility do not constitute extreme hardship, and has listed separation from family members and emotional difficulties as factors considered common rather than extreme. *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). U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991).

With regards to extreme hardship from separation from the applicant, the applicant's wife asserts that she needs her husband for guidance in raising their daughter, that being separated from the applicant has caused a strain on her physical and psychological state, and that she cannot function without the applicant. She states that the thought of being away from her husband for a prolonged period of time scares her, and that she is unable to live a normal life without him. However, like the Board in *Cervantes-Gonzalez*, the AAO notes that the record evidence shows the applicant's wife knew of her husband's removal from the United States at the time they were married. 22 I&N Dec. at 566-67. The Board has stated that this factor goes to the applicant's wife's expectations at the time they were wed. *Id.* As such, the applicant's wife was aware that she may have to face the decision of parting from the applicant or following him to India. In the former scenario, the applicant's wife was also aware that a return to the United States would separate her from the applicant, who was removed to India in June 2009. Like the Board in *Cervantes-Gonzalez*, the AAO finds this to undermine the assertion that the applicant's wife will experience extreme hardship in the event of separation and relocation. *See id.* at 567; *see also Shooshtary v. INS*, 39 F.3d 1049, 1051 (9th Cir. 1994) (holding that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported); *Silverman v. Rogers*, 437 F.2d 102, 107 (1st Cir. 1970) ("Even assuming that the federal government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States").

The applicant's wife indicates that she needs the applicant in the United States to help her financially and support their family. However, there is insufficient evidence in the record to substantiate these assertions, or to show that without this financial support, the applicant's wife and daughter are experiencing extreme financial hardship. The applicant's wife has indicated that she works part-time as an administrative assistant earning $10.00 an hour. Yet, the documentary evidence in the record does not demonstrate the inadequacy of her earnings in providing for her household. Moreover, the record evidence does not demonstrate that the applicant is unable to contribute to the applicant's wife's household through employment abroad.

The documentation in the record therefore fails to establish the existence of extreme hardship to the applicant's wife and daughter caused by the applicant's inadmissibility to the United States. 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 proceedings for an application for waiver of grounds of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.