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

H/2

[REDACTED]

DATE: **APR 19 2011** OFFICE: **CHICAGO** FILE: [REDACTED]

IN RE: [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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case 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,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for waiver of inadmissibility 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 applicant is a native and citizen of Mexico who 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 crimes involving moral turpitude. The applicant is applying for 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 wife, son and daughter.

The director determined that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 18, 2008.

On appeal, counsel asserts that the applicant “has shown that his qualifying relatives, his wife and two children, would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member.” *Appeal Brief*, dated October 20, 2008.

In support of the waiver application, the record includes, but is not limited to, financial documentation, the applicant’s conviction records, a psychological evaluation, the applicant’s spouse’s birth certificate, the applicant’s marriage certificate, family photographs, and letters from the applicant’s spouse, friend and brother-in-law. The entire record was reviewed and considered in rendering a decision on the appeal.

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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(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), that:

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

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record reflects that on August 20, 1992, the applicant was convicted in the Circuit Court of Cook County, Illinois of aggravated assault in violation of Chapter 38 § 12-2(a)(1) of the then Illinois Revised Statutes (IL ST CH) and unlawful use of weapons in violation of IL ST CH 38 § 24-1(a)(4) (Case No. [REDACTED]). On January 22, 2001, the applicant was convicted in the Circuit Court of the Eighteenth Judicial Circuit of "criminal damage to property without owners consent" in violation of Chapter 720 § 5/21-1(1)(a) of the Illinois Compiled Statutes (ILCS) (Case No. [REDACTED]). On December 12, 2005, the applicant was convicted in the Circuit Court of the Eighteenth Judicial Circuit of "retail theft – possess/carry away/transfer under 150" in violation of 720 ILCS 5/16A-3(a) (Case No. [REDACTED]). Finally, on June 5, 2007, the applicant was convicted in the Circuit Court of the Eighteenth Judicial Circuit of endangering the health or life of a child, in violation of 720 ILCS 5/12-21.6 and driving while blood alcohol level is .08 or more in violation of 625 ILCS 5/11-501(a)(1) of the Illinois Compiled Statutes (Case No. [REDACTED]).

At the time of the applicant's conviction, IL ST CH 38 § 12-2(a)(1) provided in pertinent part:

- (a) A person commits an aggravated assault, when, in committing an assault, he:
  - (1) Uses a deadly weapon or any device manufactured and designed to be substantially similar in appearance to a firearm . . . .

In *Matter of Medina*, the BIA addressed whether aggravated assault under section 12-2(a)(1) of Chapter 38 of the Illinois Revised Statutes is conviction of a crime involving moral turpitude. 15 I&N Dec. 611 (BIA 1976). The BIA viewed the various mental states under which the crime could

have been convicted - intent, knowledge, or recklessness – and determined that “[e]ach of these mental states will support a finding of moral turpitude.” 15 I&N Dec. at 614. Therefore, the AAO finds that the applicant’s conviction for aggravated assault is categorically a crime involving moral turpitude.

At the time of the applicant’s conviction, 720 ILCS 720 § 5/16A-3(a), Retail Theft, provided in pertinent part:

A person commits the offense of retail theft when he or she knowingly:

- (a) Takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise . . . .

The BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person’s property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) (“Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended.”). In *Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the Board of Immigration Appeals found that violation of a Pennsylvania retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently. Thus, the AAO finds that the applicant’s conviction for retail theft under 720 ILCS 5/16A-3(a) is categorically a crime involving moral turpitude.

In sum, the applicant has been convicted of at least two crimes involving moral turpitude, aggravated assault and retail theft. He is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act.<sup>1</sup> The applicant does not contest his inadmissibility on appeal.

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

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in [her] discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

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<sup>1</sup> Since the applicant has been found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, we will not evaluate whether his other convictions are also crimes involving moral turpitude.

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

(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 established to the satisfaction of the [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...

(2) the [Secretary], in [her] discretion, and pursuant to such terms, conditions and procedures as [she] 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.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse and two U.S. citizen children.

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). In most discretionary matters, the alien bears the burden of proving eligibility simply by showing equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). However, the AAO cannot find, based on the facts of this particular case, that the applicant merits a favorable exercise of discretion solely on the balancing of favorable and adverse factors. The applicant's conviction indicates that he may be subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

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). Black's Law Dictionary, Seventh Edition (1999), defines violent as "of, relating to, or characterized by strong physical force" and dangerous as "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 AAO finds the applicant's assault conviction to be a violent and dangerous crime within the meaning of 8 C.F.R. § 212.7(d), and the heightened discretionary standards found in that regulation are applicable in this case.

Accordingly, the applicant must show that "extraordinary circumstances" warrant approval of the waiver. 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. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities, the AAO 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. *Id.*

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

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."). The AAO notes 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.

On appeal, counsel asserts that the applicant's spouse "has been suffering from extreme anxiety, and stress as a result of her husband's immigration uncertainty." Counsel states that the applicant's spouse "relies very much on her husband, both emotionally and financially, and the notion of his deportation has resulted in manifested symptoms of forgetfulness, and an inability to focus and concentrate." *Appeal Brief*, dated October 20, 2008.

The applicant's spouse asserts in a letter she filed with the waiver application that if the applicant departs the United States, she would have to find another job to compensate for the applicant's lost income. She states that she would have to find a full-time babysitter or daycare for her children. She states that such care would be "very costly" and she would not have the income to afford the service. The applicant's spouse contends that her children are in a stage where they need both parents. She

states that her children would be emotionally distressed if they were separated from the applicant. She states that her son has suffered breathing issues as a newborn and continues to have problems. She explains that her son was born with Respiratory Distress Syndrome and had jaundice. She states that her son recently fainted and she believes that it was related to seizures. She notes that her son was examined by a pediatric neurologist and had an electroencephalogram, which is a test to diagnose epilepsy, and "everything came out normal." She notes that her children receive their health insurance through the applicant. The applicant's spouse concludes that if the applicant departs, she "would be left with major debt in hand and impossibility to pay out money" that she does not have. Letter from [REDACTED] dated April 2008.

The AAO acknowledges that the applicant's spouse and children will suffer financial hardships if the applicant is denied admission and she remains in the United States. The record reflects that she is an administrative assistant with Axiom Corporation, and the most recent tax return in the file reflects that she earned \$29,363 in 2006. The applicant's spouse would be financially responsible for her six-year-old son and eleven-year-old daughter on this income alone if the applicant were denied admission. However, the record does not show the extent of the hardship the applicant's spouse would suffer. The applicant has not provided evidence of his major expenses, such as his mortgage statement, or recent evidence of his earnings, to show the impact the loss of his income would have on his qualifying family members. Moreover, the applicant has not shown that he is providing health insurance to his qualifying family members. Nor has he demonstrated that his son has an ongoing chronic medical condition that would result in additional financial hardship to his spouse. 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)). Accordingly, the AAO cannot assess the extent of financial harm the applicant's spouse and children would suffer if they remained in the United States separated from him.

The AAO acknowledges that the applicant's spouse and children will experience emotional hardship if they are separated from the applicant. The record contains a psychological evaluation, which diagnoses the applicant's spouse with suffering from "severe mental and emotional distress" because of the applicant's inadmissibility. *Psychological Evaluation of [REDACTED]* dated April 10, 2008. In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and that "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted). The AAO acknowledges that the applicant's spouse and children will experience emotional hardship if they remain in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, rises to the level of exceptional and extremely unusual. While almost every case will present some hardship, the fact pattern here is not 'substantially' beyond ordinary hardship.

As previously discussed, a determination of exceptional and extremely unusual hardship should include a consideration of the impacts of relocation on the applicant's qualifying relatives.

Counsel asserts that if the applicant's children "were to go to Mexico with their father, their future would be uncertain." Counsel notes that the applicant's children were born and raised in the United States, and do not speak Spanish. Counsel states that the applicant's children have no family or friends in Mexico. Counsel contends that the applicant's children "would receive substandard education and would eventually be unable to effectively civically contribute in their country of citizenship." *Appeal Brief* at 4.

The AAO notes that counsel's assertion that the applicant's children have no family in Mexico is inconsistent with the record. According to a letter from the applicant's spouse, she and her children visited the applicant's mother in Mexico in September 2006. *See Letter from* [REDACTED] dated April 2008. Notwithstanding this inconsistency, the AAO recognizes that the applicant's six-year-old son and eleven-year-old daughter have resided in the United States their entire lives, and are integrated into their community. The Board of Immigration Appeals and U.S. Courts have found extreme hardship in cases where the language capabilities of the children were not sufficient for them to have an adequate transition to daily life in the applicant's country of origin. For example, *Matter of Kao and Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language capabilities of the respondent's 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in Taiwan. The girl had lived her entire life in the United States and was completely integrated into an American lifestyle. *Id.* The BIA found that uprooting her at this stage in her education and her social development to survive in a Chinese-only environment would constitute extreme hardship. *Id.* In *Ramos v. INS*, 695 F.2d 181, 186 (5<sup>th</sup> Cir. 1983), the Fifth Circuit Court of Appeals stated that "imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language," must be considered in determining whether "extreme hardship" has been shown. In *Prapavat v. INS*, 638 F.2d 87, 89 (9<sup>th</sup> Cir. 1980) the Ninth Circuit Court of Appeals found the BIA abused its discretion in concluding that extreme hardship had not been shown to the aliens' five-year-old citizen daughter, who was attending school, and would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her.

Counsel has asserted that the applicant's children do not speak Spanish and "would receive substandard education and would eventually be unable to effectively civically contribute in their country of citizenship" if they relocated to Mexico. *Appeal Brief* at 4. However, the applicant has failed to demonstrate that this hardship to his children, when combined with other hardship factors, rises to the level of exceptional and extremely unusual hardship. Although the hardships presented here may meet the "extreme hardship" standard under section 212(h), "they are not the types of hardship envisioned by Congress when it enacted the significantly higher 'exceptional and extremely unusual hardship' standard." *Andazola-Rivas*, 23 I&N Dec. 319, 324.

In conclusion, the record does not reflect that the applicant's spouse or children would suffer exceptional and extremely unusual hardship upon separation from the applicant or upon relocation to Mexico. The AAO therefore finds that the applicant has failed to establish that he warrants a waiver of inadmissibility under section 212(h) of the Act as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.