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

U.S. Citizenship and Immigration Services

ft 2

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 09 2011

IN RE: Applicant: [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 Shumway

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Columbia. The director found the applicant to be inadmissible under section 212(a)(2)(D) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D), for engaging in prostitution; and 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 committing a crime involving moral turpitude. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel states that the applicant is inadmissible for having three convictions for prostitution or related offenses, and that her offenses are encompassed within section 212(a)(2)(D)(i) of the Act, which relates to aliens who have engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment. Counsel contends that the applicant is the mother of a U.S. citizen son, who would experience extreme hardship if his mother is inadmissible to the United States. Counsel maintains that the applicant is eligible for a waiver under section 212(h)(1)(A) of the Act since the inadmissibility ground is under section 212(a)(2)(D)(i) of the Act.

The applicant was found to be inadmissible under section 212(a)(2)(D)(i) of the Act. That section provides, in pertinent part, that:

> (D) *Prostitution and commercialized vice.*—Any alien who—
>
> > (i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,
> >
> > . . .
> >
> > is inadmissible.

Section 212(a)(2)(D)(i) of the Act renders inadmissible any alien who "is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status."

In order for the applicant to be inadmissible under section 212(a)(2)(D)(i) of the Act, the applicant must have engaged in prostitution. The AAO notes that "each case must be determined on its own facts but the general rule is that to constitute 'engaging in' there must be a substantial, continuous and regular, as distinguished from casual, single or isolated, acts." *Matter of T*, 6 I&N Dec. 474, 477 (BIA 1955); *see also* [redacted] 454 F.3d 1057, 1061 (9th Cir. 2006) ("The term 'prostitution' means engaging in promiscuous sexual intercourse for hire. A finding that an alien has 'engaged' in prostitution must be based on elements of continuity and regularity, indicating a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.").

For the applicant to have engaged in prostitution there must be evidence showing that the acts of prostitution were "substantial, continuous and regular." The record reflects that on December 11, 1996, June 3, 2000, and October 8, 2006, the applicant pled guilty to prostitution in violation of New York Law 230.00. Although the applicant has only three convictions, the fact that these convictions span a period of ten years could be interpreted as showing continuous involvement in prostitution. However, it is also possible to reach the opposite conclusion—that the applicant engaged in acts of prostitution on an isolated, irregular basis. Because we find that the applicant's convictions also render her inadmissible under section 212(a)(2)(A) of the Act, and she must be granted a waiver under section 212(h) to overcome that ground of inadmissibility, it is not necessary to determine if the applicant's acts render her inadmissible to the United States under section 212(a)(2)(D)(i) of the Act.

The director found the applicant to be inadmissible under section 212(a)(2)(A) for having been convicted of committing a crime involving moral turpitude. That section 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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The Board of Immigration Appeals (Board) held in *Matter of* [redacted], 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. 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 [redacted], 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 [redacted] 549 U.S. at 193).

As previously stated, on December 11, 1996, June 3, 2000, and October 8, 2006, the applicant pled guilty to prostitution in violation of New York Law 230.00. For the first two convictions, the applicant was granted a one-year conditional discharge and ordered to provide community service. For the third conviction, the applicant was sentenced to imprisonment for time served.

N.Y. Penal Law § 230.00 provides that "[a] person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee. Prostitution is a class B Misdemeanor." In *People v. Costello*, 90 Misc.2d 431, 432, 395 N.Y.S.2d 139 (N.Y.Sup. 1977), the Supreme Court, New York County, stated that:

> The term "prostitution" itself has a commonly understood meaning, and the use of the term "fee" in the statutory definition is the key to that meaning. The legislature has enacted the section to prohibit commercial exploitation of sexual gratification. The methods of obtaining that gratification are as broad and varied as the term "sexual conduct," but the common understanding of the term "prostitution" involves the areas of sexual intercourse, deviate sexual intercourse, and masturbation. The many non-physical facets of sexual conduct are defined and regulated by other statutes (e. g., obscenity and exposure of a female).

Moreover, we note that in *People v. Hinzmann*, 177 Misc.2d 531, 677 N.Y.S.2d 440 (N.Y.City Crim.Ct.,1998), the Criminal Court noted that the purpose of Article 230 was "to prohibit the commercial exploitation of sexual gratification," and that "[t]he sexual conduct need not in fact be consummated; the offer or agreement to trade the sexual conduct with another person for a fee may be sufficient". *Id.* at 533. (*See,* Donnino, Practice Commentaries, [redacted] of NY, Book 39, Penal Law art 230, at 145 [1989".) The Court indicated that *Costello's* interpretation of the term "sexual conduct" has been followed by other courts, and that a more expansive interpretation of "sexual conduct" is warranted. *Id.* at 533-534. Thus, the Court held that the combination of "lap dancing" with the touching of naked breasts and buttocks to be encompassed within the meaning of "sexual conduct." *Id.* The Court reasoned that:

> [T]he defendants agreeing to sit on the officer's lap and "move around" while the officer would touch their naked breasts and buttocks were suggestive of conduct done to satisfy a sexual desire. This was not merely nude dancing, which generally is protected as expressive conduct under the First Amendment. . . . In addition, there are sufficient allegations the defendants agreed to perform these acts in exchange for money. That is the essence of prostitution.

*Id.* at 534.

The AAO is unaware of any published federal cases addressing whether the crime of promoting prostitution under New York law is a crime of moral turpitude. However, in *Matter of Turcotte*, 12 I&N Dec. 206 (BIA 1967), the respondent was charged with prostitution and the Board held that the

charge of "offer to commit or to engage in prostitution, lewdness, or assignation," a misdemeanor under Florida law, was a crime involving moral turpitude. *Id.* at 207. Furthermore, in *Matter of W,* 4 I&N Dec. 401 (BIA 1951), the Board held that the respondent's conviction for violation of an ordinance of the City of Seattle, Washington, which ordinance stated that "[i]t shall be unlawful to commit or offer or agree to commit any act of prostitution, assignation, or any other lewd or indecent act," involved moral turpitude. The Board stated that "[i]t is well established that the crime of practicing prostitution involves moral turpitude." *Id.* 401-404.

In *Costello*, the Court held that even though the term "prostitution" has no statutory definition, the term has its "commonly understood meaning," which involves sexual intercourse, deviate sexual intercourse, and masturbation; and "the use of the term "fee" in the statutory definition is the key to that meaning." *Id.* at 432. "Sexual conduct" was expanded in [redacted] to encompass the combination of "lap dancing," which was the agreement "to sit on the officer's lap and "move around" while the officer would touch their naked breasts and buttocks." The Court reasoned that it was the defendants' agreement to perform those acts in exchange for money that was "the essence of prostitution." *Id.* at 534. In view of the holdings in [redacted] in so far as they relate to prostitution, we find that the acts proscribed under N.Y. Penal Law § 230.00, which are done specifically for prostitution, are morally turpitudinous. Thus, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
>
> (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
>
> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
>
> (ii) the alien has been rehabilitated; or
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

We note that since the most recent conviction rendering the applicant inadmissible occurred in 2006, which is less than 15 years ago, her convictions involving moral turpitude are not waivable under section 212(h)(1)(A) of the Act.

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative here is the applicant's U.S. citizen son. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of* [redacted], 21 I&N Dec. 296 (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 are possible 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 to be taken is difficult, and it 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 stated in *Matter of Ige*:

> [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,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The 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 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* [redacted] 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).

In rendering this decision, the AAO will consider all of the evidence in the record including medical records, birth certificates, and other documentation.

With regard to remaining in the United States without the applicant, the applicant's son, Mr. [redacted] asserts in his affidavit that he was born in Columbia and came to the United States when he was 12 years old. He states that he was raised by his mother and has a close relationship with her, and that he has no other family members in the United States. The applicant's son conveys that his mother pays all their household expenses, even though he is employed. The applicant's son avers that he has anxiety and panic attacks worrying about his mother's immigration status. He states that in Columbia his mother could only go to Salamina, a poor town with crime and violence, that is controlled by paramilitary. We note that [redacted] a licensed mental health counselor and certified clinical psychopathologist, states in the psychoemotional and family dynamics assessment dated April 26, 2008 that the applicant's 21-year-old son reports that his mother is the main provider of their home and is the most important person in his life. Mr. [redacted] also states that the applicant has a 27-year-old married son, who is the brother of Santiago, in

Columbia. The applicant's son reported that he has had many panic attacks in the last three years, with some requiring emergency and ambulance calls and hospitalizations. The applicant's son also reported that his mother completed three years of college education. Mr. [redacted] states that the applicant's son has experienced panic attacks and body dysmorphic disorder, and that his symptoms are aggravated by the potential deportation of the applicant. Lastly, Mr. [redacted] conveys that the applicant's son has symptoms of anxiety-depression and is at risk of experiencing aggravated symptoms. We observe that Mr. [redacted] states in the letter dated April 25, 2008, that the applicant's son has been employed with his company since December 10, 2007, and that he earns $12.00 per hour.

Family separation has been found to be a common result of inadmissibility or removal in some cases. *See Matter of* [redacted] 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of* [redacted] 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 type of familial 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. [redacted] 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* [redacted] the Board 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 [redacted] reflects the norm that spouses reside with one another and otherwise 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)); [redacted] 809 F.2d at 1422.

Regardless of the type of familial relationship involved, the hardship resulting from family separation is 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. Indeed, the specific facts of a case may dictate that even the separation of a spouse and children from an applicant does not constitute extreme hardship. In *Matter of Ngai*, for instance, the Board did not find extreme hardship because the claims of hardship conflicted with evidence in the record and because the applicant and his spouse had been voluntarily separated from one another for 28 years. 19 I&N Dec. at 247. 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 hardship factors asserted in the instant case are the emotional and financial impact to the applicant's son as a result of separation from his mother. In the hardship analysis we have taken into consideration the evidence of emotional and financial hardship that the applicant's son will experience due to separation from his mother, who the applicant's son states is his only family member in the United States. In addition, we have weighed the hardship of the applicant's son's concern about his mother living in Columbia. Though the applicant's 24-year-old son describes himself to Mr. [redacted] as having panic attacks, with some requiring hospitalization, we note that there is no documentation in the record of his hospitalizations. The medical record from [redacted] dated August 27, 2007 relates not to the applicant's son, but to the applicant, and it states that she was prescribed Zoloft. Further, the psychoemotional and family dynamics assessment conveys that the applicant's son works as a salesman in a Manhattan clothing store while studying fashion design at the Parson's Institute. In weighing all of the evidence in the record, the AAO finds that even though the record establishes that the applicant's son will endure emotional hardship as a result of separation of his mother, the evidence in the record demonstrates that he is able to function independently of his mother as he is able to earn a living while studying at [redacted] Thus, we believe that the emotional and financial dependence of the applicant's son on the applicant is not of the same degree and extent as that of a minor child. In addition, we believe that the applicant's son's concern about his mother's well-being in Columbia would be alleviated by the fact that the applicant has other family members there. When all of the alleged hardship factors are considered collectively, we find that they fail to establish that the hardship endured by the applicant's son as a result of separation from his mother meets the standard of "extreme hardship."

With regard to the hardships of the applicant's son joining his mother to live in Columbia, the applicant's son avers in his affidavit that he has lived in the United States for nine years and would have difficulty adapting to Columbia's culture, customs, and way of life. He avers that he and his mother would be unable to obtain a decent job and will live in extreme poverty. The applicant's son states that his goals, including a career in fashion design, will be shattered if he returns to Columbia. Moreover, the applicant's son contends that throughout Columbia there are paramilitary. He states that the guerrilla and paramilitary groups have kidnapped, tortured, and killed thousands of people; and that he would be targeted because he is a U.S. citizen and due to his accent and appearance. He contends that he would live in fear in Columbia and would worry about being recruited by the paramilitary or guerrillas. In support of the applicant's son's concerns the record contains the U.S. Department of State Country Reports on Human Rights Practices – 2007 for Columbia. We note that the U.S. Department of State recently issued a travel warning for Columbia, which states that "security in Colombia has improved significantly in recent years," and that violence by narco-terrorist groups affects some rural areas as well as large cities. U.S. Department of State, Bureau of Consular Affairs, *Travel Warning*.1 (November 10, 2010). We further note that the applicant submitted as Exhibit I articles, reports, and other documents about political, social, and human rights in Columbia. The document by the Council on Foreign Relations dated March 11, 2008 states that the Revolutionary Armed Forces of Columbia (FARC) targets for ransom kidnappings wealthy landowners, foreign tourists, and prominent international and domestic officials.

The asserted hardship factors are concern about personal safety in Columbia and living in poverty. However, we find that the applicant has not fully demonstrated that her son will be specifically targeted in Columbia because he is a U.S. citizen and on account of his accent and appearance. The applicant's son was born in Columbia and lived there for a significant period such that he should be familiar with Columbia's culture and language, notwithstanding the fact that he is a citizen of the United States and has lived in the United States for the past 12 years. The applicant has not demonstrated that her son's appearance and accent is so different from other Columbians that he will be singled out based on such qualities. In addition, the applicant has not fully demonstrated that she will be unable to live anywhere in Columbia except for Salamina. She has completed several years of college, has been employed as a home health aide, and has family ties to Columbia through her adult son who is married, and through her siblings. When all of the alleged hardship factors are considered in the aggregate, we find that they fail to establish that the hardship endured by the applicant's son as a result of joining his mother to live in Columbia meets the standard of "extreme hardship."

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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

**ORDER:** The appeal is dismissed.