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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

[redacted]

Date: FEB 0 7 2012 Office: CHICAGO FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[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 Field Office Director, Chicago, Illinois, 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 Mexico. He 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 his 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 director abused his discretion in denying the waiver application. Counsel states that the submitted psychological report estabishes that the applicant's U.S citizen wife and children will suffer extreme hardship if the waiver is denied. Counsel maintains that the applicant's wife sought professional help for anxiety and stress, headaches, trouble concentrating at work, and sleeping and eating problems. Counsel states that the applicant's wife's emotional problems are due to uncertainty about the applicant's immigration. Counsel states that the applicant's wife depends on the applicant financially and emotionally. Counsel asserts that separating the applicant's children from their father will violate their fundamental right to family unity under the Due Process Clause of the U.S. Constitution. Counsel states that if the applicant's wife and children joined the applicant to live in Mexico their future will be uncertain. Counsel asserts that the applicant's children were born and raised in the United States and do not speak Spanish. Counsel maintains that their education in Mexico will be inferior to the one they now have in the United States.

We will first address the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of 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 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.)

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.

The applicant's criminal record, in pertinent part, is as follows:

Date of Crime	Crime
August 11, 2000	Attempt Obstructing Justice
September 3, 2000	Battery
September 3, 2000	Resisting Arrest

The applicant was found guilty of the aforementioned crimes. The applicant was placed on court supervision for six months and one day, and ordered to pay fines and costs, and perform community service for the obstructing justice offense. The applicant was placed on six months conditional discharge, and ordered to pay fines and costs, and have no contact with the victim for the battery offense. Finally, the applicant was placed on conditional discharge for six months and ordered to pay fines and costs for the resisting arrest offense.

Violation of 720 ILCS 5/8-4 (attempt offense) reads as follows:

> (a) Elements of the offense.
>
> A person commits the offense of attempt when, with intent to commit a specific offense, he or she does any act that constitutes a substantial step toward the commission of that offense.
>
> (b) Impossibility.
>
> It is not a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.
>
> . . .

The applicant's underlying attempt offense is obstructing justice. 720 ILCS 5/31-4 states:

> A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he knowingly commits any of the following acts:
>
> (a) Destroys, alters, conceals or disguises physical evidence, plants false evidence, furnishes false information; or
>
> (b) Induces a witness having knowledge material to the subject at issue to leave the State or conceal himself; or
>
> (c) Possessing knowledge material to the subject at issue, he leaves the State or conceals himself.
>
> . . .

In *Padilla v. Gonzales,* the Seventh Circuit held that obstructing justice under 720 ILCS 5/31-4 involves moral turpitude. 397 F.3d 1016, 1021 (7th Cir. 2005). Padilla was charged with giving officers a false name and driver's license when stopped for a traffic violation in order to prevent Padilla's arrest for driving with a revoked license. *Id.* at 1020. The Seventh Circuit stated that concealing criminal behavior involves moral turpitude and so does the dishonest act of knowingly furnishing false information. *Id.* at 1020-1021.

Violation of 720 ILCS 5/31-4 therefore categorically involves moral turpitude because the language of the Illinois obstructing justice statute convicts a person of acts of dishonesty and concealing criminal behavior. Accordingly, the crime obstructing justice renders the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The applicant was also convicted of resisting arrest and simple battery. At the time of his arrest, 720 ILCS 5/31-1(a) was violated by "[a] person who knowingly resists or obstructs the performance by one known to the person to be a peace officer . . . within his official capacity commits a Class A misdemeanor." In *Payne v. Pauley*, 337 F.3d 767, 776 (7th Cir. 2003), the Seventh Circuit stated that the resistance must be physical. In *People v. Miller*, 199 Ill.App.3d 603, 557 N.E.2d 500 (1990), the Court stated that the essential element of resisting a peace office is "resistance," and the crime of resisting a peace officer does not require establishment of battery. 199 Ill.App.3d 603 at 607-610.

720 ILCS 5/12-3(a)(1) was violated if a person "intentionally or knowingly without legal justification and by any means . . . causes bodily harm to an individual . . . Battery is a class A misdemeanor. In *People v. Rodarte*, 190 Ill.App.3d 992, 547 N.E.2d 1256 (1989), the Court stated that: "For purposes of the battery statute, bodily harm consists of some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent." 190 Ill.App.3d 992 at 999.

As a general rule, simple assault or battery is not deemed to involve moral turpitude for purposes of the immigration laws. *Matter of Fualaau,* 21 I&N Dec. 475, 477 (BIA 1996). However, this general rule does not apply where an assault or battery necessarily involved some aggravating dimension, such as the use of a deadly weapon or serious bodily harm. *See, e.g., Matter of Danesh,* 19 I&N Dec. 669 (BIA 1988), *Matter of Goodalle*, 12 I&N Dec. 106 (BIA 1967), *Matter of S-*, 5 I&N Dec. 668 (BIA 1954), and *Nguyen v. Reno*, 211 F.3d 692 (1st Cir. 2000). The Board has also found:

> [M]oral turpitude necessarily inheres in assault and battery offenses that are defined by reference to the infliction of bodily harm upon a person whom society views as deserving of special protection, such as a child, a domestic partner, or a peace officer, because the *intentional or knowing infliction of injury* on such persons reflects a degenerate willingness on the part of the offender to prey on the vulnerable or to disregard his social duty to those who are entitled to his care and protection.

Matter of Sanudo, 23 I&N Dec. 968, 971 (BIA 2006) (emphasis added).

Based solely on the statutory language, 720 ILCS 5/31-1(a) and 720 ILCS 5/12-3(a)(1) encompass (hypothetically) conduct that involves moral turpitude and conduct that does not. However, in accordance with *Silva-Trevino*, we must determine if an actual case exists in which these criminal statutes were applied to conduct that did not involve moral turpitude. A case involving 720 ILCS 5/12-3(a)(1) was applied to conduct not involving moral turpitude. In *People v. Claudio*, 13 Ill.App.3d 537, 540, 300 N.E.2d 791 (1973), the Court found that kicking police officers was the "causing of bodily harm," even though the officers testified to not having sustained any injuries. The offense of resisting arrest was also applied to conduct not involving moral turpitude. In *Williams v. Jaglowski*, 269 F.3d 778, 782 (7th Cir. 2001), the Seventh Circuit stated that 720 ILCS

5/31-1 proscribes "going limp" because it is a physical act imposing an obstacle impeding, hindering, interrupting, preventing or delaying the performance of the officer's duties.
Therefore, we cannot find that the offenses described in 720 ILCS 5/31-1(a) and 720 ILCS 5/12-3(a)(1) are categorically crimes involving moral turpitude. The AAO must therefore review the entire record, including the record of conviction and, if necessary, other relevant evidence, to determine if the applicant's conviction under these statutes was for morally turpitudinous conduct.

The record of conviction indicates that the applicant's battery offense involved an aggravating dimension. The complaint for battery stated that:

> [T]he defendant . . . without legal justification knowingly and intentionally caused bodily harm to [redacted] in that he pushed [redacted] in the chest [illegible] times and then grabbed [redacted] by the neck causing a small laceration.

The complaint for resisting arrest conveyed that:

> [T]he defendant . . . knowingly resisted the performance of [redacted][,] a person known to be a peace officer, by pushing, fighting, and refusing using to be handcuffed.

The complaint for battery indicates that the applicant intentionally or knowingly inflicted bodily injury upon a person the applicant knew to be a peace officer. In view of the aforementioned cases, this crime renders the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The complaint for resisting arrest conveys that the applicant did not inflict any bodily injury to [redacted] However, the battery and resisting arrest offenses involve the same event. Thus, in view of the battery complaint, which conveyed that the applicant physically harmed [redacted] we find that the applicant's offense of resisting arrest did involve moral turpitude.

The applicant was convicted of battery. 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 battery 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.

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 evidence in this case includes letters, birth certificates, photographs, a marriage certificate, wage statements, federal income tax records, medical records, school records, and other documentation.

The applicant asserted in the letter dated August 11, 2008 that his wife has headaches and sometimes stays in bed. The applicant stated that his wife works part time and that without his income will have to move from where she now lives and work full time to support their eight-year-old daughter and six-year-old son. The applicant conveyed that his wife will require a babysitter to take care of their children. The applicant indicated that his wife will be depressed in having these responsibilities alone. He expressed concern about the effects of separation on his children's behavior, and about how being able to survive in Mexico after living in the United States for many years. The applicant expressed regret for his past errors and placing the wellbeing of his family at risk.

The applicant's wife conveyed in the letters dated August 6, 2008 and July 6, 2009 that her husband's employer provides their health insurance, she depends on her husband's emotional and financial support, and is worried about the effects of separation from the applicant on their children.

[redacted] a licensed social worker at [redacted] stated in the letter dated July 3, 2009 that the applicant's wife came to the United States in 1994 and married the applicant in 2001. [redacted] conveyed that the applicant's possible deportation has created emotional trauma and anxiety for the applicant and his wife and their two children. She asserted that the applicant's children will be separated from the applicant during an extremely difficult period of their development, causing emotional and psychological trauma for them as well as their parents. [redacted] stated that the applicant's wife is distracted at work, has difficulty sleeping and eating, and is very fearful about her husband not being with them. [redacted] conveyed that the applicant's wife has a depressed mood, feeling overwhelmed and sad, and was given medication (cyclobencapr) by her doctor to ease severe stress related headaches. [redacted] stated that the applicant is the primary provider and the applicant's wife will have excessive financial hardship without his income. [redacted] indicated that the applicant and his wife share the responsibility of taking care of their children because they cannot afford childcare. [redacted] stated that the applicant's wife expressed anxiety about losing her apartment and not having a place to live and about her children losing the family connectedness they need and have with their father. [redacted]

[redacted] indicated that the applicant's son is rebellious and soccer helps with his behavior. [redacted] stated that the applicant expressed regret for his difficulties with the law and has worked to be a good provider, father, and role model for his children.

A medical record dated June 25, 2009 reflects the applicant's wife was treated for headaches that she had intermittently for a month, and in the past was put on Lexapro for panic attacks, the cause of which she was unable to identify. The record reflects the applicant was employed as a sous chef from September 1994 to August 1999 and from April 4, 2001 to at least July 2, 2009. Wage statements reflect the applicant works full time earning $13.50 per hour, and the applicant's wife works full time earning $8.25 per hour with [redacted] stated in the letter dated July 2, 2009 that the applicant's wife "usually works two jobs (one at night) to provide for her family." Financial records show the applicant's rent in 2008 was $880 and the record contains invoices of household expenses.

The asserted hardships in the instant case are emotional and financial in nature. The applicant's assertion of having a strong relationship with his wife and children is consistent with letters in the record from the applicant's wife, daughter, and friends attesting to the close bond that the applicant has with his wife and children. Medical records reflect the applicant's wife had headaches and was prescribed medication. The applicant did not submit documentation of his wife's medication. The record shows that the applicant's wife is actively engaged in her job, working full time, and in her community, volunteering at her children's school. The record reflects that the applicant's wife will experience financial hardship without her husband's income as she earns $8.25 per hour ($17,160 annually), and income from the second job she appears to have should augment her earnings. The submitted household invoices for utilities, telephone, and rent total approximately $1,200, indicating that the applicant's wife may be able to meet household expenses. Income tax records reflect that since 2005 the applicant's father lived with the applicant and his wife. There is no indication in the record that he will not be able to take care of his grandchildren while the applicant's wife worked. Lastly, counsel contends that separation from the applicant is a violation of the fundamental right to family unity under the Due Process Clause of the U.S. Constitution. We observe that, like the Board of Immigration Appeals, this office cannot rule on the constitutionality of laws enacted by Congress, and we are bound by the precedent decisions cited herein. *See, e.g., Matter of Fuentes-Campos*, 21 I&N Dec. 905 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529 (BIA 1992). Thus, we find that when the claimed hardships are considered collectively, the applicant has not fully demonstrated they rise to the level of exceptional and extremely unusual hardship.

The hardships of joining the applicant to live in Mexico are described by the applicant's wife in the letter dated July 6, 2009. She stated that if she joined her husband to live in Mexico it would be difficult because there are no jobs in Mexico, the economy is terrible, and her children will not have the same opportunities they now have in the United States. The applicant's wife indicated that she is satisfied with her children's education and sports activities. The applicant's wife stated that her husband provides financial support to his parents in Mexico.

The claimed hardships of having to live in Mexico are, in substance, emotional and financial. The hardship to the applicant's two young children in are not knowing the Spanish language, not having the educational opportunities and resources equal to what they have in the United States, and having to adapt to life in an unfamiliar country. In *In re Kao*, 23 I&N Dec. 45 (BIA 2001), the Board found

extreme hardship to an applicant's U.S. citizen 15-year-old daughter. The Board held that the applicant's daughter had lived her entire life in the United States and uprooting her to live in China "at this stage in her education and her social development" and requiring "her to survive in a Chinese-only environment would be a significant disruption that would constitute extreme hardship." 23 I&N Dec. 45 at 50. The applicant's wife claimed that they will have difficulties obtaining jobs in Mexico for which they are qualified. But the applicant submitted no evidence consistent with his wife's claim. Additionally, the record reflects that the applicant's father has been living in the United States with the applicant. Consequently, when the claimed hardships are considered collectively, we find that the applicant has not fully demonstrated they rise to the level of exceptional and extremely unusual hardship.

In conclusion, the applicant has not demonstrated that the hardships meet the "exceptional and extremely unusual hardship" standard as required in 8 C.F.R. § 212.7(d), and we therefore find that there are not extraordinary circumstances warranting a favorable exercise of discretion in this case.

In 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.