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



U.S. Citizenship
and Immigration
Services

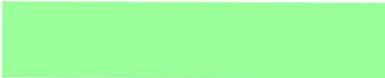


Date: JUL 01 2014

Office: BOSTON FIELD OFFICE

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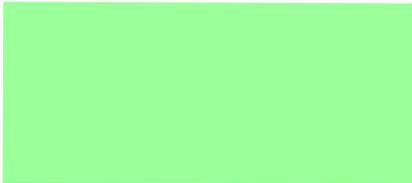
IN RE:

Applicant: 

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:



INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Boston, Massachusetts denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia 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, and section 212(a)(2)(A)(i)(II), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. He is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, dated June 22, 2012.

On appeal, counsel for the applicant contests inadmissibility, asserts hardship to the applicant's U.S. citizen spouse and children, and supplements the record with medical documents for the applicant's daughter and other documentary evidence. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B) and *Counsel's Statement of Reasons*, received July 23, 2012.

The record contains, but is not limited to: Form I-290B and counsel's statement; various immigration applications and petitions; a statement by the applicant; a hardship letter; medical records; country reports for Colombia; copies of naturalization certificates and permanent resident cards; an employment verification letter, a pay stub and paycheck; letters indicating that the applicant has a bank account and social security card; birth, marriage and divorce certificates; a news article and photographs; and the applicant's criminal conviction and court documents. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime... is inadmissible.

...

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

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record shows that on January 12, 2003, the applicant was arrested and charged with one count of Assault and Battery with a Dangerous Weapon, in violation of the Mass. Gen. Laws ch. 265, §15A(b); three counts Assault and Battery, in violation of ch. 265, §13A(a); and one count Destruction of Property Malicious + \$250, in violation of ch. 266, §127A. The final charge was later amended to Destruction of Property Malicious - \$250, in violation of the same section. On June 12, 2003, the applicant pled guilty or admitted to sufficient facts on all charges, which were continued without a finding until June 14, 2004. The applicant was sentenced to 12 months of supervised probation, fined, and assessed penalties to be paid into restitution and a victim's fund.

At the time of the applicant's conviction, Mass. Gen. Laws ch. 265, §15A(b) provided, in pertinent part:

Whoever commits an assault and battery upon another by means of a dangerous weapon shall be punished by imprisonment in the state prison for not more than 10

years or in the house of correction for not more than 2 1/2 years, or by a fine of not more than \$5,000, or by both such fine and imprisonment.

In assessing whether a conviction is a crime involving moral turpitude, the adjudicator must first “determine what law, or portion of law, was violated.” *Matter of Esfandiary*, 16 I&N Dec. 659, 660 (BIA 1979). The adjudicator engages in a categorical inquiry, considering the “inherent nature of the crime as defined by statute and interpreted by the courts,” not the underlying facts of the criminal offense. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *see also Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009) (citing *Taylor v. United States*, 495 U.S. 575, 599-600 (1990)). If the statute “defines a crime in which turpitude necessarily inheres, then the conviction is for a crime involving moral turpitude.” *Matter of Short*, *supra*, at 137.

Where the statute includes some offenses involving moral turpitude and some which do not – where there is a *realistic probability, not a theoretical possibility*, that the statute would be applied to conduct not involving moral turpitude – the adjudicator looks to the record of conviction to determine the offense for which the applicant was convicted. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 698 (A.G. 2008) (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where there is an actual prior case, possibly the applicant’s own criminal case, in which “the relevant criminal statute was applied to conduct that did not involve moral turpitude.” *Matter of Silva-Trevino*, *supra*, at 708. The record of conviction is a narrow, specific set of documents which includes the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Matter of Louissaint*, *supra*, at 757; *see also Shepard v. U.S.*, 544 U.S. 13, 16 (2005) (finding that the record of conviction is limited to the “charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.”)

In *Com. v. Appleby*, 380 Mass. 296, 308 (Mass. 1980), the Supreme Judicial Court of Massachusetts wrote: “[T]he offense of assault and battery by means of a dangerous weapon under [ch. 265, §15A], requires that the elements of assault be present, that there be a touching, however slight, that that touching be by means of the weapon, and that the battery be accomplished by use of an inherently dangerous weapon, or by use of some other object as a weapon, with the intent to use that object in a dangerous or potentially dangerous fashion.” The Court went on to define a dangerous weapon as one that is designed or constructed to produce great bodily harm or one that is capable of causing such harm. *Id.* at 303-04. The BIA has previously defined a violation of Mass. Gen. Laws ch. 265, §15A as “an offense involving an evil intent, as shown by the use of the ... dangerous weapon—a crime of moral turpitude.” *Matter of J-*, 4 I&N Dec. 512, 515 (BIA 1951).

The BIA wrote in *In re. Sanudo*, 23 I&N 168, 171 (BIA 2006), that “assault and battery with a deadly weapon has long been deemed a crime involving moral turpitude by both this Board and the Federal courts, because the knowing use or attempted use of deadly force is deemed to be an act of moral depravity that takes the offense outside the ‘simple assault and battery’ category. *See Gonzales v. Barber*, 207 F.2d 398, 400 (9th Cir. 1953), *aff’d on other grounds*, 347 U.S. 637 (1954); *Matter of Medina*, 15 I&N Dec. 611, 614 (BIA 1976), ... *Sosa-Martinez v. U.S. Att’y Gen.*, 420 F.3d 1338, 1342 (11th Cir. 2005).” In *Sosa-Martinez*, the BIA found the respondent’s use of shoes as a dangerous weapon to be vile and having the potential to cause great harm. Citing

the BIA's decision in *Sosa-Martinez*, the eleventh circuit concluded in *Destin v. U.S. Attorney General*, 345 F. App'x 485 (11th Cir. 2009), that a conviction under Mass. Gen. Laws ch. 265, §15A is "categorically a crime involving moral turpitude." While an unpublished decision in the eleventh circuit is not binding, it is nonetheless useful guidance particularly as the decision addresses the very Massachusetts statute under which the present applicant has been convicted. In light of the state and federal case law discussed, we find that a conviction for assault and battery with a dangerous weapon under Mass. Gen. Laws ch. 265, §15A is categorically a crime involving moral turpitude, rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Counsel contends that while the applicant's criminal complaint states that he "did assault and beat" the victim, this boilerplate language was found in *United States v. Holloway*, 630 F.3d 252 (1st Cir. 2011) to not necessarily include a violent felony or to be purposeful or deliberate. In *Holloway*, the Court determined that the rule in *United States v. Mangos*, 134 F.3d 460 (1st Cir. 1998), that the boilerplate charging language of assault and battery alone establishes a violent felony is no longer good law, and that "further analysis is ordinarily required in the district courts before the conclusion can be reached as to whether the offense at issue qualifies as an ACCA felony." The present case is distinguished from *Holloway* in that we are not determining whether the applicant's conviction constitutes a violent felony under the Armed Career Criminal Act. We concur with the field office director that the applicant has been convicted of a crime involving moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. He requires a waiver under section 212(h) of the Act.

We note that the applicant is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act for his conviction for a crime involving a controlled substance.

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

The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

The record shows that on June 4, 2004, the applicant was arrested and charged with Possession of a Class D Drug, in violation of Gen. Law Mass. 94C § 34, and License Revoked as HTO, Operate MV With, in violation of Gen. Law Mass. 90 § 23C. On August 18, 2004, sufficient facts were found for both charges and the controlled substance charge was continued without finding until February 11, 2005. A certified incident report from the [REDACTED] shows that the substance for which the applicant was convicted was marijuana, and the amount of marijuana in his possession was less than 30 grams. Thus as noted by the field office director, while the applicant has been convicted of a crime involving a controlled substance, rendering him inadmissible under section 212(a)(2)(A)(i)(II) of the Act, he is eligible to seek a waiver found at section 212(h) of the Act.

However, a waiver under section 212(h) is discretionary. The field office director did not determine whether the applicant's conviction for Assault and Battery with a Dangerous Weapon

was, in addition to a crime involving moral turpitude, a “violent or dangerous crime” as contemplated by 8 C.F.R. § 212.7(d). The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien’s underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The words “violent” and “dangerous” and the phrase “violent or dangerous crimes” are not further defined in the regulation, and we are aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, “crime of violence,” is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in 8 C.F.R. § 212.7(d). 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Thus, we find that the statutory terms “violent or dangerous crimes” and “crime of violence” are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependent on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we find the definition of a crime of violence found in 18 U.S.C. § 16 to be useful guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms “violent” and “dangerous”. The term “dangerous” is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms “violent” and “dangerous” in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual “case-by-case basis.” 67 Fed. Reg. at 78677-78. Considering the plain language, common meaning, and case law cited in reference to “assault and battery upon another by means of a

dangerous weapon,” we find that the applicant’s conviction under Mass. Gen. Laws ch. 265, §15A(b) constitutes a violent or dangerous crime as contemplated by 8 C.F.R. § 212.7(d).

Accordingly, the applicant must show that “extraordinary circumstances” warrant approval of the waiver. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant’s admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities, we will consider whether the applicant has “clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship” to a qualifying relative. *Id.*

Although 8 C.F.R. § 212.7(d) does not specifically state to whom the applicant must demonstrate exceptional and extremely unusual hardship, we interpret this phrase to be limited to qualifying relatives described under the corresponding waiver provision of section 212(h)(1)(B) of the Act. A waiver of inadmissibility under section 212(h)(1)(B) 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 qualifying relatives here are the applicant’s spouse and two daughters. 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

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

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one’s present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm’r 1984);

Matter of Kim, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record shows that the applicant’s spouse is a 46-year-old native and citizen of the United States who asserts separation-related hardship of an emotional and economic nature to herself and her daughters. In support of the claim of economic hardship, the applicant submitted with the waiver application an employment verification letter and a single pay check stub and pay check copy indicating that he began earning \$750 per week in March 2011. The applicant states on appeal that although in the United States he might earn \$800 per week, in Colombia the most he could earn would be \$100 which would be insufficient to support himself and his two daughters. While we recognize that the applicant’s spouse will experience some reduction in household income as a result of separation from the applicant, the record does not demonstrate that she would be unable to support herself and her children in his absence. The applicant’s spouse states that her children would greatly benefit financially and emotionally from their father becoming a permanent resident. While we acknowledge the applicant’s spouse’s contention that she will experience emotional hardship were she to remain in the United States while the applicant resides abroad, the record does not establish the severity of this hardship or the effects on her daily life.

The applicant indicates that his younger daughter was born on August 20, 2006 with a problem in her left shoulder due to a bacterial infection, her left shoulder and upper arm have not developed properly, she has required regular medical care, and he and his spouse are considering potentially

lengthy and painful treatment options. Corroborating medical records have been submitted on appeal. However, while we recognize that the applicant's daughter has had a physical deformity since birth, the observation reports submitted use medical terminology and abbreviations for review by medical professionals and do not contain a clear explanation of her current condition and prognosis. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, we are not in a position to reach conclusions concerning the severity of a medical condition or the treatment needed. In addition, the evidence in the record fails to demonstrate the impact that either separation from the applicant or relocation to Colombia would have on his daughter's condition.

No specific assertions of separation-related hardship have been made or documentary evidence submitted concerning the applicant's elder daughter, born on March 19, 2005. As such, we will not speculate in this regard.

We acknowledge that separation from the applicant may cause various difficulties for his spouse and children. However, we find the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relatives, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant asserts hardship to his spouse and children of a familial, economic, employment and safety-related nature. The applicant's spouse writes that moving to Colombia would be very difficult emotionally, socially, and economically for herself and her children. She explains that she would have to leave her family, siblings and parents, learn a new language, and it would be difficult to find a job in her career which would be difficult financially. The applicant's spouse does not identify her career or specify the difficulty she anticipates in securing employment related thereto. She states that she would also have to work very hard to assimilate her children to a foreign country where they do not speak the language, which would be emotionally, educationally and socially difficult and stressful for them. While we acknowledge these difficulties, the evidence in the record does not specifically identify or demonstrate the potential relocation-related hardship to the applicant's children or distinguish the difficulties described from the types of challenges ordinarily associated therewith.

Counsel contends that the applicant's spouse and children have no ties to Colombia and that the applicant's ties to the United States are strong, while his ties to Colombia are weak. In support of this contention, counsel points to the applicant's long residence in the United States since 1999, his family ties to his U.S. citizen spouse, two daughters, brother and an uncle, and to his lawful permanent resident father and cousin. Corroborating naturalization certificates and permanent resident cards have been submitted. While we have considered the applicant's spouse's and children's lack of ties to Colombia, hardship to the applicant himself may be considered only insofar as it results in hardship to the qualifying relatives.

Counsel avers that there is a great deal of violence and insecurity in Colombia, including general crime such as kidnapping and also the activities of terrorist groups. A U.S. State Department travel warning and human rights report have been submitted. Counsel explains that this is particularly important to the applicant because he was a victim of crime in Colombia. The

applicant states on appeal that he was shot in the foot by a criminal gang member in Colombia. A news article, dated January 20, 2001, names the applicant and notes that the incident occurred on August 17, 1997. A photo of his left foot and ankle shows that the applicant has a scar. Neither counsel nor the applicant have articulated a correlation between the incident in which the applicant was involved nearly 17 years ago, and a present danger or hardship to the applicant's spouse or children. We have, however, considered the current U.S. State Department travel warning, dated April 14, 2014. It is noted therein that while there have been no reports of U.S. citizens being targeted in Colombia because of their nationality and security has improved significantly in recent years, violence linked to narco-trafficking continues to affect some rural areas and parts of large cities, as does incidents of kidnapping, which have declined significantly since 2000.

We have considered cumulatively all assertions of relocation-related hardship to the applicant's spouse and children including adjustment to a country in which they have not resided and reportedly do not speak the language; their lifelong residence in the United States and close family ties thereto; and asserted emotional, economic, employment, educational and safety-related concerns about Colombia. Considered in the aggregate, we find the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse or children would suffer extreme hardship were they to relocate to Colombia to be with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship, and the applicant would therefore fail to demonstrate exceptional and extremely unusual hardship to a qualifying relative, a standard more restrictive than the extreme hardship standard. *Cortes-Castillo v. INS*, 997 F.2d 1199, 1204 (7th Cir. 1993). As the applicant has not established hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.