U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-V-

DATE: SEPT. 8, 2015

APPEAL OF MIAMI FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

The Applicant, a native and citizen of Cuba, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Miami, Florida, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible under 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 a crime involving moral turpitude. On February 25, 2013, the Applicant filed an Application to Adjust Status (Form I-485) to that of a lawful permanent resident under Section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966, and is seeking a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse and children and lawful permanent resident parents.[1]

The Field Office Director determined that the Applicant did not establish extreme hardship to a qualifying relative or that he had been rehabilitated. The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied accordingly. *Decision of the Field Office Director*, dated November 17, 2014.

On appeal the Applicant asserts that his conviction is not a crime involving moral turpitude, that he has otherwise shown rehabilitation, and that his qualifying relatives would suffer extreme hardship if he were removed to Cuba. With the appeal the Applicant submits a statement. The record contains affidavits from the Applicant, his spouse and his father; letters of support for the Applicant from family, friends and his employer; medical documentation for the Applicant's father; a psychological evaluation of the Applicant's family; a mental health evaluation of the Applicant's step-son; financial documentation; country information for Cuba; and other evidence submitted in support of the Applicant's Form I-485. The entire record was reviewed and considered in rendering this decision.

[1] The record reflects that the Applicant was paroled into the United States on January 27, 1998, and was issued an order of removal by an immigration judge on January 15, 2002.

(b)(6)

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 –
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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.

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

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

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –
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> . . . .
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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 . . . .

The record reflects that on [redacted] 2001, the Applicant was convicted in the Circuit Court of the Eleventh Judicial Circuit in and for [redacted] Florida, of Manslaughter, a second degree felony, in violation of Florida Statutes 782.07, for which he was sentenced to 15 years imprisonment. The sentence was vacated on [redacted] 2001, and the Applicant was sentenced to two years imprisonment followed by a 10-year probation period, which the record shows was terminated on [redacted] 2011.

At the time of the Applicant's conviction Florida Statutes stated:

782.07. Manslaughter;

> (1) The killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification according to the provisions of chapter 776 and in cases in which such killing shall not be excusable homicide or murder, according to the provisions of this chapter, is manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
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> (2) A person who causes the death of any elderly person or disabled adult by culpable negligence under s. 825.102(3) commits aggravated manslaughter of an elderly person or disabled adult, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
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> (3) A person who causes the death of any person under the age of 18 by culpable negligence under s. 827.03(3) commits aggravated manslaughter of a child, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

On appeal the Applicant asserts that his conviction is not for a crime involving moral turpitude. The Applicant cites BIA decisions holding that involuntary manslaughter does not involve moral turpitude and claims that the statute under which he was convicted does not require that it be proved he intended to kill the victim, so the statute punishes involuntary manslaughter.

The Florida manslaughter statute prohibits both intentional (voluntary) and unintentional (involuntary) killings. *Rodriguez v. State*, 443 So.2d 286, 289 (Fla. 3d DCA 1983). The BIA held that an involuntary manslaughter statute was categorically a crime involving moral turpitude (CIMT) because the statute had as elements both extreme recklessness and the death of another person, a result serious enough to raise the offense to a CIMT even without a showing of specific evil intent. *Matter of Franklin*, 20 I&N Dec. 870 (BIA 1994).

In *Matter of Solon*, 24 I&N Dec. 239 (BIA 2007), the BIA stated that crimes committed intentionally or knowingly have been found to involve moral turpitude, and that "[m]oral turpitude may also inhere in criminally reckless conduct, i.e., conduct that reflects a conscious disregard for a substantial and unjustifiable risk." 24 I&N Dec. at 240. The Board stated that "as the level of conscious behavior decreases, i.e., from intentional to reckless conduct, more serious resulting harm is required in order to find that the crime involves moral turpitude." *Id.* at 242.

In *Matter of Medina*, 15 I&N Dec. 611, 613-14 (BIA 1976), the BIA reasoned that when criminally reckless conduct requires a conscious disregard of a substantial and unjustifiable risk to the life or safety of others, although no harm was intended, the crime involves moral turpitude for immigration purposes. In *Matter of Wojtkow*, 18 I&N Dec. 111, 112-13 (BIA 1981), the BIA concluded that a conviction for second degree manslaughter under the New York Penal Law constituted a crime involving moral turpitude. The BIA noted that a person is guilty of second degree manslaughter in

New York if "he recklessly causes the death of another person." *Id.* at 112, n.1. The BIA further observed that the definition of "recklessness" under New York law was the same as the definition under Illinois law that had been analyzed in *Medina*. *Id.* at 112-13.

In Matter of Perez-Contreras, supra, the BIA held that a conviction for assault causing bodily harm with criminal negligence did not involve moral turpitude because it did not require the conscious disregard of a substantial and unjustifiable risk. 20 I&N Dec. at 618-19. The BIA noted that under Washington law, criminal negligence existed where the perpetrator "fails to be aware of a substantial risk that a wrongful act may occur and his failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation." *Id.* at 618.

The Florida manslaughter statute refers to culpable negligence. The Supreme Court of Florida has stated:

> We have repeatedly said that the culpable conduct necessary to sustain proof of manslaughter under section 782.07 must be of a gross and flagrant character, evincing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or there is that entire want of care which would raise the presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others which is equivalent to an intentional violation of them.

McCreary v. State, 371 So. 2d 1024, 1026 (Fla. 1979); *see also Filmon v. State*, 336 So. 2d 586 (Fla. 1976); *Miller v. State*, 75 So. 2d 312 (Fla. 1954); *Preston v. State*, 56 So. 2d 543 (Fla. 1952); *see also Tillman v. State,* 842 So.2d 922 (Fla. 2d DCA 2003) (finding that culpable negligence is "more than a failure to use ordinary care; it is a course of conduct showing reckless disregard of human life or the safety of others.").

Culpable negligence necessary for a conviction under Florida Statute 782.07 is analogous to a conscious disregard of a substantial and unjustifiable risk to the life or safety of others. It is more serious than the criminal negligence mental state addressed in *Perez-Contreras*, which specified that the perpetrator be unaware of a substantial risk that a wrongful act may occur, because it involves conduct raising the presumption of a conscious indifference to consequences or reckless indifference equivalent to an intentional violation of the rights of others, or otherwise involves recklessness or disregard of human life or the safety and welfare of the public. As the applicant's conviction required at a minimum reckless conduct resulting in the killing of another human being, we find it to be a crime involving moral turpitude.

Section 212(h)(1)(A) of the Act provides that certain grounds of inadmissibility under section 212(a)(2)(A)(i)(I)-(II), (B), and (E) of the Act may be waived in the case of an alien who demonstrates to the satisfaction of the Attorney General that:

> (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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

An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992). The record reflects that the activity for which the Applicant was convicted occurred on [redacted] 1999. Since the criminal activity for which the Applicant was found inadmissible occurred more than 15 years ago, he is now eligible for a waiver under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) of the Act requires that the Applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated. The record does not reflect that admitting the Applicant would be contrary to the national welfare, safety, or security of the United States. Here the record reflects that since his conviction the Applicant has married and has two children, has been gainfully employed with records for years of tax payments, and has support from family and friends. An April 29, 2003, mental health evaluation of the Applicant during his incarceration indicates that he showed remorse for his actions and had matured, and other documentation shows that the Applicant participated in betterment programs while incarcerated. In a February 13, 2013, affidavit in support of his waiver application the Applicant expresses regret for his actions. The record reflects that since his conviction and release from imprisonment the Applicant was cited in 2007 for multiple toll violations, which were dismissed; in 2009 for an auto window cover material violation, which was dismissed; in 2009 for having improper color rear lamps, which was dismissed; in 2010 for speeding, which was dismissed; and in 2014 for failure to provide proof of insurance, which was dismissed. These infractions, all minor and all dismissed, do not support a finding that the Applicant has not been rehabilitated. The Applicant has shown by a preponderance of the evidence that he has been rehabilitated.

Once eligibility for a waiver is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the Applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. Even if the Applicant establishes that he meets the requirements of section 212(h)(1)(A) of the Act, a favorable exercise of discretion is limited pursuant to 8 C.F.R. § 212.7(d) in the case of an applicant who has been convicted of a violent or dangerous crime.

8 C.F.R. § 212.7 states in pertinent part:

Waiver of certain grounds of inadmissibility.

> d) Criminal grounds of inadmissibility involving violent or dangerous crimes. The Attorney General, 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.

We note that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and we are 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 BIA, in *Matter of Alcantar*, 20 I&N Dec. 801 (BIA 1994), analyzed an Illinois involuntary manslaughter statute and held that it was a crime of violence under section 16(b) because it involved "reckless behavior" which "'by its nature' involves a substantial risk of physical force against the person or property of another." *Alcantar* at 28 (citing *U.S. v. Springfield*, 829 F.2d 860 (9th Cir. 1987).

In the present case the behavior of Applicant that led to his conviction involved substantial risk of harm to others. According to court documents and the Applicant's affidavit, he was racing when he caused an automobile accident that caused the death of another person. As noted above in *McCreary v State*, the conduct necessary to prove manslaughter under section 782.07 includes a grossly careless disregard of the safety and welfare of the public, or of the safety of persons exposed to its dangerous effects, a conscious indifference to consequences, or reckless indifference to the rights of others. As referenced above, Black's Law Dictionary defines dangerous as "perilous; hazardous; unsafe" or "likely to cause serious bodily harm."

Given the conduct necessary for the Applicant to have been convicted, we find that the Applicant's conviction for manslaughter under Florida Statutes 782.07, is a violent or dangerous crime and we therefore find that the Applicant is subject to 8 C.F.R. § 212.7(d) and, accordingly, must show that "extraordinary circumstances" warrant approval of the waiver.

Pursuant to 8 C.F.R. § 212.7(d), extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant's admission would result in exceptional and extremely unusual hardship. Finding no evidence of foreign policy, national security, or other extraordinary equities, we will consider whether the applicant has "clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship" to a qualifying relative.

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), merely showing extreme hardship under section 212(h) of the Act is not sufficient. He must meet the higher standard of exceptional and extremely unusual hardship. Although 8 C.F.R. § 212.7(d) does not specifically state to whom the applicant must demonstrate exceptional and extremely unusual hardship, we interpret this phrase to be limited to qualifying relatives described under the corresponding waiver provision of section 212(h)(1)(B) of the Act. A waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant.

In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the 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." However, the applicant need not show that hardship would be unconscionable. *Id.* at 61. We note 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 BIA 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.

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 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*, 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.

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."). We note that exceptional and extremely unusual hardship to a qualifying relative must be established in the event that he or she accompanies the Applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the Applicant's waiver request.

Although 8 C.F.R. § 212.7(d) does not specifically state to whom the Applicant must demonstrate exceptional and extremely unusual hardship, we interpret this phrase to be limited to qualifying relatives described under the corresponding waiver provision of section 212(h)(1)(B) of the Act. A waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, son or daughter of the Applicant. In this case the Applicant's U.S citizen spouse and children and his lawful permanent resident parents are qualifying relatives.

In his affidavit the Applicant states that he is close to his parents, that his father suffers prostate cancer, diabetes, hypertension, and depression, and that his mother takes anti-anxiety medication and has been depressed since his conviction. He asserts that his spouse is emotionally and financially dependent on his love and support and that his step-son suffers from depression and needs attention.

In an affidavit dated February 13, 2013, the Applicant's spouse states that the Applicant is the only father figure his step-son has known and that he is close to the Applicant and needs him for guidance. She states that if the Applicant returns to Cuba their other children would lose a male role model that would compromise their future. She states that the Applicant is close to his parents, who are emotionally dependent him for their wellbeing, that they are fragile, and that without the Applicant they would suffer and have no reason to continue living.

In an affidavit dated February 12, 2013, the Applicant's father asserts that his emotional situation effects his recuperation from cancer and is doing irreparable damage to his life and health as he also suffers hypertension and feels devastated.

Documentation submitted to the record includes a letter dated December 13, 2012, from a hematology and oncology specialist stating that the Applicant's father was diagnosed with prostate cancer, is under care, and needs the love and support of his family. A letter from a physician dated December 6, 2012, states that the Applicant's father was diagnosed with hypertension and diabetes, and a letter dated February 12, 2013, from another physician states that the Applicant's father suffers major depression and anxiety. A document dated December 8, 2012, from a clinical social worker indicates that the Applicant's step-son was diagnosed with a depressive disorder, but that he was not taking medication or seeing a psychiatrist. A psychological evaluation of the Applicant's family, dated January 8, 2013, notes that the step-son reports seeing a school counselor for anger management and that the Applicant's spouse worries about her son if he is separated from the Applicant. In the spouse's affidavit she states that her son is treated at school for depression and is a special education student, but no further detail has been provided.

A psychological evaluation of the family, dated January 8, 2013, reports that the family is close-knit and that the Applicant's immigration situation has been a strain for years. The evaluation states that the Applicant's spouse calls the Applicant a great friend and good father who takes care of his family, and that the spouse fears she will never recover from the loss of their home and lives together, and she will suffer massive depression. It states that the spouse does not want their children to be without a father because it would destroy their lives. The evaluation states that the Applicant's spouse worries about the Applicant's parents who suffer depression and were devastated when the Applicant went to jail. The evaluation states that the Applicant's father is depressed and in constant worry and that the Applicant's mother is depressed over the Applicant's actions, his possible removal from the United States, and his father's cancer. It states that the Applicant's mother takes medication for depression and has no energy for daily activities. The evaluation indicates that the parents suffer Adjustment Disorder with Depressed Mood as a direct consequence of the Applicant's immigration problems, that their depression began with the Applicant's arrest in 1999, and that their hardship will worsen if the Applicant is removed. The spouse also reports that the Applicant's mother helps her with children but that she is always depressed so the spouse would have no one else to help care for the children if the Applicant were gone.

Although we recognize that a strong familial bond exists between the Applicant, his spouse and children, and his parents, and that his removal would result in emotional hardship were they to remain in the United States while he relocates abroad, the evidence in the record is insufficient to demonstrate that any of the Applicant's qualifying relatives would be unable to support themselves or each other emotionally in his absence, or that the challenges they would face are distinguished from those ordinarily associated with a loved one's inadmissibility or removal to such a significant degree that they rise to the level of exceptional and extremely unusual hardship.

The spouse states that the Applicant is a hard worker who supports the family, and letters of support for the Applicant indicate that he provides most of the income for the household and that the spouse's income is not enough for the family. The record contains tax returns for the Applicant and

letters from his employer and coworkers, but no documentation has been submitted establishing the spouse's current income, expenses, assets, and liabilities or her overall financial situation, or to show the financial situation of the Applicant's parents, to establish that without the Applicant's physical presence in the United States a qualifying relative will experience financial hardship.

With regard to relocation the record contains Department of State Country Reports on Human Rights Practices for 2011 and for 2000 for Cuba. The Applicant refers to Cuba as having a repressive dictatorship, the spouse calls Cuba an economically-depressed communist state, and the Applicant's father states that the Applicant would have no family support there. According to the U.S. Department of State Country Reports on Human Rights Practices for 2014, Cuba is an authoritarian state where principal human rights abuses include the use of government threats, extrajudicial physical assault, intimidation, violent government-organized counter-protests against peaceful dissent, and harassment and detentions to prevent free expression and peaceful assembly. The Department of State warns that Cuba routinely employs repressive methods against internal dissent and limits fundamental freedoms. It further notes that medical care in Cuba typically does not meet U.S. standards. While medical professionals are generally competent, many health facilities face shortages of supplies. *U.S. Department of State, Bureau of Consular Affairs – Cuba*, July 22, 2015. We acknowledge that the Applicant's family members would experience hardship due to conditions in Cuba. However, their statements contain no detail, and no documentation or other evidence has been submitted to show specifically how any of the Applicant's qualifying relatives would suffer hardship that rises to the level of exceptional and extremely unusual hardship were they to relocate to Cuba.

The record, reviewed in its entirety, does not support a finding that if the Applicant is unable to reside in the United States his qualifying relatives will face hardships that rise to the level of exceptional and extremely unusual hardship as required in 8 C.F.R. § 212.7(d). Although we are not insensitive to the situation of the Applicant's spouse, children, and parents, the record does not establish that the hardships they would face are substantially beyond the ordinary hardship that would be expected when a close family member leaves this country. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001). We therefore find that there are not extraordinary circumstances warranting a favorable exercise of discretion in this case.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of R-V-*, ID# 12363 (AAO Sept. 8, 2015)