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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: OCT 2 8 2013 Office: SAN BERNARDINO 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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Bernardino, California. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO) on March 7, 2013. The matter is now before the AAO on motion. The motion will be granted, but the prior AAO decision dismissing the appeal will be affirmed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. On November 22, 2010, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. Lawful Permanent Resident (LPR) spouse and U.S. citizen children.

In a decision dated December 1, 2011, the field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that his qualifying relatives would experience extreme hardship as a consequence of his inadmissibility. The field office director further denied the waiver application as a matter of discretion. In a decision dated March 7, 2013, the AAO found that the applicant's two criminal convictions for inflicting corporal injury upon a spouse, in violation of section 273.5(a) of the California Penal Code, rendered the applicant subject to the heightened hardship requirement of the regulation at 8 C.F.R. § 212.7(d). The AAO further found that the applicant did not demonstrate that his qualifying relatives would experience exceptional and extremely unusual hardship as a consequence of his inadmissibility. Accordingly, the applicant's appeal was dismissed.

On April 8, 2013, the applicant, through counsel, submitted a Form I-290B (Notice of Appeal or Motion), indicating in Part 3 that she was submitting additional factual evidence for the AAO to review and consider. On motion, counsel submits new evidence which she contends overcomes the reasons for the dismissal of the applicant's appeal. Counsel contends that the submitted evidence on motion outlining medical, financial, and emotional hardship to the applicant's wife and children demonstrates exceptional and extremely unusual hardship to his qualifying relatives.

The regulation at 8 C.F.R. § 103.5(a) states, in pertinent part, that:

> (a) Motions to reopen or reconsider
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> . . . .
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> (2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. . . .
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> (3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

> (4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The record includes the following new or additional evidence: a psychological evaluation of the applicant's lawful permanent resident spouse, medical documentation, school enrollment records, and declarations by the applicant's U.S. citizen children. Upon review, we find that the additional evidence meets the requirements of a motion to reopen found in 8 C.F.R. § 103.5(a)(2). The evidence points to new facts not previously addressed, which are supported by documentary evidence.

The record shows that the applicant was convicted of inflicting corporal injury upon a spouse, in violation of section 273.5(a) of the California Penal Code, on May 8, 1996 and October 24, 2005. The applicant does not contest inadmissibility on motion. As such, the AAO confirms the finding that the applicant has two convictions for crimes involving moral turpitude rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The AAO has also concluded that the applicant has been convicted of a "violent or dangerous crime" pursuant to the regulation at 8 C.F.R. § 212.7(d), which the applicant does not dispute on motion.

As discussed in the AAO's dismissal of the applicant's appeal, even if the applicant satisfied the extreme hardship requirement of section 212(h)(1)(B) of the Act, he would still be subject to the heightened hardship requirement of showing exceptional and extremely unusual hardship to warrant a favorable exercise of discretion under section 212(h)(2) of the Act. The exceptional and extremely unusual hardship standard is more restrictive than the extreme hardship standard. *Cortes-Castillo v. INS*, 997 F.2d 1199, 1204 (7th Cir. 1993). Since the applicant is subject to 8 C.F.R. § 212.7(d), he must meet the higher standard of exceptional and extremely unusual hardship.

In *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001), the Board of Immigration Appeals (BIA) determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." The BIA has also stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. These 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 upon the qualifying relatives; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *Id.*

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

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

23 I&N Dec. at 63-4.

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

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

23 I&N Dec. at 324.

However, the BIA in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as *Andazola-Rivas*, clarified that "the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief." 23 I&N Dec. 467, 470 (BIA 2002). The BIA found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The BIA noted that these factors included her heavy financial and

familial burden, lack of support from her children's father, her U.S. citizen children's unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The BIA stated, "We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met." *Id.* at 470.

The AAO turns first to a consideration of the additional evidence submitted to establish that the applicant's wife and children would suffer exceptional and extremely unusual hardship if the applicant's waiver application is denied. The AAO, in its decision dated March 7, 2013, found that the requisite hardship had not been established. Specifically, the AAO noted that the emotional hardships the applicant's wife and children experienced, although significant, were insufficient to demonstrate exceptional and extremely unusual hardship when considered on their own. The AAO further noted the submitted medical documentation was insufficient to demonstrate exceptional and extremely unusual hardship upon separation.

On motion, the applicant contends that his wife will experience medical, financial, psychological, and emotional hardship if she remains in the United States while he resides abroad due to his inadmissibility. In support, the applicant submitted a psychological evaluation of his wife, prepared on May 6, 2013 by Dr. Based on interviews and psychological testing conducted on April 10, 2013 and April 16, 2013, Dr. diagnosed the applicant's wife with chronic posttraumatic stress disorder, major depressive disorder, and generalized anxiety disorder. He also concluded that the applicant's wife is a high risk for suicide. In his evaluation, Dr. states that the applicant's wife seemed to be severely depressed, extremely anxious, and exhibited symptoms of insomnia, stress, crying, loss of appetite and worry. Dr. asserts that the applicant's wife's medical history includes diabetes, pain in her shoulders, neck and head resulting from a work-related injury, periodontal problems, and obesity. However, Dr. acknowledges that her diabetes is a treatable condition and that she is taking medication to treat her afflictions. In fact, in a letter dated May 1, 2013, Dr. MD, states that the applicant has been receiving care for diabetes, abnormal liver enzymes and obesity since 2007 and that her treatment includes diet, daily exercise, prescription medication, and blood sugar monitoring.

Having carefully considered the contents of the psychological evaluation, we find that although the hardships illustrated therein may be considered "extreme," the applicant has failed to demonstrate that they rise to the heightened level of exceptional and extremely unusual. Although we give considerable weight to factors here such as the applicant's wife's psychological difficulties and ill health, we do not find that the applicant has established that his wife is solely reliant on him. *See generally, Matter of Monreal*, 23 I&N Dec. at 63-64. While we recognize that the applicant's wife has serious health concerns and that she wishes for the applicant's physical and emotional support, we find the record lacking in evidence that would demonstrate that the hardship she would face is "substantially" beyond the ordinary hardship that is expected upon separation. The AAO again notes that there is no evidence in the record establishing that the applicant's wife depends upon him for medical appointments, treatment, or medical care. Additionally, the record reflects that the applicant and his wife have three U.S. citizen children over the legal age of 21 residing in the family household, and the record does not show that they would be unable or unwilling to care for their mother, if necessary.

Furthermore, although it is asserted in the psychological evaluation that the applicant is unable to work due to her physical limitations, neither counsel nor the applicant submitted independent objective evidence in support of this assertion. On motion, counsel asserts that she attached a medical certification of the applicant's wife's permanent disability. However, the documentary evidence submitted on motion to demonstrate the disability of the applicant's wife consists of two applications for a [redacted] There is no evidence in the record showing that the applications were approved by the [redacted] and the June 18, 2008 application does not indicate if the applicant's wife is permanently or temporarily disabled, as required by the form. These documents are therefore insufficient to show that the applicant is unable to work due to a physical limitation resulting from a work-related injury.

The record also includes three letters of support written by the applicant's U.S. citizen children, in which they attest to the applicant's good moral character, his contributions to their community, and the emotional and financial difficulties they would face in the event of separation from the applicant. The applicant's children all state in their declarations that they would experience financial hardship if the applicant is removed to Mexico. They assert that the applicant is the main source of financial support and that he is responsible for mortgage and utility payments. Both the applicant's daughter, [redacted] and the applicant's son, [redacted] indicate that although they are capable of securing employment to help support the family household, the job market in [redacted] California has not improved since the 2008 recession. [redacted] further indicates that he has attempted to find employment in [redacted] but that jobs are scarce in that city. Here, the AAO notes that other than the applicant's children's assertions regarding employment opportunities in [redacted] the record does not contain documentary evidence showing decreased employment opportunities in that area, or of a surplus of young, educated adults actively looking for employment in [redacted] California. 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)).

Similarly, in a declaration dated April 2013, [redacted] the applicant's youngest son, states that he was recently informed by staff at the [redacted] for General Education that he would not receive additional financial assistance "because of the time limit held on completing certain educational goals." He indicates that his educational plans have therefore been altered due to the uncertainty surrounding his father's immigration status and the termination of financial assistance. Though the record contains documentation indicating that Julius is a student enrolled at [redacted] there is no objective documentary evidence corroborating his assertion regarding the termination of financial aid benefits.

Lastly, we acknowledge the applicant's children's assertions regarding [redacted] outstanding academic achievements, the loving and caring relationship that their parents now enjoy, and the emotional and financial challenges associated with separation. However, we find that the record evidence as presently constituted indicates that the applicant's qualifying relatives face no greater hardship than the unfortunate but common difficulties arising whenever an alien is denied admission. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627,

632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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).

Therefore, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives upon separation, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of exceptional and extremely unusual hardship. *Matter of Monreal-Aguinaga*, 23 I&N Dec. at 62. Additionally, as the applicant has not asserted on motion exceptional and extremely unusual hardship to his qualifying members upon relocation to Mexico, we will not find that refusal of admission would result in exceptional and extremely unusual hardship to the applicant's wife and children.

In proceedings for an 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, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, although we have reopened the matter to consider the new evidence submitted, we affirm our prior decision dismissing the applicant's appeal.

ORDER: The prior AAO decision is affirmed.