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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE: [REDACTED] Office: MEXICO CITY (PANAMA CITY) Date: MAR 14 2011

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the application will be denied.

The applicant is a native and citizen of Columbia. The director found the applicant to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year; section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of committing a crime involving moral turpitude; and section 212(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1182(a)(1)(A)(iii)(I), as an alien classified as having a physical/mental disorder with associated behavior that may pose, or has posed, a threat to the property, safety or welfare of the alien or others. The applicant seeks waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v), 212(h), and 212(g) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(h) and 1182(g). The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the applicant demonstrated extreme hardship to her husband based on submitted letters by [REDACTED]; [REDACTED]; psychologists; the U.S. Department of State travel warning for Columbia, and the Wikipedia report on poverty in Columbia. Counsel contends that U.S. Citizenship and Immigration Services' (USCIS) analysis of hardship did not include the psychological condition of the applicant's husband after having served in Iraq for several months, the country conditions in Columbia, or the totality of the circumstances.

We will first address the finding of inadmissibility under section 212(a)(9)(B) of the Act, which provides, in pertinent part:

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

....

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

....

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

immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

USCIS records reflect that the applicant gained admission into the United States on October 24, 2001 on a B-1/B-2 nonimmigrant visitor visa, with authorization to remain in the United States for a temporary period not to exceed April 23, 2002. On July 2, 2002, the applicant was placed in removal proceedings and ordered to appear before an immigration judge on September 19, 2002. On July 20, 2002, in Florida, the applicant was arrested and charged with burglary/dwelling structure or conveyance armed, aggravated assault with deadly weapon without intent to kill, and false imprisonment/adult. On September 19, 2002, the immigration judge ordered that the applicant be removed *in absentia*. On November 6, 2002, the applicant pled guilty to and was convicted for burglary/dwelling structure or conveyance armed and aggravated assault with deadly weapon without intent to kill. The applicant states that she left the United States in September 2003.

Based on the record, we find the applicant accrued unlawful presence from April 23, 2002 until September 2003, when she left the United States and triggered the ten-year bar, rendering her inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Thus, we will not disturb the director's finding of inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of committing a crime involving moral turpitude.

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.

The Board of Immigration Appeals (Board) 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 applicant was convicted for aggravated assault with deadly weapon without intent to kill, and burglary/dwelling structure or conveyance armed in violation of Florida law. She was sentenced to serve five concurrent years of probation for each crime.

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The applicant was convicted of aggravated assault with deadly weapon without intent to kill in violation of Florida Statute § 784.021(1)(a). At the time of the applicant’s conviction, Florida Statute § 784.021 provided, in pertinent part:

(1) An “aggravated assault” is an assault:

(a) with a deadly weapon without intent to kill; or

(b) with an intent to commit a felony.

(2) Whoever commits an aggravated assault shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The definition of “assault” is under Florida Statutes § 784.011(1), which states, in pertinent part:

(1) An “assault” is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

In *Matter of O--*, 3 I&N Dec. 193 (BIA 1948), the Board found that assault with a deadly and dangerous weapon (which was unspecified in the complaint) in violation of section 6195 of the General Statutes of Connecticut would involve moral turpitude because “it is inherently base . . . because an assault aggravated by the use of a dangerous or deadly weapon is contrary to accepted standards of morality in a civilized society, and . . . always constituted conduct contrary to acceptable human behavior.” *Id.* at 197. Moreover, in *In re Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006), the Board states that “assault and battery with a deadly weapon has long been deemed a crime involving moral turpitude . . . 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.” (citations omitted).

We take notice that aggravated assault in Florida requires proof of a specific intent to do violence. *See Lavin v. State*, 754 So.2d 784, 787 (Fla.App. 3 Dist.,2000). Further, we note that in *Dey v. State*, 182 So.2d 266, 268 (Fla.App., 1966), the Court states that aggravated assault is an assault with a deadly weapon that is “likely to produce death or great bodily harm.” (citing *Goswick v. State*, 143 So.2d 817 (Fla.1962)). In view of the decisions in *In re Sanudo* and *Matter of O--*, wherein the knowing use or attempted use of deadly force is deemed to involve moral turpitude, we find that an assault with a deadly weapon, is morally turpitudinous because such an assault is committed with the knowing or attempted use of deadly force. Thus, based on the aforementioned discussion, we find that the applicant’s aggravated assault conviction involves moral turpitude.

On July 20, 2002, the applicant was arrested for burglary/dwelling structure or conveyance armed in violation of Florida Statute § 810.02(1) and Florida Statute § 810.02(2)(b).

Florida Statute § 810.02 provides:

1(a) For offenses committed on or before July 1, 2001, “burglary” means . . .

(b) For offenses committed after July 1, 2001, "burglary" means:

1. Entering a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter; or
2. Notwithstanding a licensed or invited entry, remaining in a dwelling, structure, or conveyance:
 - a. Surreptitiously, with the intent to commit an offense therein;
 - b. After permission to remain therein has been withdrawn, with the intent to commit an offense therein; or
 - c. To commit or attempt to commit a forcible felony, as defined in s. 776.08.

(2) Burglary is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the course of committing the offense, the offender:

- (b) Is or becomes armed within the dwelling, structure, or conveyance, with explosives or a dangerous weapon; or

In essence, Florida Statute § 810.02(1)(b) provides that burglary occurs when a person enters or remains in, without permission, "a dwelling, a structure, or a conveyance with the intent to commit an offense therein." Florida Statute § 810.02(2)(b) states that the burglar is or becomes armed within the dwelling, structure, or conveyance, with explosives or a dangerous weapon.

We are unaware of any published federal cases addressing whether the crime of burglary under Florida law is a crime of moral turpitude. However, in *Matter of Louissaint*, 24 I&N Dec. 754, 759 (BIA 2009), the Board held that "moral turpitude is inherent in the act of burglary of an occupied dwelling itself and the respondent's unlawful entry into the dwelling of another with the intent to commit *any crime* therein is a crime involving moral turpitude."

The applicant was convicted under Florida Statute §§ 810.02(1)(b) and 810.02(2)(b). Based on the statutory language of Florida Statute § 810.02(1)(b), the applicant could have entered a dwelling, a structure, or a conveyance. Under the modified categorical approach, we find that the arrest report reveals that the applicant entered the apartment of her former boyfriend and that she held a knife to his throat. Since the record of conviction is clear that the applicant's burglary offense involved an occupied dwelling and the use of a deadly weapon, in accordance with *Louissaint* her offense involves moral turpitude, rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The waiver for inadmissibility under section 212(a)(2)(B) 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 -

...

(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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives here are the applicant's U.S. citizen spouse and child. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The applicant was convicted of armed burglary (occupied dwelling) and aggravated assault. 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 AAO notes that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and the AAO is 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). 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 dependant 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 will use the definition of a crime of violence found in 18 U.S.C. § 16 as 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.

The AAO finds that the offense of which the applicant was convicted, armed burglary (occupied dwelling) and aggravated assault, are violent crimes. The AAO notes 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. In the instant case, the qualifying relatives are the applicant’s U.S. citizen spouse and daughter.

In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board 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 AAO notes that the exceptional and extremely unusual hardship standard in cancellation of removal cases is identical to the standard put forth by the Attorney General in *Matter of Jean*, *supra*, and codified at 8 C.F.R. § 212.7(d).

The Board 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 Board 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 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 an exclusive list. *Id.*

In *Monreal*, the Board 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 *Matter of Andazola-Rivas*, the Board 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 Board 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 Board 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 Board 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 Board found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The Board 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 Board 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.”).

The applicant’s husband contends on appeal that he has been separated from his wife and daughter since 2007. He conveys that he is struggling financially, and owes \$2,944 in rent to his previous landlord in Columbia. He states that for the past year their funds have consisted of his post 9-11 G.I. Bill (\$981 every month), and his Pell grant (\$1,850 every three months). The applicant’s husband avers that their expenses in Columbia from May 2009 to April 2010 included \$924 in rent and \$322 every month for his daughter’s schooling. The applicant’s husband states that his daughter’s tuition will increase to \$800 to \$1,000 every month when she is in the first grade. He states that their other expenses were for utilities, an administration fee, groceries, and health insurance for his wife and daughter. The applicant’s husband asserts that he worries about the safety of his wife and daughter, and he refers to the U.S. Embassy’s website and the U.S. Department of State travel warning in support of his concerns. Further, he avers that his wife’s parent’s house, where his wife and children reside, was burglarized. The applicant’s husband indicates that prospective employers will not hire him because of his frequent travel to Columbia, and he expresses concern about the affect of separation on his daughter.

Moreover, we note that [REDACTED] states in the dated March 26, 2010 that he diagnosed the applicant’s husband with dysthymic disorder, which is a chronic depressive disorder. In addition, we observe that the applicant’s husband was previously treated by [REDACTED], a licensed clinical social worker, for a major depressive episode related to his wife’s immigration problems. [REDACTED] conveys in the letter dated March 21, 2009, that she treated the applicant’s husband in psychotherapy on a weekly basis since September 27, 2008 for a significant major depressive episode. She conveys that the applicant’s husband worked in communications. We also note that [REDACTED] a clinical psychologist with the Army, states in the memorandum dated August 11, 2007, that the applicant’s husband is currently serving in Iraq, and that he had met the applicant while he served at the U.S. Embassy in Columbia in 2005. [REDACTED] indicates that the applicant believes that his family would be particularly at risk of being targeted for acts of violence or kidnapping if he lived with them in Columbia because of his fair complexion and blonde hair, and his U.S. citizenship. Lastly, [REDACTED] states in the evaluation that the applicant’s

husband was stationed in Bogota, Columbia, from October 2004 until January 2007, and that he met the applicant while she worked at a hotel. [REDACTED] conveys that the applicant stopped taking college courses since his wife's waiver was denied because he cannot concentrate. [REDACTED] states that the applicant worries about moving to Columbia and not obtaining employment because he speaks almost no Spanish, about having to separate from his daughter, and about his daughter being kidnapped because she has a U.S. citizen father.

The submitted U.S. Department of State travel warning conveys that security in Columbia has improved significantly in recent years, but violence by narco-terrorist groups continues to affect rural areas and large cities. The warning states that American citizens are the victims of kidnapping, and that the incidence of kidnapping has diminished significantly from its peak early in the decade. U.S. Department of State, Bureau of Consular Affairs, *Travel Warning – Columbia* (March 5, 2010).

We note that the record reflects that in early 2007, the applicant's husband was stationed in Iraq, working in a communications systems unit, and that he served there for 15 months. The record also indicates that the applicant's husband's military enlistment ended in May 2009.

With regard to remaining in the United States without the applicant, the asserted hardship factors are the emotional and financial hardship to the applicant's husband. We note [REDACTED], [REDACTED], and [REDACTED] convey that the applicant's husband has been emotionally impacted by separation from his wife and daughter and is concerned about their safety in Columbia. Even though the AAO takes notice of the U.S. Department of State travel warnings about Columbia, we find that the applicant has not fully demonstrated that she and her daughter are likely targets for violence or kidnapping, which is the principle cause of her husband's anxiety. The record does not convey that the applicant or his wife and daughter were ever targeted for acts of violence while the applicant was stationed in Columbia from 2004 to January 2007. In addition, we observe that the applicant's wife and daughter (born on August 29, 2005) have lived in Columbia without the applicant's presence since January 2007 and, other than the burglary which occurred at the applicant's parent's house, they have not been specifically targeted for acts of harm in any manner. Moreover, with regard to concern about their financial circumstances, while the record shows that the applicant's family expenses exceed their income by \$300, no evidence has been provided to show that the applicant would not be able to overcome this shortfall by obtaining employment in Columbia. Thus, when the evidence of hardship in the record is considered collectively, we find that the applicant has not shown that her husband and daughter will endure "exceptional and extremely unusual hardship" if they remained in the United States without her. Accordingly, the applicant has not demonstrated that the financial and emotional hardship to her qualifying relatives meets the "exceptional and extremely unusual hardship" standard as required in 8 C.F.R. § 212.7(d).

With regard to joining the applicant to live in Columbia, the asserted hardships to the applicant's husband are his lack of ties to Columbia, his close familial ties in the United States, concern about his personal safety and that of his wife and daughter, and not being able to obtain employment due to a language barrier. However, we find that these factors are to be balanced by the applicant's having lived apart from his parents and siblings in the United States while serving five years in the Army; his having lived in Columbia from 2004 to 2007 without ever being assaulted and his wife and

daughter also living there without incident; his wife's ability to obtain employment and support their family; and the applicant's social and business ties to Columbia, which were established during his life there for three years. Thus, when all of the stated hardship factors and their supporting evidence are considered collectively, we find that the applicant has not shown that the hardship to her husband and daughter, as a result of living in Columbia, is "exceptional and extremely unusual hardship." Consequently, the applicant has not demonstrated that the hardship to her qualifying relatives meets the "exceptional and extremely unusual hardship" standard as required in 8 C.F.R. § 212.7(d).

Lastly, the record reflects that the applicant was determined to be inadmissible under section 212(a)(1)(A)(iii)(I) of the Act as an alien classified as having a physical/mental disorder with associated behavior that may pose, or has posed, a threat to the property, safety or welfare of the alien or others.

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

(a) Classes of Aliens Ineligible for Visas or Admission.--Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.--

(A) In general.--Any alien-

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General [now Secretary of Homeland Security])—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others . . . is inadmissible.

(B) Waiver authorized.--For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

Based on the record, the AAO finds that the applicant is not inadmissible under section 212(a)(1)(A)(iii) of the Act. The record reflects that the panel physician classified the applicant as having a Class B medical condition, Affective Bipolar Disorder, without harmful behavior or history of such behavior unlikely to recur. Thus, the applicant does not "have a physical or mental disorder and behavior associated with the disorder that may post, or has posed, a threat to the property, safety, or welfare of the alien or others." Consequently, we conclude that the record does not support the director's finding of inadmissibility under section 212(a)(1)(A)(iii) of the Act.

However, we have found that the applicant failed to establish exceptional and extremely unusual hardship to a qualifying family member for purposes of relief under section 212(h) of the Act.

Finally, the AAO notes that the director denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(2)(A)(i)(I) of the Act, and does not warrant a waiver of inadmissibility, no purpose would be served in granting the applicant's Form I-212.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.