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

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: MIAMI, FL Date: DEC 20 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Rhew

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Jamaica 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 spouse of a U.S. citizen and the mother of a U.S. citizen. She 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.

The District Director found that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *District Director's decision*, dated February 19, 2008.

On appeal, counsel states that United States Citizenship and Immigration Services (USCIS) failed to follow precedent decisions regarding the exercise of discretion in the applicant's case and, therefore, erred in denying the applicant's waiver application. *Form I-290B, Notice of Appeal or Motion*, dated March 19, 2008.

In support of the application, the record contains, but is not limited to, statements from the applicant, her spouse, her mother, her sisters, her grandmother and her mother-in-law; tax returns and W-2 forms; utility, credit card and automobile insurance billing statements; lease agreements; bank statements; debt collection notices; a financial affidavit sworn to by the applicant and her spouse; country conditions materials concerning Jamaica; letters of support from friends of the applicant; copies of money transfers; medical documentation relating to the applicant and her spouse; and documentation relating to the applicant's criminal record. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(2)(A) of the Act states, 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 . . . is inadmissible.

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.)

The record reflects that, on March 19, 1999, the applicant pled nolo contendere to one count of battery in violation of section 784.03 of the Florida Statutes (Fl. Stat.). Adjudication of guilt was withheld and the applicant was sentenced to 12 months probation. On March 23, 2005, the applicant pled nolo contendere to grand theft in the third degree, $300-$5,000, pursuant to Fl. Stat. § 812.014(2)(c)(1), with adjudication withheld, and was placed on probation for two years. The applicant's probation was subsequently extended for another year as a result of her violation of the terms of her parole.

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." *Silva-Trevino*, 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the "record of conviction" to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment or information, 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. *Id.* 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. Finally, in all such inquiries, the burden is on the alien to establish "clearly and beyond doubt" that he is "not inadmissible." *Id.* at 709 (citing *Kirong v. Mukasey*, 529 F.3d 800 (8th Cir. 2008)).

At the time of the applicant's conviction, Fl. Stat. § 784.03 provided, in pertinent part:

> (1)(a) The offense of battery occurs when a person:
>
> > 1. Actually and intentionally touches or strikes another person against the will of the other; or
> >
> > 2. Intentionally causes bodily harm to another person.

Under Fl. Stat. § 784.03, a person commits battery when he or she actually or intentionally touches or strikes another individual against the will of that individual, or intentionally causes harm to that individual. As a general rule, simple assault or battery is not deemed to involve moral turpitude for purposes of immigration law, even if the intentional infliction of physical injury is an element of the crime. *Matter of Fualaau,* 21 I&N Dec. 475, 477 (BIA 1996). This general rule does not apply, however, where an assault or battery necessarily involves some aggravating dimension, such as the use of a deadly weapon or the infliction of serious injury on persons whom society views as deserving of special protection, such as children, domestic partners or peace officers. See, e.g., *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988). Based solely on the language of Fl. Stat. § 784.03, it appears that it hypothetically encompasses conduct that involves moral turpitude and conduct that does not. The Florida courts have convicted individuals for battery based on touching or striking, but without resulting bodily harm. *See Hendricks v. State*, 444 So.2d 542, 542-43 (Fla. 1st Dist. App. 1999). Accordingly, the AAO must, pursuant to *Silva-Trevino*, review the entire record, including the record of conviction and, if necessary, other relevant evidence, to determine whether the applicant's conviction under Fl. Stat. § 784.03 bars her admission to the United States.

The record of conviction in the present matter, which includes only the March 19, 1999 disposition issued by the Circuit/County Court, in and for Broward County, Florida, offers no evidence that would establish whether the battery committed by the applicant constitutes a crime involving moral turpitude. Accordingly, the AAO turns to the Complaint Affidavit in the record that provides an account of the events leading up to the applicant's February 21, 1999 arrest for battery. In this affidavit, the arresting officer reports that the battery charge arose from a domestic dispute between the applicant and her spouse, who was then her boyfriend. The officer states that the argument between the couple, who had been living together for a year, resulted in the applicant striking her spouse in the face with her hand. The officer also reports that he observed no injuries to the applicant or her spouse as a result of the confrontation. Based on the information provided by the Complaint Affidavit, the AAO does not find the applicant's violation of Fl. Stat. § 784.03 to be a crime involving moral turpitude as the applicant's battery of her then domestic partner did not result in serious injury.

At the time of the applicant's conviction for grand theft, Fl. Stat. § 812.014 provided, in pertinent part:

> (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
>
> > (a) Deprive the other person of a right to the property or a benefit from the property.
> >
> > (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.
>
> (2) . . . .
>
> > (c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:
> >
> > (1) Valued at $300 or more, but less than $5,000. . . .

Theft under Fl. Stat. § 812.014 is committed when an individual knowingly obtains or uses the property of another with the intent to temporarily or permanently deprive that individual of his or her property or appropriate the property to his or her own use. The Board of Immigration Appeals (BIA) has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another's property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). Accordingly, the AAO also finds that the language of Fl. Stat. § 812.014(1) hypothetically encompasses conduct that involves moral turpitude and that which does not, and will conduct a *Silva-Trevino* analysis of the applicant's conviction.

In the present case, the Information (Indictment) that describes the applicant's theft offenses reflects the temporary or permanent taking language of Fl. Stat. § 812.014(1) and no other documents from the applicant's record of conviction indicate whether the applicant's intent in committing theft was temporary or permanent in nature. The record does, however, contain an Arrest Form, dated October 23, 2004, and a November 11, 2004 follow-up investigation report, which indicate that on October 21, 2004, the applicant found a bank card belonging to another individual and used that card to make purchases that depleted the card owner's checking account of all but $10.00.

In *Matter of Grazley*, the BIA found it reasonable to assume that a conviction for theft involving cash involved a permanent taking. In the present case, the AAO finds the applicant's unauthorized use of another individual's bank card to make purchases to constitute a theft involving cash in that each purchase made by the applicant resulted in the withdrawal of funds from the individual's bank account. Accordingly, the applicant's conviction for grand theft under Fl. Stat. § 812.014 involved a permanent taking and is a conviction for a crime involving moral turpitude, barring her admission to

the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.[1] The applicant does not contest this finding.

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 . . . .

A waiver of inadmissibility under section 212(h) 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, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and child are both qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (BIA) stated in *Matter of Ige*:

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[1] The applicant's single conviction for a crime involving moral turpitude is not subject to the petty offense section found in section 212(a)(2)(A)(ii)(II) of the Act as a conviction under Fl. Stat. § 812.014(3)(c)(1) may carry with it a maximum sentence of five years.

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (BIA 1996)

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

The BIA has also held that the common or typical results of deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the BIA considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO now turns to the question of whether the applicant in the present case has established that her U.S. citizen spouse and/or child would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel states that if the applicant and her spouse relocated to Jamaica, they would be unlikely to obtain employment as they are not skilled trades persons and the Jamaican unemployment rate is 10.2 percent and likely higher in rural areas. In support of these assertions, counsel references the country conditions materials submitted for the record and the statements of the applicant and her family members who live in Jamaica. Counsel also states that the applicant's spouse does not want to move to a country he has never visited and that the applicant's child would lose the opportunity for proper schooling if he relocated. Counsel contends that if the applicant's spouse and child moved to Jamaica, their lives would change for the worse.

In an undated statement submitted on appeal, the applicant asserts that her spouse would have a difficult time learning to adjust to life in a third world country, where he has no family or friends and where he would not be able to live or work legally without a permit. She also states that her spouse would face a three-hour commute to work in Kingston, the city nearest her family's home, and that Kingston has a very high crime rate. The applicant further asserts that her family in Jamaica has nowhere for her and her family to live. She states that if her spouse relocated to Jamaica, he would have to leave his mother who is suffering from cancer and who needs his financial and moral support.

The applicant also contends that her son would experience multiple hardships living in Jamaica. She notes that the nearest school is miles away from her mother's home and that no one in her family owns a car. She also states that the school system in Jamaica is completely different from that in the United States and that her son would have a hard time adjusting. The applicant claims that her son would have difficulty making new friends and that there would be communication issues as he is not fluent in the local dialect. She contends that his health would also be at risk as he would not have access to any health benefits in Jamaica and his premature birth requires him to have regular physicals.

Also included in the record are letters from the applicant's spouse who states that it would be very difficult for him to relocate to Jamaica because of the deplorable living conditions and the lack of running water and electricity in some locations. The applicant's spouse also states that the schools in Jamaica are poorly equipped and 30 to 40 miles away from any of the local parishes. He asserts that the crime rate is very high and that it would be unsafe to raise a young child in Jamaica. The applicant's spouse further states that the cost of living in Jamaica is high and that it would be very difficult to find a place to live and to obtain employment with an income that would support his family. The applicant's spouse notes that his son visited Jamaica in 2006 and did not like it because of the primitive sanitary conditions to which he was exposed. His son, the applicant's spouse reports, returned from Jamaica with ringworm.

Letters from the applicant's mother offer further evidence of the conditions that would be faced by the applicant's spouse and son upon relocation. In these letters, the applicant's mother states that she, the applicant's grandmother and sister all live in a one-bedroom shack, which has no running water or inside bathroom. She also asserts that the unemployment rate in Jamaica is high and that the applicant would not be able to find a job. The applicant's mother further contends that her grandson would not be able to adjust to life in Jamaica and that he was miserable during his only visit to the island. She states that she lives in one of the most volatile communities in Jamaica and

that she is tired of hearing gunshots.

The applicant's mother also states that she depends on the applicant's U.S. income to meet her needs, including the payment of her utility and medical bills, and her food and clothing expenses. She claims that her family would suffer financial hardship if the applicant is returned to Jamaica. Letters from the applicant's grandmother and sister in Jamaica indicate that they also depend on the financial assistance the applicant is able to provide them from the United States. The applicant's grandmother states that she suffers from diabetes, hypertension and arthritis, and that the applicant provides the money for her food and medication. The applicant's grandmother states that she does not know how she would manage without the applicant's financial support. The applicant's sister states that the applicant has always paid for her educational needs and that she will not be able to finish school without the applicant's continued assistance.

In a statement submitted for the record, the applicant's mother-in-law asserts that she has recently been diagnosed with cancer, has had to stop working as a result of her treatment's side effects and has moved in with her son and the applicant. She states that she is unable to care for herself and that all her meals and care are provided by the applicant.

The record contains a copy of the Department of State's *Background Note: Jamaica*, issued in October 2007, which indicates that "high unemployment, burdensome debt, an alarming crime rate, and anemic growth continue to darken the country's [economic] prospects." An online report issued by Amnesty International indicates that among the human rights concerns in Jamaica are sexual violence against women and girls, and the high incidence of violence. The record also provides online information on the Jamaica that demonstrates the unemployment rate in Jamaica is 10.2 percent and that the country is struggling with the problem of crime and violence.

While the AAO acknowledges these country conditions, we also observe that general economic or country conditions in an applicant's native country do not establish extreme hardship in the absence of evidence that the conditions would specifically affect the qualifying relative. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996) (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985)). In the present matter, the AAO does not find the record to establish how the documented conditions in Jamaica would affect the applicant's spouse and son. Neither does it demonstrate that the applicant and his spouse, particularly in light of the job experience they have gained in the United States, would be unable to obtain employment in Jamaica. We also note that the record offers no documentary evidence in support of the applicant's spouse's claim that her spouse, as the husband of a Jamaican citizen, would require permission to live and work in Jamaica or indicating that such permission, if required, could not be readily obtained. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO also finds that the record does not demonstrate that the applicant and her family would be limited to residing at the location where her mother lives, and which the applicant states is three hours away from the nearest city and miles from the nearest school. Further, the record does not

clearly establish the specific location where the applicant's mother resides. The applicant's Form G-325A, Biographic Information, reports her mother as living in St. Ann-St. Mary, both of which are the names of parishes in Jamaica. No evidence addresses the applicant's mother specific location in either of the noted parishes. The record also fails to demonstrate how the Jamaican school system differs from that in the United States, thereby precluding any assessment of what adjustment problems it might pose for the applicant's son. The record further lacks documentation that establishes the applicant's child was born prematurely or continues to require regular medical monitoring as a result.

The AAO notes the applicant's claim that her mother-in-law has been diagnosed with cancer and is dependent on her son for emotional and financial support. However, the record again does not support these claims. While the record contains several medical records relating to the applicant and her spouse, there are no medical reports or statements concerning the health of the applicant's mother-in-law and no objective evidence indicates that either the applicant or her spouse is supporting her mother-in-law or is involved in her care. *Id.* Therefore, the record does not establish that in relocating to Jamaica, the applicant's spouse would be abandoning a dependent mother with serious medical problems.

The AAO also acknowledges the statements made by the applicant's mother, grandmother and sister regarding their financial dependence on the applicant and notes that the record contains several money transfers sent by the applicant to her mother and sister in Jamaica. We observe, however, that the only qualifying relatives in this proceeding are the applicant's spouse and child. Accordingly, the hardship that the applicant's family members in Jamaica may suffer as a result of the denial of her waiver application are relevant only to the extent that their hardship would affect a qualifying relative. In that the record does not indicate that the hardships described by the applicant's mother, grandmother and sister would have any impact on the applicant's spouse or son, they have not been considered by the AAO in this proceeding.

Based on the record before us, the AAO does not find the applicant to have submitted sufficient evidence to establish that her spouse or her son would experience extreme hardship if they were to relocate to Jamaica.

Counsel states that if the applicant is removed and her spouse remains in the United States, he will lose her love, as well as her emotional and financial support. Counsel asserts that the applicant's removal would also result in her son being torn from her arms and asks what could be more damaging to his development. Counsel also states that the applicant's spouse would experience anxiety, distress and grief knowing that the applicant had been returned to a crime-ridden and extremely dangerous country. She contends that the applicant's removal also risks long-term hardship to her spouse in the event that the violence in Jamaica results in physical injury to her.

The applicant states that she has not been formally educated and does not possess any job skills that would be useful in seeking employment in Jamaica. As a result, she asserts, she would be unable to support herself or provide financial assistance to her family. The applicant's spouse contends that he and the applicant's son would struggle financially without the applicant and that with just his income it would be close to impossible to meet his and his child's needs. He states that that he would not

have the resources to send his son to a sitter and would not be able to obtain a second job. The applicant's spouse also indicates that he relies on the applicant to help care for his mother, taking her to the doctor and supporting her physically and emotionally during her cancer treatment. The applicant's mother-in-law states that the applicant and her son live from paycheck to paycheck and that, without the applicant's income, the family would not be able to pay their rent. She also asserts that, without the applicant's continued support, she would be unable to continue her cancer treatment.

The AAO notes the preceding claims but does not find them to be supported by the record. As previously discussed, the submitted materials on conditions in Jamaica do not establish that the applicant would be at risk if she returned to Jamaica. Neither is there any documentation, e.g., evaluation by a licensed mental health professional, of the emotional impact that separation would have on the applicant's spouse or son. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record also fails to document that the applicant's mother-in-law is being treated for cancer or that she is in any way dependent on her son and daughter-in-law.

The record contains a January 30, 2008 financial affidavit signed by the applicant and her spouse that lists their monthly financial obligations. While the financial documentation found in the record does not support all of the expenses claimed by the applicant and her spouse, the AAO finds there is sufficient evidence to demonstrate that the applicant's spouse and son would experience financial hardship if they were dependent solely on the applicant's spouse's income to support their household. However, the extent of that financial hardship is unclear. The record fails to establish that the applicant would be unable to obtain employment in Jamaica and provide her spouse with some level of financial assistance from outside the United States. The AAO observes that the record indicates that the applicant has held responsible positions in the U.S. financial services industry that may provide her with an advantage in obtaining employment in the Jamaican economy. As previously noted, the record also fails to establish that the applicant's mother-in-law is no longer able to support herself as a result of her cancer treatment and, therefore, that she would be financially dependent on the applicant' spouse if the applicant is removed. Moreover, the AAO notes that the applicant's spouse's W-2 form for 2007 indicates that he earned approximately $24,700, an income level that is well above the 2010 federal poverty guideline of $14,570 for a family of two or $18,310 for a family of three.

Absent additional documentation, the AAO is unable to determine the extent to which the applicant's spouse and son would be affected by her removal from the United States. Accordingly, the applicant has failed to establish that either of her qualifying relatives would experience extreme hardship if her waiver application is denied and they remain in the United States.

As the applicant has not established that a qualifying relative would experience extreme hardship as a result of her inadmissibility, the AAO finds that the applicant has not established eligibility for a waiver under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in considering whether she merits a waiver as a matter of discretion.

Accordingly, the AAO will not address counsel's assertions regarding the exercise of discretion in this matter.

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

ORDER: The appeal is dismissed.