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

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 10 2011

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry 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,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Romania. She was found to be inadmissible to the United States pursuant to 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 crimes involving moral turpitude. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). 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 Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends that the hardship in the instant case is exceptional and extremely unusual hardship, thus the waiver should be granted. Counsel declares that the applicant has resided in the United States since 1974, and lives with her U.S. citizen son, who was born on December 18, 1981. Counsel states that the applicant's son was diagnosed with schizophrenia, and has only two relatives in the United States, his mother and father. Counsel avers that the applicant's son was homeless for a long period of time, and reunification with his mother changed his life. Counsel maintains that the applicant's son receives supplemental security income, and requires his mother to supervise his activities and medical treatment on a daily basis.

With regard to living in Romania, counsel indicates that the applicant's son does not speak Romanian and will be unable to learn the language, and that his inability to communicate may impact his mental stability. Counsel declares that in Romania the applicant's son will not receive the medical treatment that he requires. Counsel maintains that even if the applicant's son's supplemental security income is forwarded to Romania, it will not be enough to pay for psychiatric medication.

Counsel contends that the applicant's son is a qualifying relative, and in view of *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 (BIA 2001), his psychiatric disorder qualifies as a hardship factor since the Board of Immigration Appeals (Board) states that factors to be considered for "exceptional and extremely unusual hardship" are the qualifying relatives "age, health, and circumstances." 23 I&N Dec. 56 at 63. Counsel avers that the Board indicates that a qualifying child with a serious illness has a strong case of "exceptional and extremely unusual hardship." *Id.*

We will first address the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of committing crimes 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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The 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 AAO notes that in the recently decided *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.

On March 14, 1995, the applicant pled nolo contendere to aggravated assault with a deadly weapon in violation of Florida Statutes § 784.021(1)(a). The judge withheld adjudication of guilt and placed

the applicant on community control until December 28, 1995. (case number 94-6007). The judge also withheld adjudication of guilt for offense of aggravated stalking – prior restraint injunction in violation of Florida Statutes 784.048. For this offense the applicant was placed on community control until December 28, 1995. (case number 94-33105). Lastly, on December 28, 1994, the applicant pled nolo contendere to retaliating against a witness in violation of Florida Statutes § 914.23. The judge withheld adjudication of guilt and placed the applicant on probation, and community control for a period of six months, which was to run concurrently with her prior conviction in case number 94-6007. (case number 94-33105).

The applicant was convicted of aggravated assault with a deadly weapon in violation of Florida Statutes § 784.021(1)(a), which provides, in pertinent part:

> (1) An "aggravated assault" is an assault:
>
> (a) With a deadly weapon without intent to kill; or
>
> . . .
>
> (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 *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 decision in *In re Sanudo,* 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, whether the assault is committed with the intent to do "bodily harm," or with intent to do "violence" to the person of another, 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.

Aggravated assault is a third degree felony under Florida Statutes § 784.021(1), and is punishable by a term of imprisonment not exceeding five years. *See* Florida Statutes § 775.082 Since the applicant's aggravated assault with a deadly weapon conviction involves moral turpitude, which renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, we need not determine whether any of the applicant's other convictions involve moral turpitude.

The applicant was convicted of aggravated assault with a dangerous weapon. 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, at a minimum, the applicant's conviction for aggravated assault with a dangerous weapon is a violent crime. In the instant case, as we find that there are not national security or foreign policy considerations that would warrant a favorable exercise of discretion, the applicant must, in addition to the statutory requirement of proving extreme hardship, demonstrate that denial of admission would result in exceptional and extremely unusual hardship, to a qualifying relative, who in the instant case is the applicant's U.S. citizen son.

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.*

We note that 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 the precedent decision issued the following year, *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 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 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 son conveys in his affidavit dated August 21, 2008, that he is 26 years old and is single and does not have any children or siblings. He indicates that he has no contact with his father at this time, and resides with his mother. The applicant's son states that he was homeless in Texas and Florida for a period of time until February 2007, and that his father left him alone in the world although he was mentally ill. He states that when he was homeless in Florida his mother saw him and wanted to help him, but was in a women's shelter and unable to take care of him. He indicates

that when she left the shelter she found him living in the street and with the assistance of the church paid his bond. The applicant's son avers that he was arrested for sleeping on benches and trespassing, and that he was also arrested while living with his mother. He states that he was diagnosed with acute psychosis paranoid-type schizophrenia on August 21, 2007. The applicant's son declares that he receives $75 in food stamps and disability benefits of $424 every month from the Social Security Administration. He states that he needs his mother, who works and has found the church to help them. The applicant's son avers that his mother takes him to medical appointments, ensures he takes his medication, and has guided him to religion. He states that his mother has helped him when he feels stressed, and is able to find him wherever he may go.

[redacted] states in the letter dated August 1, 2008, that the applicant's son has been a client at Henderson Mental Health Center since June 18, 2007, and was diagnosed with schizophrenia. [redacted] indicates that the applicant's son was prescribed [redacted], and Cogentin. She states that though applicant's son is stable, he is low functioning and unable to work.

We note that the record contains an ex parte order for involuntary examination dated June 5, 2007, wherein it states that if the applicant's son does not receive care or treatment, he is likely to suffer from neglect or will refuse to care for himself, which poses "a real threat and present threat of substantial harm to his well being."

Further, we note that the applicant's son's medical records reflect that the applicant lives at the same Hallendale Beach address as her son and that she is shown as his emergency reference. The Memorial Regional Hospital record that reflects the applicant was admitted on August 21, 2007 indicates that the applicant brought her son to the hospital because of violent behavior.

Lastly, we note that the record contains documentation reflecting that the applicant's son receives supplemental security income of $424.67 every month from the Social Security Administration.

The conditions in the country to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries must be assessed in the exceptional and extremely unusual determination. The AAO finds that counsel's assertion that learning Romanian will be difficult, if not impossible, for the applicant's son is consistent with [redacted] description of the applicant's son as "low functioning." Further, in view of the applicant's son's psychiatric disorder, we believe that having to adapt to a foreign environment will have a significant adverse effect on the applicant's son's well-being. Consequently, when the hardship factors are considered collectively, the applicant demonstrates that the hardship to her son will be "exceptional and extremely unusual" in joining her to live in Romania.

In addition, in view of the applicant's son's psychiatric disorder, which the record shows necessitates medication and therapy, and the close relationship that the applicant's son claims that he has with his mother, which is consistent with documentation that reflects that the applicant brought her son to the hospital for violent behavior and lives with him, we find that the applicant has demonstrated that her son will experience "exceptional and extremely unusual" hardship if he remains in the United States without her.

In conclusion, the applicant has demonstrated that the hardship to a qualifying relative meets the "exceptional and extremely unusual hardship" standard as required in 8 C.F.R. § 212.7(d). However, we note that depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances is not always sufficient to warrant a favorable exercise of discretion

In general, a showing of hardship is one of the favorable factors to be considered in determining whether we should exercise discretion in favor of the waiver. *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996). The Board has stated:

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

Id. at 301.

We then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

We recognize the favorable factors in the present case, which include the commendation of the applicant by her son, the exceptional and extremely unusual that he will experience without her, the applicant having lived in the United States since 1974, and the passage of 15 years since the conduct rendering her inadmissible.

However, we also find that the applicant's crimes of aggravated assault with a deadly weapon (a vehicle), aggravated stalking – prior restraint injunction, and retaliating against a witness are grave crimes that constitute weighty adverse factors in our discretionary analysis.

We observe that the police report dated February 22, 1994 describes the incident for the aggravated assault with a deadly weapon as follows:

> Victim stated that she and friends (witnesses) were walking home from school when the defendant attempted to hit the victim with her vehicle. Defendant was driving

> [redacted] and stopped at the sign and waited several minutes for the victim to walk up to [redacted] Upon victim[s] [beginning] to walk across [redacted] the defendant swerved towards the victim with her vehicle, causing the victim to run out of the way. The defendant then fled. Victim was in fear for her life. Note: Victim's mother stated that there is a restraining [order] on the defendant. . . .

The police report dated September 27, 1994 describes the incident for the aggravated stalking and retaliating against victim as follows:

> A permanent injunction for protection against repeat violence was issued 12-09-93 (exp. 12-08-94) to protect victim[redacted]s from the defendant. On 05-17-94 a hearing was held in front of [redacted] where the victim faced the defendant and testified against her. After repeated acts of intimidation and harassment the victim genuinely fears the defendant.
>
> On 09-18-94, approximately 7:10 PM, the victim and her mother were walking on the sidewalk when they saw the defendant standing on her walkway with a broom in her hand. When the victim saw her, she walked into the roadway to avoid her. The defendant made eye contact with the victim and said, "I know you are afraid of me, I'll kill you." The victim stated, "That she was so afraid that she froze in her tracks." Her mother in fear of her daughter's safety grabbed her, ran into the house and called the police. . . .
>
> . . .

The applicant has not, in any meaningful way, explained or expressed remorse for her criminal conduct, which evinces a pattern of violent and menacing behavior. She has not described her rehabilitation, or any treatment she has received or may be receiving to address any mental health issues that may have contributed to her conduct. In view of the gravity of the applicant's past criminal conduct, and the applicant's failure to demonstrate her desirability as permanent resident in light of the doubts raised by that conduct, we find that the applicant has not demonstrated that she warrants a favorable exercise of discretion in spite of the extraordinary circumstance of exceptional and extremely unusual hardship to her son.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

ORDER: The appeal is dismissed.