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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: BUFFALO Date: APR 07 2010

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Shumway

Perry Rhew,
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse and child.[1]

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on his qualifying relatives, his U.S. citizen spouse and child, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant is supporting a U.S. citizen spouse and child who are residing in the United States. Counsel states that neither the applicant's U.S. citizen spouse nor child has family ties outside the United States. Counsel cites to the U.S. Department of State's report on human rights practices in Ecuador and consular information sheet for Ecuador. Counsel states that the country report indicates that there is violence and discrimination against women in Ecuador. Counsel states that the country report also indicates that there are killings, torture and other abuses in Ecuador that could cause hardship to the applicant's spouse and child. Counsel states that the applicant's spouse and child would have to choose between living in an urban area where they would be the target of violent crime and living in a rural area where they would be unable to receive proper medical attention. Counsel states that should the applicant's spouse and child remain in the United States they would suffer financially because the applicant would be unable to contribute to their support.

The record contains, but is not limited to, copies of the applicant's son's birth certificate, the applicant's marriage certificate, the applicant's spouse's U.S. passport, financial documentation, country condition reports, and letters from the applicant's friends and family members. The entire record was reviewed and considered in rendering this decision on the appeal.

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.

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[1] On appeal, counsel noted that the applicant has a U.S. citizen father. The record contains a copy of a Petition for Alien Relative (Form I-130) the applicant's father filed on his behalf in 1983. However, the record does not contain any evidence of hardship to the applicant's father. Therefore, only hardship to the applicant's spouse and child will be considered in these proceedings.

> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-
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> > (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 the recently decided *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 director found the applicant inadmissible under section 212(a)(2)(A) of the Act for having been convicted of eight crimes involving moral turpitude, which include the following: 1) April 20, 1979, Petit Larceny, in violation of section 155.25 of the New York Penal Law (N.Y. Penal Law § 155.25); 2) July 12, 1979, Attempted Petit Larceny, in violation of N.Y. Penal Law §§ 110, 155.25; 3) January 28, 1984, Petit Larceny in violation of N.Y. Penal Law § 155.25; 4) September 25, 1992, Petit Larceny in violation of N.Y. Penal Law § 155.25; 5) January 18, 1993, Petit Larceny in violation of N.Y. Penal Law § 155.25; 6) January 11, 1996, Petit Larceny in violation of N.Y. Penal Law § 155.25; and 8) April 17, 2006, Criminal Possession of a Weapon in the Fourth Degree: Firearm/Weapon in violation of N.Y. Penal Law § 265.01.

On appeal, counsel states that the applicant is inadmissible to the United States due to six petty larceny convictions, all of which are misdemeanors. Therefore, counsel does not contest the finding that the applicant's convictions for petty larceny are crimes involving moral turpitude.

U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involves moral turpitude. See *Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974)(stating, "It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude . . ."); *Morasch v. INS*, 363 F.2d 30, 31 (9th Cir. 1966)(stating, "Obviously, either petty or grand larceny, i.e., stealing another's property, qualifies [as a crime involving moral turpitude].") A conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973).

N.Y. Penal Law § 155.25 (McKinney 1996) provides, "A person is guilty of petit larceny when he steals property. Petit larceny is a class A misdemeanor." N.Y. Penal Law § 155.05 (McKinney 1996) defines larceny as the intent of a perpetrator "to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof." N.Y. Penal Law § 155.00 (McKinney 1996), states that to deprive another of property means "(a) to withhold it or cause it to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him, or (b) to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property." From these definitions, it cannot be

concluded that petty larceny under N.Y. Penal Law § 155.25 requires the intent to permanently take another person's property. However, the applicant has not presented and the AAO is unaware of any prior case in which a conviction has been obtained under N.Y. Penal Law § 155.25 for conduct not involving moral turpitude. Thus, pursuant to *Matter of Silva-Trevino*, *supra*, the AAO must find that the applicant's convictions under N.Y. Penal Law § 155.25 constitute crimes involving moral turpitude.

Counsel further asserts on appeal that the applicant's conviction for criminal possession of a weapon does not render him inadmissible. The record reflects that the applicant was convicted on April 18, 2006 of criminal possession of a weapon (firearm/knife) in violation of N.Y. Penal Law § 265.01.

N.Y. Penal Law § 265.01 (McKinney 2006) provides, in part:

> A person is guilty of criminal possession of a weapon in the fourth degree when:
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> (1) He possesses any firearm, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type slingshot or slungshot, shirken or "Kung Fu star"; or
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> (2) He possesses any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another; or
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> (3) He knowingly has in his possession a rifle, shotgun or firearm in or upon a building or grounds, used for educational purposes, of any school, college or university, except the forestry lands, wherever located, owned and maintained by the State University of New York college of environmental science and forestry, without the written authorization of such educational institution; or
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> (4) He possesses a rifle or shotgun and has been convicted of a felony or serious offense; or
>
> (5) He possesses any dangerous or deadly weapon and is not a citizen of the United States; or
>
> (6) He is a person who has been certified not suitable to possess a rifle or shotgun, as defined in subdivision sixteen of section 265.00, and refuses to yield possession of such rifle or shotgun upon the demand of a police officer. Whenever a person is certified not suitable to possess a rifle or shotgun, a member of the police department to which such certification is made, or of the state police, shall forthwith seize any rifle or shotgun possessed by such person. A rifle or shotgun seized as herein provided shall not be destroyed, but shall be delivered to the headquarters of such police department, or state police, and there retained until the aforesaid certificate has been rescinded by the director or physician in charge, or other disposition of such rifle or shotgun has been ordered or authorized by a court of competent jurisdiction.

> (7) He knowingly possesses a bullet containing an explosive substance designed to detonate upon impact.
>
> (8) He possesses any armor piercing ammunition with intent to use the same unlawfully against another.

In *Matter of S-*, the BIA held that carrying a concealed and deadly weapon with intent to use against the person of another is a crime involving moral turpitude because "the use of a dangerous weapon against the person of another is motivated by an evil, base, and vicious intent. The essence of the offense is the carrying of the dangerous weapon with a base, evil and vicious intent to injure another." 8 I&N Dec. 344, 346 (BIA 1959)(citations omitted). Thus, it is not only the possession of a dangerous weapon, but the intent to use the weapon to injure another that renders it a morally turpitudinous offense. N.Y. Penal Law § 265.01 is a divisible statute that can be violated by a possession of a weapon with or without a specific intent to use the weapon.

The AAO is aware of a prior case in which N.Y. Penal Law § 265.01 has been applied to conduct not involving moral turpitude. The New York Court of Appeals in *People v. Persce*, 97 N.E. 877 (N.Y. 1912), addressed the strict liability component of the first paragraph of former Penal Law 1909 § 1897, now N.Y. Penal Law § 265.01(1), in relation to the possession of a slungshot. The Appeals Court stated:

> If we give to the statute under consideration a rational interpretation, it becomes clear that the carrying or possessing of a slungshot even without proof of specific ulterior criminal intent are within the character of acts which the Legislature may thus condemn. Of course, the possession which is meant is a knowing and voluntary one, as the trial judge explicitly charged. Further, the word 'possesses' is to be interpreted somewhat in the light of its association with the other word of the statute, 'carries.' As such, it must mean a possession which places the weapon within the immediate control and reach of the accused, and where it is available for unlawful use if he so desires.

97 N.E. 877, 878.

As such, the AAO cannot find that N.Y. Penal Law § 265.01 is categorically a crime involving moral turpitude. The AAO shall, under the modified categorical approach, review the record of conviction to determine if the applicant's conviction under N.Y. Penal Law § 265.01 was for morally turpitudinous conduct. However, the record of proceedings only contains a disposition from the New York State Unified Court System Criminal History Record Search (CHRS) Program. The applicant failed to submit his record of conviction.[2] Thus, pursuant to *Matter of Silva-Trevino*, *supra*, the AAO must find that the applicant's conviction under N.Y. Penal Law § 265.01 constitutes a crime involving moral turpitude.

Finally, counsel notes in his brief, dated June 20, 2007, that the applicant's last conviction for a crime involving moral turpitude was eleven years ago. However, the record reflects that the

[2] The burden of proof in the present proceedings is on the applicant to establish his admissibility for admission to the United States to the satisfaction of the Secretary of Homeland Security. *See* Section 291 of the Act, 8 U.S.C. § 1361.

applicant was convicted of a recent crime involving moral turpitude that was not cited in the director's decision. The record reflects that on February 17, 2005, the applicant was convicted of trademark counterfeiting in the third degree in violation of N.Y. Penal Law § 165.71.

N.Y. Penal Law § 165.71 (McKinney 2005) provides, in part:

> A person is guilty of trademark counterfeiting in the third degree when, with the intent to deceive or defraud some other person or with the intent to evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods, he or she manufactures, distributes, sells, or offers for sale goods which bear a counterfeit trademark, or possesses a trademark knowing it to be counterfeit for the purpose of affixing it to any goods.

A person may be convicted under N.Y. Penal Law § 165.71 for manifesting either the "intent to deceive or defraud" or the "intent to evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods." Therefore, an individual may be convicted under N.Y. Penal Law § 165.71 without the intent to deceive or defraud the consumer. However, this does not render trademark counterfeiting a victimless crime or lessen the morally turpitudinous nature of the crime as the owner of the trademark remains a victim of the counterfeiting in either scenario. In *Matter of Kochlani*, 24 I&N Dec. 128, 131 (BIA 2007), the BIA determined that trafficking in counterfeit goods is a crime involving moral turpitude because it is "tantamount to commercial forgery" and involves the theft of someone else's property in the form of a trademark.

The BIA noted:

> As Congress made clear . . . 'Trademark counterfeiting ... defrauds purchasers, who pay for brand-name quality and take home only a fake,' but it also exploits mark holders, since 'counterfeiters [can earn] enormous profits ... by capitalizing on the reputations, development costs, and advertising efforts of honest manufacturers at little expense to themselves.'

24 I&N Dec. at 131 (citation omitted).

The Ninth Circuit Court of Appeals in *Tall v. Mukasey*, 517 F.3d 1115 (9th Cir. 2008) determined that an analogous statute, Cal. Penal Code § 350, counterfeit of registered mark, is categorically a crime involving moral turpitude. The Ninth Circuit held:

> Under the categorical approach, § 350(a) is a crime involving moral turpitude because it is an inherently fraudulent crime. Either an innocent purchaser is tricked into buying a fake item; or even if the purchaser knows the item is counterfeit, the owner of the mark has been robbed of its value. The crime is really a species of theft.

517 F.3d at 1119.

The AAO finds that N.Y. Penal Law § 165.71, which penalizes the manufacturing, distributing, selling, or offering for sale goods which bear a counterfeit trademark, or, possessing a trademark knowing it to be counterfeit for the purpose of affixing it to any goods, is similarly an inherently

fraudulent crime involving theft of a trademark. The AAO can therefore conclude that a conviction under N.Y. Penal Law § 165.71 is categorically a crime involving moral turpitude.

In sum, the AAO finds that the applicant's convictions for petit larceny, criminal possession of a weapon and trademark counterfeiting are crimes involving moral turpitude that render him inadmissible under section 212(a)(2)(A)(i)(I) 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 –
>
> . . . .
>
> (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 . . . .

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. Hardship to the applicant himself is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (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. 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 an exclusive list. *See id.*

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that in *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.)

The AAO notes, however, that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Court defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record reflects that the applicant wed [redacted], a U.S. citizen, on November 14, 2005. The record also shows that the applicant has a sixteen-year-old U.S. citizen child, [redacted] The applicant's wife and child are qualifying family members for section 212(h) of the Act extreme hardship purposes.

On appeal, counsel asserts that the applicant has a U.S. citizen spouse and child, whom he is supporting, in the United States. Counsel states that should the applicant's spouse and child decide to remain in the United States, they would be adversely impacted financially because the applicant has no means of earning a living in Ecuador and as a result would be unable to contribute to their support.

Evidence of financial hardship will be considered as a factor contributing to a finding of extreme hardship, but such claims must be demonstrated in the record. The record in the present case fails to show that the applicant's removal from the United States would cause financial detriment to his spouse and child. The record contains an Erie County (New York) Office of Child Support Enforcement Support Obligation Summary dated October 27, 2006, which shows that the applicant's spouse makes a monthly child support payment of $50.00 to his child's mother, [redacted] There is nothing in the record to indicate that [redacted] would be financially unable to raise the applicant's child without this monthly support. The record contains a copy of the applicant's Social Security Statement dated September 26, 2005, which contains his earning history from 1968 until 2003. The statement reflects that in 2000 the applicant earned $5,625.00; in 2001 he had no earnings; in 2002 he earned $1,070; and in 2003 he had no earnings. In contrast, the applicant's spouse's Social Security Statement dated November 21, 2005 reflects that in 2000 she earned $21,062; in 2001 she earned $25,109; in 2002 she earned $19,565; and in 2003 she earned $19,341. There is nothing in the record to show that the applicant's absence from the United States would cause any financial detriment to his spouse, who appears to be the primary wage earner in the household. Therefore, the AAO does not find that the applicant's spouse and child would suffer financial hardship if the applicant's waiver is denied and they remain in the United States separated from him.

The record contains a letter from the applicant's child, [redacted], stating that he needs the applicant to remain in the United States to watch him grow from a young boy to a young man and help

raise him. The record also contains a letter from the applicant's child's mother, [redacted], stating that the applicant is a great father and it would not be in the best interest of her son if the applicant was deported because her son will suffer a great deal.

The AAO acknowledges that the applicant's son will experience emotional hardship if he remains in the United States without his father, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship demonstrated by the record is the common result of removal or inadmissibility and does not rise to the level of extreme hardship. 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). In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

Counsel asserts on appeal that neither the applicant's spouse nor son have family ties outside the United States. Counsel states that the U.S. Department of State's 2006 Country Reports on Human Rights Practices for Ecuador indicates that violence against women is widespread; sexual harassment in the workplace is common; societal discrimination against women is pervasive; and that there were unlawful killings, torture, and other abuses in the country. Counsel states that the latest U.S. Department of State's Consular Information Sheet for Ecuador advises against travel by U.S. citizens to the Northern provinces due to organized crime, drug trafficking, arms trafficking, kidnapping of U.S. citizens, and incursions by Colombian terrorist organizations. Counsel states that the report sets forth that violent and non-violent crime is common in urban Ecuador, and that medical services are limited in smaller communities. Counsel states that the applicant's spouse and child would have to choose between living in an urban area where they would be the target of violent crime and living in a rural area where they would be unable to receive proper medical attention.

The AAO notes that the submitted Child Support Enforcement Support Obligation Summary reflects that the applicant is his son's non-custodial parent while [redacted] is his custodial parent. There is nothing in the record to indicate that the applicant's son would reside with him in Ecuador since he is in the custody of his mother, [redacted] who resides in the United States. Further, the record does not contain a letter from the applicant or his spouse detailing the hardship the applicant's spouse would suffer if she decides to reside with the applicant in Ecuador. Moreover, the country conditions presented by counsel are general in nature and fail to specifically refer to the applicant's situation. There is no indication of where the applicant and his spouse would reside in Ecuador. The current U.S. Department of State travel advisory on Ecuador states that the U.S. Embassy in Quito advises caution when traveling to the northern border region of Ecuador.[3] However, it is not apparent from the record that the applicant and his spouse would by necessity reside in the northern border region. In regard to counsel's assertion that health care is not available in Ecuador, the current travel advisory now states that adequate medical and dental care can be readily obtained in the major cities of Ecuador.[4] Accordingly, the AAO cannot determine that the applicant's spouse would suffer extreme hardship if she relocated to Ecuador.

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[3] U.S. Department of State, Ecuador Country Specific Information, http://travel.state.gov/travel/cis_pa_tw/cis/cis_1106.html, May 14, 2009.

[4] *Id.*

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse and son, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.