



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 26 2015**

File: 

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, 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 Jamaica who was admitted to the United States as a lawful permanent resident on February 18, 1986. The applicant was ordered deported on June 6, 1996, and removed from the United States on April 23, 1997, as an aggravated felon. The record indicates that the applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The director found the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant 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 with his U.S. citizen spouse.<sup>1</sup>

The director concluded that the applicant has been convicted of a violent or dangerous crime, and failed to establish exceptional and extremely unusual hardship would be imposed on a qualifying relative. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Director*, dated June 4, 2014.

On appeal the applicant contends that sufficient evidence of exceptional and extremely unusual hardship to his spouse and children has been presented and that U.S. Citizenship and Immigration Services (USCIS) failed to properly review and consider the evidence. The record contains statements from the applicant's spouse, the spouse's mother, and the mothers of two of the applicant's three U.S. citizen children; birth certificates; medical documentation and a mental health evaluation for the applicant's spouse; financial documentation; country information for Jamaica; letters of support for the applicant; and documents related to the applicant's criminal record and deportation. The entire record was reviewed and considered in rendering this decision on 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.

<sup>1</sup> In *Matter of Yeung*, 21 I&N Dec 610 (BIA 1996) the Board of Immigration Appeals noted that under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)(1994), as amended by Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), an alien admitted to the United States as a lawful permanent resident who has been convicted of an aggravated felony since the date of admission is ineligible for a waiver, but the BIA determined that the IIRIRA provides that the amendments to section 212(h) of the Act apply to aliens in exclusion or deportation proceedings as of September 30, 1996, the date of enactment of the IIRIRA, unless a final administrative order of deportation has been entered as of such date.

...

(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 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 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.

The director found the applicant inadmissible under section 212(a)(A)(2)(i)(I) of the Act, for having been convicted of a crime of moral turpitude. The record reflects that on [REDACTED], the applicant was convicted of Robbery in the First Degree, in violation of New York Penal Law § 160.15, for which he was sentenced to two to six years’ imprisonment. On [REDACTED], the applicant was convicted of Criminal Possession of a Weapon, in violation of New York Penal Law § 265.02, for which he was sentenced to one-and-a-half to four-and-a-half years’ imprisonment to run concurrently.

At the time of the applicant’s conviction, New York Penal Law § 160.15 Robbery in the First Degree stated:

A person is guilty of robbery in the first degree when he forcibly steals property and when, in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime:

1. Causes serious physical injury to any person who is not a participant in the crime; or
2. Is armed with a deadly weapon; or
3. Uses or threatens the immediate use of a dangerous instrument; or
4. Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; except that in any prosecution under this subdivision, it is an affirmative defense that such pistol, revolver, rifle, shotgun, machine gun or other firearm was not a loaded weapon from which a shot, readily capable of producing death or other serious physical injury, could be discharged. Nothing contained in this subdivision shall constitute a defense to a prosecution for, or preclude a conviction of, robbery in the second degree, robbery in the third degree or any other crime.

Robbery in the first degree is a class B felony.

New York Penal Law § 265.02 stated, in part;

A person is guilty of criminal possession of a weapon in the third degree when:

- (1) He commits the crime of criminal possession of a weapon in the fourth degree as defined in subdivision one, two, three or five of section 265.01, and has been previously convicted of any crime; or
- (2) He possesses any explosive or incendiary bomb, bombshell, firearm silencer, machine-gun or any other firearm or weapon simulating a machine-gun and which is adaptable for such use; or
- (3) He knowingly has in his possession a machine-gun, firearm, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, rifle or shotgun; or
- (4) He possesses any loaded firearm. Such possession shall not, except as provided in subdivision one, constitute a violation of this section if such possession takes place in such person's home or place of business.
- (5)(i) He possesses twenty or more firearms; or (ii) he possesses a firearm and has been previously convicted of a felony or a class A misdemeanor defined in this chapter within the five years immediately preceding the commission of the offense and such possession did not take place in the person's home or place of business.

Criminal possession of a weapon in the third degree is a class D felony.

The BIA has determined that “robbery is universally recognized as a crime involving moral turpitude.” *Matter of Martin*, 18 I&N Dec. 226, 227 (BIA 1982). Further, the BIA found that robbery involves moral turpitude and is an offense against both person and property that is “a grave, serious, aggravated, infamous, and heinous crime.” *Matter of Rodriguez-Palma*, 17 I&N Dec. 465, 469 (BIA 1980). The statute the applicant was convicted of meets the generic definition of the crime of robbery and based on this case law it is categorically a CIMT.

The applicant’s robbery conviction therefore renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. As the record reflects that the applicant was 21 years old at the time he committed the crime and was sentenced to two to five years of imprisonment, the petty offense exception under section 212(a)(2)(A) of the Act does not apply. Therefore the applicant requires a waiver under section 212(h) of the Act. The applicant does not contest whether he has been convicted of a crime involving moral turpitude, or whether he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of 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 . . . .

- (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
  - (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 [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 . . .; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her 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. An application for admission to the United States is 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). Since the criminal activity for which the applicant was found inadmissible occurred more than 15 years ago, he is now eligible for a waiver under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) 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 he has been rehabilitated.

Here the record does not show that the applicant's admission to the United States would be contrary to the national welfare, safety, or security of the United States and the record does establish that the applicant has been rehabilitated. The record shows that the crimes for which the applicant was convicted were committed more than 20 years ago when he was 21 years old, and that he has had no arrests or convictions since that time. Although the record contains no documentation related to the applicant's employment, letters of support for the applicant indicate that he had been regularly employed with a construction company from about 1999 to 2008 before being laid off, then worked as a caretaker for an estate for two years, and has been intermittently employed since that time due to a poor economy. The record also contains numerous letters of

support for the applicant indicating that he has been active in community service groups advocating cultural awareness and working with youth.

However, even though the applicant establishes that he meets the requirements of section 212(h)(1)(A), we cannot favorably exercise discretion in the applicant's case except in an extraordinary circumstance. *See* 8 C.F.R. § 212.7(d). Once eligibility for a waiver is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). A favorable exercise of discretion is limited in the case of an applicant who has been convicted of a violent or dangerous crime.

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.

We note that 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.

In *United States v. Galicia-Delgado*, 130 F.3d 518 (2d Cir. 1997) the court found that first degree robbery under New York Penal Law § 160.15 is a crime of violence under 18 U.S.C. § 16(a) as one element of the crime is forcibly stealing property which involves the use of force. Therefore, we agree with the director finding the crime for which the applicant was convicted to be a violent and dangerous crime within the meaning of 8 C.F.R. § 212.7(d), and the heightened discretionary standards found in that regulation are applicable in this case. The applicant has not contested the determination that he was convicted of a violent and dangerous crime.

As he was convicted of a violent and dangerous crime 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.*

In *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001), the BIA determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that “must be ‘substantially’ beyond the ordinary hardship that would be expected when a close family member leaves this country.” However, the applicant need not show that hardship would be unconscionable. *Id.* at 61

The BIA stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. 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. The BIA added that not all of the

foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *Id.*

In *Monreal*, the BIA provided additional examples of the hardship factors it deemed relevant for establishing exceptional and extremely unusual hardship:

[T]he ages, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives. For example, an applicant who has elderly parents in this country who are solely dependent upon him for support might well have a strong case. Another strong applicant might have a qualifying child with very serious health issues, or compelling special needs in school. A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.

23 I&N Dec. at 63-4.

In the precedent decision issued the following year, *Matter of Andazola-Rivas*, the BIA noted that, “the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by comparing it to the hardship others might face.” 23 I&N Dec. 319, 323 (BIA 2002). The issue presented in *Andazola-Rivas* was whether the Immigration Judge correctly applied the exceptional and extremely unusual hardship standard in a cancellation of removal case when he concluded that such hardship to the respondent’s minor children was demonstrated by evidence that they “would suffer hardship of an emotional, academic and financial nature,” and would “face complete upheaval in their lives and hardship that could conceivably ruin their lives.” *Id.* at 321 (internal quotations omitted). The BIA viewed the evidence of hardship in the respondent’s case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The BIA noted:

While almost every case will present some particular hardship, the fact pattern presented here is, in fact, a common one, and the hardships the respondent has outlined are simply not substantially different from those that would normally be expected upon removal to a less developed country. Although the hardships presented here might have been adequate to meet the former “extreme hardship” standard for suspension of deportation, we find that they are not the types of hardship envisioned by Congress when it enacted the significantly higher “exceptional and extremely unusual hardship” standard.

23 I&N Dec. at 324.

However, the BIA in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as *Andazola-Rivas*, clarified that “the hardship standard is not so restrictive that only a handful of

applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief.” 23 I&N Dec. 467, 470 (BIA 2002). The BIA found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The BIA noted that these factors included her heavy financial and familial burden, lack of support from her children’s father, her U.S. citizen children’s unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The BIA stated, “We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met.” *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate. See *Gonzalez Recinas*, 23 I&N Dec. at 469 (“While any hardship case ultimately succeeds or fails on its own merits and on the particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship.”). We note that exceptional and extremely unusual hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

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. In the present case the record reflects that the applicant has a U.S. citizen spouse, three U.S. citizen children, a U.S. citizen father, and a lawful permanent resident mother. None of the birth certificates for the applicant’s children list a father, although statements submitted to the record contend that the applicant was not present to sign the documents because he was estranged from the mother of his first child, incarcerated when the second child was born, and was in Jamaica when the third child, conceived in Jamaica, was born in the United States.

The applicant’s spouse states that she has massive uterine fibroids, with abdominal and back pain, for which she had surgery in 2009, but that they returned in 2011. She states that excruciating pain has caused her to miss work or arrive late, and to take pain medication. She states that medical doctors have advised her that she needs a hysterectomy, but she wants to first start a family with the applicant and that in vitro fertilization is the only way for her and the applicant to have children, given her age and health, and that it is best to do such a procedure in the United States where there is a better chance of conception. The spouse asserts that she will be unhappy for the rest of her life if she misses the opportunity to have children with the applicant. She states that she has had depression since 2009 because their entire relationship has been long distance where they talk via phone three times a day. She states that she experiences emotional strain for which she is now seeing a mental health counselor and that medication did not help. The spouse asserts that prior to marrying she had been a strong and confident person, but now she is emotionally fragile with meltdowns, bouts of depression, and constant tears. She states that she

does not want to get out of bed especially around holidays, is depressed around married relatives and friends, and is losing hair and gaining weight. She states that her depression affects her work where she is a manager responsible for leading meetings and training classes.

A letter from a mental health counselor states that she is working with the applicant's spouse over depression and stress related to being physically separated from the applicant. Medical documentation includes discharge instructions from the spouse's 2009 myomectomy following a diagnosis of multiple uterine fibroids and bilateral adrenal masses, and general information about a medication called hydrochlorothiazide.

While the record contains sufficient evidence to establish that the applicant's spouse experiences some emotional hardship due to separation from the applicant, the evidence of psychological and medical hardship does not support the assertion that it rises to the level of exceptional and extremely unusual hardship.

The applicant's spouse states that she went through bankruptcy in 2011 and nearly foreclosed the house she shares with her mother in 2013, borrowing from her 401K to save the home. She states that since she and the applicant married she has borne all the expenses in the United States and most of the applicant's expenses since he cannot assist her or sustain himself due to economic conditions in Jamaica. She states that it is a burden to support two households and that the applicant works off and on as a self-employed construction worker, but sometimes has a difficult time collecting payment from customers. The spouse also asserts that she faces exorbitant travel and phone expenses to stay in touch with the applicant, and lists her expenses of car and mortgage payments, utilities, cell phone bills, credit cards payments, a 401k loan, a home improvement loan, life insurance, and food, plus \$400 a month sent to Jamaica. She asserts that the applicant's construction skills would secure employment in the United States where he could contribute to the household. Documents submitted to the record include money transfer receipts, flight costs, mortgage information, and a letter from the spouse's employer.

In reviewing the evidence submitted to the record we find that it is not sufficient to demonstrate that the applicant's spouse experiences financial hardship that is exceptional and extremely unusual due to separation from the applicant. The evidence in the record is insufficient to establish that the emotional and financial challenges faced by the applicant's spouse are distinguished from those ordinarily associated with a loved one's inaccessibility to such a significant degree that they rise to the level of exceptional and extremely unusual hardship.

The applicant's spouse states it would be devastating for her to relocate as all her life has been in the United States where she shares a home with her mother, and where her family includes her son, father, and five brothers. She states that she has been with the same employer for more than 18 years. She also states that she fears the crime and adverse country conditions in Jamaica, and that the United States is much more medically advanced with the in vitro process that she may wish to undergo.

Country information submitted to the record includes the U.S. Department of State human rights reports for 2010 and 2012, in addition to a travel warning noting that crime is a serious problem in

Jamaica and noting that medical care is more limited than in the United States. An Amnesty International annual report for 2012 notes that gang violence is a concern in Jamaica, a BBC News business report describes the poor economy and high unemployment, and a 2013 World Health Organization report notes that there is a general shortage of health care providers.

These reports describe generalized country conditions and the record does not indicate how they specifically affect the applicant's spouse, thus failing to establish that the applicant's spouse would be at risk as a result of relocating to Jamaica.

The applicant's spouse asserts that the applicant's children suffer as they are each with single mothers who earn little and that the applicant is unable to provide for them because his income is inadequate. The spouse states that the applicant's oldest child was raised by foster parents, the next one often in trouble with police and with her mother and step-father, and the youngest one desperately needs a father figure. She states that the applicant has noted that he is distressed by missing his children's milestones.

The mother of the applicant's youngest child describes the challenge of meeting her son's needs without the applicant's assistance financially, including for medical costs from the son's bladder problems and for eyeglasses. She states that her son wants to see his father, but that she cannot afford the airfare or time off work. She asserts that her son is sad when classmates speak of plans with their fathers and that he needs his father's physical presence and attention.

The mother of applicant's second child explains that she is married, but currently separated, with four children plus her child by the applicant who she raised without assistance from the applicant. She states that she has been the sole breadwinner for her five children though she has been laid off or working part time. She asserts that her daughter needs supervision and guidance from the applicant, her father, because she is out of control, disrespectful, back talks, ran away, and has been expelled from several schools. She also states the daughter suffers depression and is getting outpatient counseling.

Other than statements from two of their mothers, the record contains no documentation or other evidence related to any hardship the applicant's U.S. citizen children experience, thus does not establish that they experience hardship that is exceptional and extremely unusual. The assertions of these two mothers 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)).

Nothing in the record addresses hardship to the applicant's children if they were to relocate to Jamaica to reside with him, and the record contains no assertion or evidence that the applicant's parents suffer hardship due to separation from the applicant or would suffer hardship if they were



to relocate to Jamaica, their native country. The applicant has, therefore, failed to demonstrate that the challenges his children or parents face rise to the level of exceptional and extremely unusual hardship.

We acknowledge that separation from the applicant causes various difficulties for his spouse, children, and parents. Although we are not insensitive to the situations of the applicant's relatives, the record does not establish that the hardships they face being separated from the applicant, or would face if they were to relocate to reside with the applicant, rise to the level of exceptional and extremely unusual hardship as contemplated by statute and case law. The applicant has not demonstrated that the hardship to his spouse, children, or parents meets the "exceptional and extremely unusual hardship" standard as required in 8 C.F.R. § 212.7(d), and we therefore find that there are not extraordinary circumstances warranting a favorable exercise of discretion in this case.

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.