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

U.S. Citizenship and Immigration Services

DATE: JUN 0 3 2014 OFFICE: BOSTON, MA FILE:

IN RE:

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:

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, Boston, Massachusetts. The waiver application is now on appeal to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a native and citizen of Uruguay who 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 a crime involving moral turpitude. The applicant is the spouse of a U.S. citizen and the son of a lawful permanent resident. He is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his family.

In a decision, dated October 15, 2013, the field office director found that the applicant had been convicted of two crimes involving moral turpitude that he had failed to show extreme hardship to his U.S. citizen spouse as a result of his inadmissibility, and because of his criminal record, he did not warrant a favorable exercise of discretion.

In an appeal, counsel states that the applicant did establish extreme hardship to his U.S. citizen spouse as a result of his inadmissibility. In his brief, counsel emphasizes the evidence submitted to establish that the applicant's spouse is dependent on the applicant for emotional and physical support and that she has extensive ties to the United States. Counsel also asserts that the field office director erred in his discretionary analysis in relying too heavily on the applicant's criminal convictions and not giving enough weight to his family ties in the United States.

Section 212(a)(2)(A) of the Act provides, in relevant part:

> (i) … any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
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> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, ... is inadmissible.
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> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-
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> …
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> > (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):

> [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....
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> 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 *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General set forth a new framework for determining whether a conviction is a crime involving moral turpitude where the language of a criminal statute 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 record indicates that on February 4, 2004, the applicant was convicted of Assault and Battery with a Dangerous Weapon, victim sixty years old or older, under Massachusetts General Statutes 265 § 15A(a) and the Malicious Destruction of Property, over $250 under Massachusetts General Statutes 266 § 127A. The applicant was sentenced to one year probation for each crime.

At the time of the applicant's conviction, Massachusetts General Statutes 265 § 15A(a) stated:

> (a) Whoever commits assault and battery upon a person sixty years or older by means of a dangerous weapon shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars or imprisonment in jail for not more than two and one-half years.

Massachusetts General Statutes 265 § 15A(a) is a general intent crime in that specific intent to do bodily harm is not required, but general intent to do the acts which cause the harm is required. See *Com. v. Waite* (1996) 665 N.E.2d 982, 422 Mass. 792 and *Com. V. Meadows* (1981) 428 N.E.2d 321, 12 Mass.App.Ct. 639.

Massachusetts courts have held that to constitute a dangerous weapon an object must be shown to be capable of causing death or the requisite degree of bodily harm or serious damage to the victim of the assault. *Com. v. Lord* (2002) 770 N.E.2d 520, 55 Mass.App.Ct. 265, review denied 774 N.E.2d 1098, 437 Mass. 1108 and *Com. v. Tevlin* (2001) 741 N.E.2d 827, 433 Mass. 305. In addition, the Massachusetts courts have held that the requisite degree of bodily harm, for purposes of a charge of assault and battery by means of dangerous weapon, must interfere with the health or comfort of the victim; such hurt or injury need not be permanent, but must be more than merely transient and trifling. *Com. v. Lord* (2002) 770 N.E.2d 520, 55 Mass.App.Ct. 265, review denied 774 N.E.2d 1098, 437 Mass. 1108.

As a general rule, simple assault or battery is not deemed to involve moral turpitude. *Matter of Fualaau,* 21 I&N Dec. 475, 477 (BIA 1996). However, assault or battery offenses involving some aggravating dimension, such as the use of a deadly weapon or serious bodily harm, have been found to be crimes involving moral turpitude. *See, e.g., Matter of Goodalle*, 12 I&N Dec. 106 (BIA 1967) (finding that second degree assault with a knife is a crime involving moral turpitude); *Matter of Medina*, 15 I&N Dec. 611 (BIA 1976) (assault with a deadly weapon); *Matter of S-*, 5 I&N Dec. 668 (BIA 1954) (assault with a .38-caliber revolver); *Nguyen v. Reno*, 211 F.3d 692 (1st Cir. 2000) (intentional infliction of serious injury). The infliction of bodily harm upon a person society views as deserving of special protection, such as a child, a domestic partner, or a peace officer, is also considered an aggravating circumstance. *See, e.g., Matter of Tran*, 21 I&N Dec. 291 (BIA 1996) (willful infliction of corporal injury on a spouse, cohabitant, or parent of the offender's child); *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988) (aggravated assault against a peace officer).

A finding of moral turpitude may also involve "an assessment of both the state of mind and the level of harm required to complete the offense." *Matter of Solon*, 24 I&N Dec. 239, 242 (BIA 2007). Crimes committed intentionally or knowingly with the specific intent to inflict a particular harm, and with a resulting meaningful level of harm, constitute crimes involving moral turpitude, but "as the level of conscious behavior decreases, i.e., from intentional to reckless conduct, more serious resulting harm is required" for a finding of moral turpitude. *Id.* "[W]here no conscious behavior is required, there can be no finding of moral turpitude, regardless of the resulting harm." *Id.*; *see also Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) (finding that third-degree assault under section 9A.36.031(1)(f) of the Revised Code of Washington is not a crime involving moral turpitude because neither intent nor recklessness is required for a conviction); *Matter of Fualaau*, 21 I&N Dec. at 478 (third-degree assault in Hawaii, an offense that involves recklessly causing bodily injury to another person, is not a crime involving moral turpitude); *Matter of P-*, 3 I&N Dec. 5, 8-9 (BIA 1947) (finding that assault without a deadly weapon but with the intent to cause great bodily harm is a crime involving moral turpitude).

Furthermore, in *Matter of O--*, the Board of Immigration Appeals found that assault with a deadly and dangerous weapon in violation of section 6195 of the General Statutes of Connecticut involves moral turpitude. 3 I&N Dec. 193 (BIA 1948). The Board noted that the offense "is inherently base . . . because an assault aggravated by the use of a dangerous or deadly weapon is contrary to accepted standards of morality in a civilized society." *Id.* at 197. In *Matter of Sanudo*, the Board noted 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." 23 I&N Dec. 968, 971 (BIA 2006) (citations omitted).

In the applicant's case, his conviction involves more than simple assault and battery because it involved the use of a dangerous weapon and it resulted in serious harm.[1] We recognize that the applicant's conviction did not involve specific intent to inflict a particular harm, but only intent to commit the acts that resulted in the harm. Nevertheless, given the use of a dangerous weapon and the resulting serious injury, an injury beyond mere offensive touching, as result of the applicant's actions, the applicant's conviction is for a crime involving moral turpitude.

Because the applicant has been found inadmissible for his conviction under Massachusetts General Statutes 265 § 15A(a) and this conviction does not fall within the petty offense exception, we will

[1] Massachusetts General Statutes 265 § 15A(c)(i) allows for the conviction for acts that constitute assault and battery with a dangerous weapon causing serious bodily injury. Massachusetts General Statutes 265 § 15A(d) defines serious bodily injury as injury which results in a permanent disfigurement, loss or impairment of a bodily function, limb or organ, or a substantial risk of death. Thus, we can infer that the injury caused by the applicant's actions was not serious bodily injury, but in accordance with Massachusetts case law was more than mere offensive touching and of such a nature that would bring his actions into the realm of crimes involving moral turpitude.

not discuss whether his conviction for Malicious Destruction of Property constitutes a crime involving moral turpitude.

The applicant requires a waiver under section 212(h) of the Act.

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

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if –
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> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
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> (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,
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> (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
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> (iii) the alien has been rehabilitated; or
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> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .; and
>
> (2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The applicant's qualifying relatives are his spouse and mother. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (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 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. 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).

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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. I.N.S.,* 138 F.3d 1292 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not

extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record of hardship includes: two briefs from counsel, two statements from the applicant, two statements from the applicant's spouse, a letter from the applicant's mother, medical documentation, school certificates, a statement from the applicant's employer, financial documentation, and country conditions information.

The applicant's spouse states that she will suffer financially and emotionally as a result of the applicant's inadmissibility. She states that she relies on the applicant's income to help with household expenses, but the record fails to include documentation to show the applicant's contributions to the household income. The applicant's spouse also states that she suffers anxiety, depression, and asthma. She states that she previously saw a counselor and took medication for depression, but with the applicant in her life she no longer needs this outside mental health support. She states that the applicant is a stabilizing force in her life. Again, the record lacks documentation to support these statements. The record does not contain supporting documentation showing that the applicant's spouse previously struggled with mental health problems.

In regards to relocation, the record indicates that the applicant's spouse traveled to the United States in 1996 at the age of 23 years old after her father, her family's sole income earner, died of a heart attack. She states that as the oldest child, she went to work in Uruguay to support her mother and four siblings. She states that she struggled because she could not find secure employment in Uruguay. The applicant's spouse asserts that she has substantial financial and emotional ties to the United States. She states that she was educated in the United States, owns a home in the United States, and owes a mortgage, car loan, and credit card debt. The record also indicates that the applicant's spouse is very close to the applicant's family and to the family who employs her as a home care nurse. The record indicates that for the past nine years the applicant's spouse has been employed caring for an elderly couple and has grown very close to their family. The applicant's spouse states that she would suffer emotionally upon relocation because she would have to separate from this family and would no longer be able to support her family and siblings in Uruguay. She also states that she is concerned with crime and medical care in Uruguay.

Like with hardship upon separation, the applicant has failed to submit documentation to support her assertions of hardship upon relocation. The record does not contain supporting evidence establishing the applicant's spouse's financial ties to the United States; that she sends support to her family in Uruguay and that her family would be unable to help her financially upon relocation. The record also fails to show that with her education she would not be able to find employment in Uruguay and/or that she would be unable to have access to medical care in Uruguay.

The record does include a statement regarding hardship to the applicant's mother. We will consider hardship to the applicant's mother, but note that the record does not include documentation to show her lawful permanent resident status. In her statement, the applicant's

mother asserts that her son is her caretaker and that none of her other children can help care for her. She also states that she would suffer hardship upon relocation because she has medical problems, is elderly, and her entire family is in the United States. The record does not include documentation to support these assertions.

We acknowledge that the assertions of the applicant's mother are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan,* 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained in an affidavit should not be disregarded simply because it appears to be hearsay. In administrative proceedings, that fact merely affects the weight to be afforded [it] . . . ."). Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Therefore, the applicant has not established that a qualifying relative will suffer extreme hardship as a result of his inadmissibility.

Moreover, even if the applicant establishes that he meets the requirements of section 212(h)(1)(B) of the Act, the Secretary may not favorably exercise discretion in the applicant's case except in extraordinary circumstances.

The regulation at 8 C.F.R. § 212.7(d) provides:

> The Attorney General [Secretary], 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 dependent 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). For example, Black's Law Dictionary, Eighth Edition (2004), defines violent as "[o]f, relating to, or characterized by strong physical force," "[r]esulting from extreme or intense force," or "[v]ehemently or passionately threatening," and dangerous as "perilous; hazardous; unsafe" or "likely to cause serious bodily harm." 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 arrest report in the applicant's case indicates that he was involved in a physical altercation where he kicked another man in the head and face causing a lump on and cuts to the man's head. Therefore, we find that the applicant's conviction for assault and battery with a dangerous weapon is a violent and dangerous crime and the applicant is subject to 8 C.F.R. § 212.7(d). However, because the applicant has not shown extreme hardship to a qualifying relative no purpose would be served in making a discretionary finding at this time.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. The appeal will be dismissed.

ORDER: The appeal is dismissed.