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



U.S. Citizenship
and Immigration
Services

DATE: JUN 09 2014

OFFICE: NEWARK FIELD OFFICE

File: [REDACTED]

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:

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,

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Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey 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. The record indicates that the applicant 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 accordingly. *See Decision of the Field Office Director*, dated March 4, 2013.

On appeal counsel contends that if a waiver is not granted, the applicant's U.S. citizen spouse will experience extreme hardship. *See Form I-290B, Notice of Appeal or Motion and Counsel's Appeal Brief*, received April 5, 2013.

The record contains, but is not limited to: Form I-290B and counsel's appellate brief; various immigration applications and petitions; hardship affidavits; employment, tax and financial records; birth, death, marriage, divorce, and child support documents; family photos; the applicant's criminal record; the applicant's statements concerning his arrests and convictions; and the applicant's medical and psychiatric records. 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) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), 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 record reflects that on February 28, 1995, the applicant was arrested and convicted of contempt (violation of a domestic violence order), in violation of New Jersey Statutes Annotated (N.J.S.A.) section 2C:29-9. He was sentenced to 30 days incarceration in the ██████████ County Jail. On April 29, 2002, the applicant was convicted in the New Jersey Superior Court for ██████████ County under two separate indictments dating back to 1995 and 1997. On the earlier indictment, the applicant was convicted of lewdness observed by children under 13, a fourth degree felony, in violation of N.J.S.A. § 2C:14-4(b)(1), for his conduct on July 21, 1995. On the latter, the applicant was convicted of false report to incriminate another, a fourth degree felony, in violation of N.J.S.A. § 2C:28-4A, for his conduct on September 30, 1997. The applicant was sentenced in the aggregate to six months of probation, fines and fees, and given credit for 12 days of jail time served in 1995, 1997 and 2001.

At the time of the applicant's conviction, N.J.S.A. § 2C:14-4(b)(1) provided:

A person commits a crime of the fourth degree if he exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a child who is less than 13 years of age where the actor is at least four years older than the child.

N.J.S.A. § 2C:14-4(c) provided, "As used in this section: 'lewd acts' shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.

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.)

For cases arising in the Third Circuit, the determination of whether a conviction is a crime involving moral turpitude requires a categorical inquiry into “the elements of the statutory state offense . . . to ascertain the least culpable conduct necessary to sustain conviction under the statute.” *Jean-Louis v. Holder*, 582 F.3d 462, 465-66 (3d Cir. 2009) (citing *Knapik v. Ashcroft*, 384 F.3d 84, 88 (3d Cir. 2004)). The “inquiry concludes when [the adjudicator] determine[s] whether the least culpable conduct sufficient to sustain conviction under the statute ‘fits’ within the requirements of a [crime involving moral turpitude].” *Jean-Louis, supra*, at 470. However, if the “statute of conviction contains disjunctive elements, some of which are sufficient for conviction of [a crime involving moral turpitude] and others of which are not, [an adjudicator] . . . examin[es] the record of conviction for the narrow purpose of determining the specific subpart under which the defendant was convicted.” *Id.* at 466. This is true “even when clear sectional divisions do not delineate the statutory variations” *Id.* In so doing, an adjudicator may only look at the formal record of conviction. *Id.* 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. *See Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009); *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”). The Third Circuit does not permit inquiry beyond the record of conviction. *See Jean-Louis, supra*, at 473-82 (rejecting *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)).

The applicant was convicted for lewd acts under N.J.S.A. section 2C:14-4(b)(1), which prohibits the exposure of intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a child who is less than 13 years of age where the actor is at least four years older than the child. N.J.S.A. section 2C:14-4(c) provides that under this section, “‘lewd acts’ shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.” This is a specific intent crime that involves the actor knowing or reasonably expecting that he is likely to be observed by a child under 13 years of age. The State must prove beyond a reasonable doubt that the defendant knew or reasonably expected that he was likely to be observed by non-consenting persons who could be affronted or alarmed. *See State v. Zeidell*, 154 N.J. 417, 430 (1998). In *State v. Hackett*, 166 N.J. 66 (2001), the New

Jersey Supreme Court held that for a conviction, the genital exposure “must be occasioned by the sexual desire of the actor to be observed by a minor who is less than thirteen.”

In light of *State v. Zeidell* and *State v. Hackett*, the AAO finds that lewdness in violation of N.J.S.A. § 2C:14-4(b)(1) is a crime of moral turpitude. In *Matter of Cortes Medina*, 26 I&N Dec. 79, (BIA 2013) the BIA held that for the offense of indecent exposure to be a crime involving moral turpitude, the statute prohibiting the conduct must require not only willful exposure of intimate parts but also a lewd intent. In that decision the BIA distinguished *Matter of P-*, 2 I&N Dec. 117, 121 (BIA 1944), where it concluded that the alien’s indecent exposure to children did not involve moral turpitude because there was no indication whether the exposure was “to arouse the sexual desires of the parties concerned or with a lewd or lascivious intent, or whether it was because of a negligent disregard of the children’s presence occasioned by physical necessity.” The BIA noted that the difference in finding whether indecent exposure is or is not a crime involving moral turpitude is lewdness and held that lewd intent brings the offense of indecent exposure within the definition of a crime involving moral turpitude. As the applicant’s conviction of lewdness observed by children under 13 required lewd intent, he 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 . . .

Section 212(h)(1)(A) of the Act provides that the Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if 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. While the conviction rendering the applicant inadmissible

occurred in 2002, the criminal activities for which he is inadmissible occurred in 1995, more than 15 years ago, and thus he is eligible for consideration of a waiver under section 212(h)(1)(A)(i) of the Act.

Section 212(h)(1)(A)(ii) and (iii) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States; and that the applicant establish his rehabilitation. Evidence in the record to establish the applicant's eligibility under section 212(h)(1)(A)(ii) and (iii) of the Act consists of hardship letters from the applicant's spouse; a statement from the applicant explaining the circumstances of his arrests and convictions; a psychiatric evaluation of the applicant and professional letters related thereto; and several letters of character reference and support.

The applicant's spouse describes the applicant as a creative, hardworking, family-oriented man who is very humble and selfless, puts his family first, and carries himself with high moral standards. She states that the applicant provides emotional support to her, her son [REDACTED] and her parents, for whom he cooks when she is at work or busy with other errands. The applicant's spouse writes that when the applicant completes his own job duties he asks if he can help his coworkers, for whom he also provides transportation when they are in need. [REDACTED] President [REDACTED] Inc., writes that the applicant has worked for his company since 2009, and "has had excellent behavior, punctuality and with a lot of the work that was designate." [REDACTED] states that the applicant has been a great stepfather and a very responsible, caring and hardworking man. Pastor [REDACTED] writes that the applicant "has never been in any kind of problem" and enjoys a good rapport with the community. The applicant's sister-in-law, [REDACTED] indicates that the applicant is a responsible, hardworking man who provides financial and moral support to her sister and parents. The applicant's in-laws, [REDACTED] and [REDACTED] aver that he supports them financially, performs handy work around the house, drives them to medical appointments and is a hardworking man who brings happiness to their daughter's life.

On February 4, 2011, the field office director requested that Civil Surgeon, Dr. [REDACTED] M.D., reexamine the applicant as his initial medical examination report failed to disclose that any of the applicant's arrests were reported to or evaluated by the doctor. Dr. [REDACTED]'s office responded that the applicant had been referred to a psychiatrist for evaluation. Addressing the applicant's criminal history, [REDACTED] M.D. states in his March 5, 2011 psychiatric evaluation that the applicant perceived the criminal charges brought against him as unfair, and that "all charges brought against him were eventually dismissed due to lack of substance and the fact that they were based on groundless accusations." This statement is factually incorrect, though it is unclear whether it is attributable to self-reporting by the applicant or Dr. [REDACTED]'s misunderstanding of the applicant's criminal record. Dr. [REDACTED] states that the applicant was administered a Minnesota Multiphasic Personality Inventory 2 (MMPI), and the findings suggested a psychotic diagnosis. However, he remarked that his face-to-face evaluation concluded that the applicant does not show the requisite characteristics associated with deviant sexual behavior and does not meet the psychological profile of a sexual predator.

Although the applicant has provided evidence attesting to his good character and Dr. [REDACTED] states that the applicant does not meet the psychological profile of a sexual predator despite his MMPI results suggesting a psychotic diagnosis, we find that the record does not support a determination that the applicant has been rehabilitated. The applicant's criminal record indicates that he acknowledged, in his plea, having exposed his penis for the purpose of arousing or gratifying his sexual desire under circumstances he knew or reasonably expected he was likely to be observed by a child less than 13 years of age. However, statements by Dr. [REDACTED] and the applicant's spouse indicate that the applicant continues to claim innocence of any wrongdoing. The applicant's spouse avers that she was in a relationship with the applicant when he was arrested on July 21, 1995, he immediately told her about the incident and stated that he is not guilty, she believes him, and they were misadvised by their attorney to plead guilty. In an undated and unsigned statement submitted for the record, the applicant asserts that on July 21, 1995:

At 7:00 am I was on my way to work. I saw a group of women walking along the sidewalk, so I decided to honk the car horn at them and kept driving. Once I noticed them motioning to me, I made a u-turn and returned. I flirted with the group of women who pointed at my private parts. They took a picture of my license plates and filed a complaint against me and I had to complete six months of probation.

This account differs from the applicant's testimony contained in the *Transcript of Plea*, dated April 29, 2002. To wit:

The Defendant: I was in my car and some girls were passing by and I honked at them and they gave me the finger and I told them to come and sit by me and I went on and when I was already in the park the police snapped me.

The Court: Did you expose your penis to the girls?

The Defendant: Yes.

We cannot look behind the applicant's conviction to relitigate the issue of his guilt, and further note that his statement concerning the incident submitted with his waiver application is inconsistent with his testimony that resulted in his guilty plea and conviction. Therefore, we find that the applicant has failed to acknowledge or show remorse for his crime. Based on the record, we find that the applicant has failed to establish his rehabilitation, as required by section 212(h)(1)(A)(ii) of the Act.

We next must make a determination as to whether the applicant has established eligibility for the grant of a waiver under 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 relative here is the applicant's spouse. 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 55-year-old native of Colombia and citizen of the United States who asserts hardship of an emotional/psychological, physical/medical and economic nature. She states that she began dating the applicant in 1994 and they have been legally married since 2005. The applicant's spouse avers that she relies on the applicant emotionally and since discovering in July 2012 that he had a possibly cancerous mass on his right kidney, has been devastated, takes sleeping pills, and is suffering anxiety and stress. She posits that the applicant would have a better chance of recovering from surgery and surviving cancer in the United States than in Colombia, and cannot imagine what would happen to him if he is forced to return there. The record shows that the applicant underwent a right open partial nephrectomy on October 22, 2012 to remove a mass on his kidney. The surgeon, [REDACTED] M.D., states that the mass was easily dissected from the kidney and that it came back negative from the lab with no evidence of any cancer. [REDACTED] writes on a prescription blank that the applicant's spouse was examined on April 1, 2013 for anxiety and depression and she is under a lot of stress due to the applicant's health and immigration issues. Dr. [REDACTED] prescribed Zoloft and Clonazepam the same day. The applicant's spouse states that the anxiety she has developed has begun to affect her performance at work, and her supervisors are aware that she might have to join the applicant in Colombia and have witnessed her having emotional breakdowns and a decline in work performance. No corroborating documentary evidence has been submitted for the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). We acknowledge the applicant's spouse's contention that she will experience emotional hardship were she to remain in the United States while he relocates abroad, but the evidence in the record does not establish the severity of this hardship or the effects on her daily life.

The applicant's spouse avers that her son, [REDACTED] relies emotionally and economically on the applicant, who has been the only father figure in his life since he was 4 years old and whom he views as a role model and mentor. The applicant's spouse explains that [REDACTED] is currently in a drug rehabilitation program, the applicant plays an active role in [REDACTED]'s recovery, and separation would have devastating physical and mental effects on [REDACTED] and could even result in his death. [REDACTED] writes that he is in a committed relationship, lives hours away in New York City, and thus it is difficult for him to come to her his mother's aid if needed. [REDACTED] does not express that he would suffer hardship due to separation from the applicant and no documentary evidence has been submitted corroborating that he has a substance abuse problem and is in a rehabilitation program

or that the applicant is essential to his recovery. The evidence in the record is insufficient to establish either that the applicant's stepson would suffer extreme hardship as a result of separation from the applicant or that any hardship he would suffer in that regard would constitute extreme hardship to the applicant's spouse.

The applicant's spouse writes that her parents depend on the applicant to do handy work around the house in which they all reside together, and he drives them to medical appointments, purchases their medicine, and pays the majority of their household expenses. As noted, the applicant's in-laws are not qualifying relatives for waiver purposes, and thus hardship to them can be considered only insofar as it constitutes extreme hardship to the applicant's spouse. Mr. and Mrs. [REDACTED] aver that the applicant helps pay their mortgage and utility bills, takes them to medical appointments and buys medicine, and helps them maintain the house and performs handy work. No corroborating documentary evidence has been submitted. The applicant's spouse states that without the applicant, they would lose their home and vehicle and would be unable to afford to maintain her parents' house or purchase the medication needed for their many health problems. The record contains no medical records for the applicant's spouse's parents or other documentary evidence identifying any diagnoses, prognoses or need of assistance. And while the record contains income tax and employment-related documents for the applicant and his spouse, these are from 2009. No documentary evidence has been submitted showing the applicant's spouse's parents' income from employment, pensions, social security or any other source. Nor have more recent tax returns or other documentary evidence been submitted demonstrating the applicant and his spouse's current income from all sources. The record contains no written budget and corroborating documentary evidence delineating the applicant's spouse's expenses (including the expenses of her parents), from which an accurate determination concerning economic hardship could be made. The evidence in the record is insufficient to demonstrate that the applicant's spouse would be unable to support herself in the applicant's absence. The evidence is likewise insufficient to establish that any hardship the applicant's in-laws would suffer as a result of separation from the applicant would constitute extreme hardship to the applicant's spouse.

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

Addressing relocation, the applicant's spouse states that her psychological health, family responsibilities, and community ties would prevent her from living with the applicant in Colombia. However, she would feel compelled to relocate by the forces of their marital bond and the applicant's serious medical condition. The evidence in the record indicates that the mass discovered on the applicant's kidney was successfully removed and that he is cancer-free. The record contains no documentary evidence demonstrating the applicant's current medical condition or showing that he is suffering from any disease. The applicant's spouse writes that she is certain that her mental and physical health will worsen in Colombia, where healthcare is not as advanced or available as in the United States and where she may have to live without treatment. The record contains no corroborating country conditions reports or other documentary evidence addressing healthcare in Colombia, or showing that the applicant's spouse requires any form of treatment

unavailable there. The applicant's spouse writes that separation from her son, [REDACTED] and her parents would weigh heavily on her, particularly as she has already begun demonstrating symptoms of anxiety and depression. She indicates that based on conversations with her doctor, she fears depression may endanger her mental and physical health. Dr. [REDACTED] stated that the applicant's spouse was examined for anxiety and depression, is under a lot of stress due to the applicant's health and immigration issues, and was prescribed Zoloft and Clonazepam on April 1, 2013, but the record contains no further detail about her psychological condition or the potential impact of either separation from the applicant or relocation to Colombia on his spouse.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including readjustment to a country in which she has not resided for many years; her lengthy residence in the United States; her close family ties to the United States - particularly to her elderly parents, son, and siblings; her church and community ties; employment in the United States; and her stated emotional/psychological, physical/medical, and economic concerns about Colombia. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Colombia to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme 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.