

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



ht2

FILE:



Office: MEXICO CITY, MEXICO

Date:

OCT 20 2010

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:



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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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,

for Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico 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 who was found to be inadmissible to the United States pursuant to 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. The applicant was also found to be inadmissible under sections 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to a U.S. citizen and has five U.S. citizen children. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated February 25, 2008, the acting district director found that the applicant was inadmissible under both section 212(a)(2)(D) and section 212(a)(2)(A)(i)(I) of the Act as a result of her criminal record involving prostitution. The acting district director also found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States. The acting district director then found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility and her application was denied accordingly.

In a statement on appeal, dated March 24, 2008, the applicant's spouse states that being separated from the applicant is causing him and his five children extreme and unusual hardship. He submits additional evidence on appeal.

The record reflects that on August 2, 1991, the applicant was arrested for prostitution in New York and was convicted upon pleading guilty. She was sentenced to time served. On March 11, 1993 the applicant was arrested for prostitution in New York and was convicted upon pleading guilty. She was sentenced to three days imprisonment. On October 6, 1998 the applicant was arrested for prostitution in Illinois, but the record does not indicate that the charge resulted in a conviction. The AAO notes that the applicant, born on June 23, 1967, was over the age of 18 when these acts were committed.

Section 212(a)(2)(D) of the Act 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,
- (ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status)

procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

- (iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

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), 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 Kepilino v. Gonzales*, 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.”).

Therefore, in order for the applicant to have engaged in prostitution, there must be evidence showing that the acts of prostitution were substantial, continuous and regular. The AAO notes that the applicant pled guilty to prostitution on two occasions occurring two years apart. No other documentation in the record indicates that the applicant engaged in other acts of prostitution within the definition of section 212(a)(2)(D)(i) of the Act. The AAO finds that there is insufficient evidence in the record to show that the acts of prostitution engaged in by the applicant were substantial, continuous, and regular; rather than isolated acts. Therefore, the AAO finds that the applicant is not inadmissible to the United States under section 212(a)(2)(D)(i) of the Act.

However, the AAO does find that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a result of her prostitution convictions, as prostitution has been found to be a crime involving moral turpitude

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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

- (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

....

- (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. 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).

The AAO notes that as stated above, the applicant was convicted in New York in 1991 and 1993 of prostitution. 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).

The AAO is unaware of any published federal cases addressing whether the crime of prostitution under N. Y. Penal Law § 230.00 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. Thus, in view of the holdings in *Turcotte* and *Matter of W.*, 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 and that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of two crimes involving moral turpitude. In addition, the AAO notes that the applicant does not qualify for the petty offence exception because she has been convicted of more than one crime involving moral turpitude.

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

The Attorney General [now, Secretary, Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if—

(1) (A) . . . it is established to the satisfaction of the Attorney General 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

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General 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 applicant's 1993 conviction occurred more than 15 years from the date of the application for admission. The AAO notes that an application for admission or adjustment of status is considered a "continuing" application and "admissibility is determined on the basis of the facts and the law at the time the application is finally considered." *Matter of Alarcon*, 20 I.&N. Dec. 557, 562 (BIA 1992) (citations omitted). Thus, the applicant is eligible to apply for a waiver under section 212(h)(1)(A) of the Act.

The AAO notes that the record reflects that the applicant has not been charged with any crimes since being charged in 1998. The record also establishes that since her last conviction in 1993 the applicant has married and had five children. In addition, the applicant's spouse states that the applicant is an extremely supportive and attentive wife and mother.

The AAO finds that the record establishes that the applicant has been rehabilitated and the record does not establish that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States." Thus, the record reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act.

Although the applicant meets the requirements for a waiver of her inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, the applicant is still inadmissible under section 212(a)(9)(B)(i)(II) of the Act and requires a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

The record indicates that the applicant entered the United States without inspection in August 1987. The applicant remained in the United States until 2006. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted until 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure in 2006 from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

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

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

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 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*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of 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 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 *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 record of hardship contains two statements from the applicant’s spouse, a letter from the applicant’s family’s church, and a psychological evaluation.

In his statement dated March 24, 2008, the applicant's spouse states that being separated from his wife is causing him extreme and unusual hardship, especially in regards to raising his five children. He states that he first took his two youngest children to live with the applicant in Colombia and then later took all five to live with her in Colombia. He states that he was very overwhelmed with having to care for the children, who were sad about missing their mother, and with having to work over sixty hours a week. The applicant's spouse states that life in Colombia is uncertain and violent; he feels that his children's lives are at risk due to the kidnappings that occur by FARC guerillas; that his children have never adapted to life in Colombia; and that his prospects for employment there are grim. He states that his oldest son began acting out in Colombia so he brought him home to the United States. The applicant's spouse states further that it is agonizing for him to be without the applicant as she has always been his support and they raised their children together. He states that he has deep concerns about the psychological effects that being away from him will have on his children. The applicant's spouse states that he is suffering from severe depression and anxiety, that he is always restless, and that he is unable to concentrate on job assignments.

In a statement dated February 7, 2007, the applicant's spouse states that he depends on the applicant for emotional support and strength and that she provides psychological and emotional security for him. He states that he is battling depression and anxiety, that he does not sleep well at night and that he is unable to function normally. In this statement the applicant's spouse again expresses his concern over his children and how being separated from their mother is and will affect them. He states that he is unable to cope with daily living and unable to adequately help his children adapt to life without their mother. He states that being solely responsible for the family's financial, social, emotional, and educational needs is a burden that he is not able to bear alone. He states that he is struggling financially, psychologically, and emotionally. The applicant's spouse also expresses his concern over the possibility of losing their home in the United States and states that relocating to Colombia, where the socio-political situation is chaotic, violent, and unstable would put his family's life at risk.

The record also contains a letter from the pastor of the applicant's church and a psychological evaluation. The pastor from the applicant's church states, in a letter dated March 24, 2008 that the applicant's spouse is suffering as a result of being separated from his family. The pastor states that the applicant's spouse is psychologically destroyed, cries a lot, and cannot sleep. In the psychological assessment dated March 14, 2008, [REDACTED] states that the applicant's spouse is suffering from severe depression and a great deal of anxiety. He states that the severe depression is a result of the applicant's spouse being separated from his family.

The AAO finds that the current record does not meet the burden of proof in establishing that the applicant's spouse is suffering extreme hardship as a result of the applicant's inadmissibility. As stated above, the applicant must show that her spouse would suffer extreme hardship as a result of separation and as a result of relocation to Colombia.

In regards to separation, the applicant's spouse states that he is suffering emotionally, psychologically, and financially. No documentation was submitted to support the statements regarding the financial hardship the applicant's spouse has been suffering. However, the applicant's

spouse submits a letter from his pastor and a psychological assessment to show that he is suffering extreme emotional hardship which would rise to the level of extreme. Both of the applicant's spouse's statements, the letter from the applicant's spouse's pastor, and the psychological testing performed by [REDACTED] support that the applicant's spouse is suffering extreme emotional hardship.

Although the AAO finds that the applicant's spouse is suffering extreme hardship as a result of separation, the AAO cannot find that the applicant has established that her spouse would suffer extreme hardship as a result of relocating to Colombia. The applicant's spouse states that Colombia is unstable and violent and that his employment prospects in Colombia are grim, but does not submit any country condition information to support these assertions, or demonstrate how these conditions would affect him specifically. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained in an affidavit should not be disregarded simply because it appears to be hearsay. In administrative proceedings, that fact merely affects the weight to be afforded [it] . . ."). Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Furthermore, the AAO finds that documentation in the record indicates that it would not be an extreme hardship for the applicant's spouse to relocate to Colombia. The psychological assessment from [REDACTED] states that the applicant's spouse was born and raised in Colombia, coming to the United States in 1991, and that he has five brothers and two sisters still living in Colombia. Thus, given the applicant's spouse's significant ties to Colombia and the absence of any documentation to establish the conditions the applicant spouse would face in Colombia, the AAO finds that the applicant has not established that her spouse would suffer extreme hardship as a result of relocating to Colombia.

The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(a)(9)(B) 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(a)(9)(B) 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.