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



U.S. Citizenship
and Immigration
Services

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FILE:

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Office: MEXICO CITY, MEXICO

Date:

NOV 29 2010

IN RE:

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APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City. 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)(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 and seeking readmission within ten years of her last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States by willfully misrepresenting a material fact when applying for an immigrant visa. The applicant is married to a U.S. citizen and has one U.S. citizen child. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated February 19, 2008, the acting district director found the applicant inadmissible for having been unlawfully present in the United States for more than one year, for misrepresenting her criminal record when applying for an immigrant visa, and for attempting to reenter the United States without being admitted after accruing over one year of unlawful presence. The acting district director then found that the applicant failed to establish extreme hardship to a qualifying relative as a result of her inadmissibility and denied the application accordingly.

In her brief dated April 2008, counsel states that the applicant is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act for attempting to reenter the United States without being admitted because after departing the United States in 2004 she never attempted to reenter the United States. Counsel also states that the acting district director's decision fails to point to a specific instance of fraud or misrepresentation made by the applicant and thus section 212(a)(6)(C)(i) of the Act is not applicable to this case. Finally, counsel states that the acting district director failed to give proper weight to the evidence presented regarding the extreme hardship to the applicant's spouse and son as a result of her inadmissibility.

The AAO notes that inadmissibility under section 212(a)(9)(C)(i)(I) of the Act pertains to applications for permission to reapply for admission and not waivers of inadmissibility. The applicant filed an Application for Permission to Reapply for Admission (Form I-212) on March 1, 2007, but given the acting district director's decision regarding the applicant's waiver application her Form I-212 application has not been adjudicated. Nevertheless, the AAO agrees with counsel in that the record does not support a finding that the applicant, after accruing over one year of unlawful presence in the United States, attempted to reenter the United States without being admitted. Thus, the AAO finds that the applicant is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act. However, the record does support a finding that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) and section 212(a)(6)(C)(i) of the Act.

The record indicates that the applicant first entered the United States without authorization in 1991 and in December 1994 she married a U.S. citizen, Mr. [REDACTED]. On November 29, 1995 the applicant was granted conditional residence based on this marriage. On August 11, 1997 the applicant and Mr.

filed a joint petition to removal the conditional basis of the applicant's residence, but on September 16, 1998 Mr. withdrew the petition and on November 9, 1998 the applicant's status as a lawful resident was terminated. On December 16, 1998 the applicant failed to appear for her removal proceeding and was ordered removed in absentia. On September 2, 2003 the applicant departed the United States.

Thus, the AAO finds that the applicant accrued unlawful presence from November 9, 1998, when the applicant's lawful status in the United States was terminated until September 2, 2003 when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her September 2003 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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

(B) Aliens Unlawfully Present.-

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

....

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

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

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

The record also shows that the applicant has a criminal record. The record indicates that on May 18, 1993 the applicant was arrested for grand theft auto in California. On May 19, 1993 the charge was dismissed. The applicant was also arrested on August 25, 1993 in California for petty theft under California Penal Code 484(A). On September 29, 1993 the applicant was convicted of this charge. The record indicates that the applicant was sentenced to imprisonment and probation, but does not state the periods of time for each.

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

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

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

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

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

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

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

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

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

(Citations omitted.)

Cal. Penal Code § 484(a) provides:

(a) Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him, or who shall knowingly and designedly, by any false or

fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. In determining the value of the property obtained, for the purposes of this section, the reasonable and fair market value shall be the test, and in determining the value of services received the contract price shall be the test. If there be no contract price, the reasonable and going wage for the service rendered shall govern. For the purposes of this section, any false or fraudulent representation or pretense made shall be treated as continuing, so as to cover any money, property or service received as a result thereof, and the complaint, information or indictment may charge that the crime was committed on any date during the particular period in question. The hiring of any additional employee or employees without advising each of them of every labor claim due and unpaid and every judgment that the employer has been unable to meet shall be prima facie evidence of intent to defraud.

U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involves moral turpitude. See *Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974)(stating, "It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude . . ."); *Morasch v. INS*, 363 F.2d 30, 31 (9th Cir. 1966)(stating, "Obviously, either petty or grand larceny, i.e., stealing another's property, qualifies [as a crime involving moral turpitude].") However, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973).

The Ninth Circuit Court of Appeals addressed the issue of whether Cal. Penal Code § 484(a) constitutes a crime involving moral turpitude in *Castillo-Cruz*. See 581 F.3d at 1157. The Ninth Circuit reviewed lower court case law on convictions under Cal. Penal Code § 484(a) and determined that a conviction for theft (grand or petty) under the California Penal Code requires the specific intent to deprive the victim of his or her property permanently. *Id.* at 1160 (citations omitted). The Ninth Circuit cited to the California Second District Court of Appeal's opinion in *People v. Albert*, which held that the act of robbery, defined by the court as "larceny aggravated by use of force or fear," requires an intended permanent taking. *Id.* (citing 47 Cal.App.4th 1004, 1007 (1996)). The Second District Court of Appeal emphasized that absent this specific intent, the taking of the property of another is not theft. 47 Cal.App.4th at 1008. Therefore, the AAO finds that a conviction for theft under Cal. Penal Code § 484(a) is categorically a crime involving moral turpitude because it requires the permanent intent to deprive the victim of his or her property.

The AAO finds that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a consequence of her conviction for theft. The AAO also finds that we are unable to make a determination as to whether the applicant's conviction qualifies for the petty offense exception because the applicant failed to submit documentation to establish the criminal penalty or the sentence resulting from her conviction. The applicant is eligible for a waiver of this ground of inadmissibility under section 212(h) of the Act.

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

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

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

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The applicant's conviction for theft occurred more than 15 years from the date of the application for an immigrant visa. The AAO notes that an application for admission or adjustment of status is considered a "continuing" application and "admissibility is determined on the basis of the facts and the law at the time the application is finally considered." *Matter of Alarcon*, 20 I.&N. Dec. 557, 562 (BIA 1992) (citations omitted). Because the issue of the applicant's admissibility is the subject of the waiver application, our determination is based on the facts and the law at the present time. Thus, the applicant is eligible to apply for a waiver under section 212(h)(1)(A) of the Act. However, as the applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in discussing whether she merits a waiver under section 212(h)(1)(A) of the Act.

The AAO now turns to the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States by willfully misrepresenting her criminal record when applying for an immigrant visa.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record indicates that the applicant failed to disclose her criminal record on her Application for an Immigrant Visa (DS-230) dated September 13, 2006 and her Application to Register Permanent Residence (Form I-485) dated January 26, 1995. However, the record indicates that during her visa interview on February 27, 2007 and her interview for adjustment on January 9, 1998, the applicant disclosed her arrest for grand theft and her arrest and conviction for petty theft, thereby eliminating any chance that she could obtain a benefit under the Act through misrepresentation. Thus, the AAO finds that the applicant is not inadmissible for her initial failure to disclose her criminal record.

The AAO does find the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresenting a material fact in an attempt to gain a benefit under the Act when she willfully misrepresented the status of her relationship with Mr. [REDACTED], her former spouse, in order to have the condition on her permanent residence removed. The applicant's record indicates that an investigation was conducted in connection with the applicant's Petition to Remove the Conditions on Residence, (Form I-751) filed on September 10, 1997, which resulted in the applicant's Form I-751 being withdrawn. The investigation revealed that the applicant and Mr. [REDACTED] were no longer residing together when they filed the Form I-751 and that they attempted to obtain permanent residence for the applicant through filing a fraudulent petition stating that they were still residing together. Thus, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure permanent residence by willfully misrepresenting a material fact, but is eligible to apply for a waiver of this ground of inadmissibility under section 212(i) of the Act.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

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

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22

I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

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

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The record of hardship includes: counsel's brief, a statement from the applicant's spouse, a statement from the applicant in English, and a statement from the applicant in Spanish. The AAO notes that because the applicant failed to submit a certified translation of her statement in Spanish, the AAO cannot determine whether the evidence supports her claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the applicant's Spanish language statement is not probative and will not be accorded any weight in this proceeding.

In her brief, counsel states that the applicant's spouse is suffering hardship as a result of the applicant's inadmissibility. She states that the applicant's spouse is suffering financially due to maintaining a home in California and in Colombia. She states that he must pay all of the bills and send money for all of the applicant's expenses in Colombia. Counsel also states that the applicant's spouse has no extended family in Colombia and no extended family outside of the United States. She states that he does not speak Spanish and does not know much about the culture. In his statement the applicant's spouse states that he is being financially strained by the separation from the applicant and is saddened by the separation. He also states that he cannot relocate to Colombia as he would be reduced to poverty. In her statement the applicant states that her son is suffering from being separated from her spouse and that her situation is causing her family stress.

The AAO finds that the current record does not establish that the applicant's spouse is suffering extreme hardship as a result of the applicant's inadmissibility. The assertions made by the applicant, her spouse, and counsel are not supported by documentation submitted as part of 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the assertions of hardship by the applicant, her spouse, and counsel do not rise to the level of extreme hardship. The applicant's spouse states that he is suffering financially and emotionally from being separated from the applicant, but submits no documentation to support these assertions. The applicant's spouse also states that he cannot relocate to Colombia because he has no economic prospects there and he would be reduced to living in poverty, but does not submit any documentation to support these assertions regarding conditions in Colombia.

Therefore, the AAO finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(i) and 212(a)(9)(B) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.