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



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MAR 08 2011

FILE:



Office: VERMONT SERVICE CENTER Date:

IN RE:

Applicant:



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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

By, Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada 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 committing a crime involving moral turpitude; and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant submitted a timely appeal.

On appeal, the applicant contends that he never claimed to be a U.S. citizen when he sought admission into the United States at the port of entry, and therefore is not inadmissible for misrepresentation.

We will first address the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act for seeking admission into the United States by fraud or willful misrepresentation.

Section 212(a)(6)(C)(i) of the Act renders inadmissible to the United States:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

U.S. Citizenship and Immigration Services (USCIS) records reflect that on November 15, 2004, the applicant claimed to be a U.S. citizen at the Ambassador Bridge in Detroit, and that he was refused entry into the United States for not possessing the Form I-512, Authorization from Parole of an Alien into the United States.

The applicant disputes the allegation that he claimed U.S. citizenship at the port of entry. The applicant conveys in an undated letter that on November 15, 2004, at the port of entry to the United States, he never claimed to be a U.S. citizen to the border patrol inspector. The applicant contends that when he was asked his nationality by the border patrol inspector, he stated that he worked and lived in the United States legally and was working on getting his citizenship, but that he was a citizen of Canada. The applicant indicates that the border patrol inspector may have misunderstood him.

The AAO has reviewed the basis for the director's denial and finds that there is not sufficient evidence in the record to conclude that the applicant claimed to be a U.S. citizen in an attempt to gain admission into the United States. We believe that the applicant may have claimed to be living and working legally in the United States, and the border patrol inspector may have misunderstood this to mean that the applicant was claiming to be a U.S. citizen. Review of the documentation in the record fails to establish that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

Accordingly, the applicant is not inadmissible under section 212(a)(6)(C) of the Act and the director's findings regarding inadmissibility under section 212(a)(6)(C) of the Act are withdrawn.

We will now address the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for the applicant having been convicted of committing a crime involving moral turpitude.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
- (i) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
 -
 - (I) 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 (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

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

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

(Citations omitted.)

The applicant has the following convictions in Canada:

<u>Conviction Date</u>	<u>Crime/Sentence</u>
03/21/1995	Mischief under \$1,000 12 months probation, fine
02/16/2000	Uttering threats; carrying concealed weapon Suspended sentence of 1-2 years jail, 12 months probation on each charge

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The applicant was convicted of uttering threats contrary to section 264.1(1)(a) of the Criminal Code of Canada. That section provides that “Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat to cause death or bodily harm to any person.” Section 264.1(2) states that the punishment for violation of 264.1(1)(a) is imprisonment for a term not exceeding five years; or summary conviction and is liable to imprisonment for a term not exceeding eighteen months. Section 2 of the Criminal Code of Canada defines “bodily harm” as “any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature.”

The *actus reus* in the crime is the utter of threats, and the *mens reas* is that the words, either spoken or written, are a threat to cause death or serious bodily harm, and are meant to intimidate or to be taken seriously. See *R. v. Abdallah*, 2002 ABPC 126, 4. The standard to determine whether the words constitute a threat is that of a reasonable person. *Id.* Furthermore, it does not matter whether or not the offender intended to carry out his threat, or acted for any specific purpose. The offender's motives are not relevant, and whether "the threat raised the possibility of imminent or remote danger is equally of no consequence." *Id.* at 5. The effect of the threat on the prospective victim is not relevant, and it is not necessary that the person threatened be aware of the fact of the threat. *Id.*

The Board has held that the intentional transmission of a "threat to kill another or inflict physical injury against the victim" is "evidence of a vicious motive or a corrupt mind" and qualifies as a crime involving moral turpitude. *In re Ajami*, 22 I&N Dec. 949, 952 (BIA1999). We further note that in *Ajami*, the Board cites previous decisions wherein it found that threatening behavior was an element of a crime involving moral turpitude. (citing *Matter of B-*, 6 I&N Dec. 98 (BIA 1954) (involving usury by intimidation and threats of bodily harm); *Matter of C-*, 5 I&N Dec. 370 (BIA 1953) (involving threats to take property by force); *Matter of G-T-*, 4 I&N Dec. 446 (BIA 1951) (involving the sending of threatening letters with the intent to extort money); *Matter of F-*, 3 I&N Dec. 361 (C.O. 1948; BIA 1949) (involving the mailing of menacing letters that demanded property and threatened violence to the recipient).

In accordance with [REDACTED], wherein intentional transmission of a "threat to kill another or inflict physical injury against the victim" is "evidence of a vicious motive or a corrupt mind," we find that the plain language of section 264.1(1)(a) of the Criminal Code of Canada indicates that the offense of which the applicant was convicted involves moral turpitude as it is a threat to cause death or bodily harm. As such, we will not disturb the finding that the applicant's conviction for uttering threats involves moral turpitude.

The applicant was also convicted of carrying a concealed weapon contrary to section 90(2) of the Criminal Code of Canada. That section states: "Every person commits an offence who carries a weapon, a prohibited device or any prohibited ammunition concealed, unless the person is authorized under the *Firearms Act* to carry it concealed." Every person who commits this offence is liable to imprisonment for a term not exceeding ten years; or is guilty of an offence punishable on summary conviction. See Criminal Code of Canada § 90(2).

In *R. v. Meatface*, 2004 ABPC 203, 3, the Court of Alberta states that "weapon" is defined in the Criminal Code in section 2 to mean "any thing used, designed to be used or intended for use (a) in causing death or injury to any person, or (b) for the purpose of threatening or intimidating any person . . . [and] includes a firearm." Section 90(2) of the Criminal Code convicts for carrying a concealed weapon; however, the court must determine, "either directly or by inference, from the facts and circumstances of a particular case what was the purpose of the accused." *Id.* at 4. Furthermore, the Court of Alberta states that an "unlawful purpose may be assumed or implied." *Id.* Lastly, we note that the Court of Alberta found that courts in Canada have no requirement that the intention to use an object (such as a knife) as a weapon must be immediate, and that there is no "proviso that an intention to use an object for self-defence precludes a finding that there was intention to use it as a weapon." *Id.* at 5-7. We note that the Court of Alberta cites *R. v. D.M.M.* [1999] B.C.J. No. 1894 (B.C.S.C.), wherein a 16-year-old girl, who was apprehended by police for

her own protection when she was found in a dangerous neighborhood, was convicted for carrying a concealed knife which she carried "for possible use as a weapon if she was physically threatened" *Id.* at 5-6.

Generally, carrying a concealed weapon is not a crime involving moral turpitude. See *U.S. ex rel. Andreacchi v. Curran*, 38 F.2d 498 (S.D.N.Y. 1926); and *Ex Parte Saraceno*, 182 F. 955 (C.C.N.Y. 1910). However, in *Matter of S-*, the Board held that carrying a concealed and deadly weapon with intent to use it against the person of another is a crime involving moral turpitude because "the use of a dangerous weapon against the person of another is motivated by an evil, base, and vicious intent. The essence of the offense is the carrying of the dangerous weapon with a base, evil and vicious intent to injure another." 8 I&N Dec. 344, 346 (BIA 1959)(citations omitted).

In view of the circumstances in *R. v. D.M.M.*, where the intention of the 16-year-old girl in carrying the concealed knife does not evince "a base, evil and vicious intent to injure another," we find that section 90(2) of the Criminal Code punishes conduct which both does and do not involve moral turpitude. Thus, we cannot find that the offense described in section 90(2) of the Criminal Code is not categorically a crime involving moral turpitude. Since the offense is not categorically a crime involving moral turpitude, we then apply the modified categorical approach and "consider whether any of a limited, specified set of documents-including the state charging document, a signed plea agreement, jury instructions, guilty pleas, transcripts of a plea proceeding and the judgment (sometimes termed 'documents of conviction')" reflect that the applicant's conviction involved an admission to, or proof of, morally turpitudinous conduct. As previously discussed, there must be evidence in the record establishing an intent to assault another with a weapon for the applicant's conviction for carrying a concealed weapon to constitute a crime involving moral turpitude.

To meet his burden, the applicant must, at a minimum, submit the available documents that comprise the record of conviction and show that these fail to establish that his conviction was based on conduct involving moral turpitude. To the extent such documents are unavailable, this fact must be established pursuant to the requirements in 8 C.F.R. § 103.2(b)(2). The AAO notes the applicant submitted the information relating to the concealed weapon offense, which states that the applicant carried a concealed knife. However, this does not describe the circumstances surrounding the applicant's arrest for this charge, and the applicant has not established, in accordance with the requirements in 8 C.F.R. § 103.2(b)(2), that the documents comprising his record of conviction are unavailable. The record does not demonstrate that the applicant's offense of carrying a conceal knife did not include "a base, evil and vicious intent to injure another." Because the record does not demonstrate that the applicant's offense was not a crime involving moral turpitude, and the applicant has not disputed the finding that it was such a crime, we will not disturb the finding that the applicant's conviction for carrying a concealed weapon involves moral turpitude.

Lastly, we observe that the applicant's crime of mischief under \$1,000 contrary to section 430 of the Criminal Code of Canada does not involve moral turpitude as the Board found that malicious mischief in breaking the glass in a door of a building and damaging a mailbox were not crimes involving moral turpitude in *In Re C-*, 2 I&N Dec. 716 (BIA 1947) and in *In Re B-*, 2 I&N Dec. 867 (BIA 1947).

Based on the record, we find the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude.

The applicant was convicted of uttering a threat to cause death or bodily harm. The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The AAO notes that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and the AAO is aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, *or* any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in 8 C.F.R. § 212.7(d). Thus, we find that the statutory terms "violent or dangerous crimes" and "crime of violence" are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependant on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms "violent" and "dangerous." The term "dangerous" is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms "violent" and "dangerous" in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual "case-by-case basis." 67 Fed. Reg. at 78677-78.

The AAO finds that the offense of which the applicant was convicted, uttering threat to cause death or bodily harm, is a violent crime. In the instant case, the applicant must demonstrate that denial of admission would result in exceptional and extremely unusual hardship to a qualifying relative, who in the instant case are the applicant's U.S. citizen spouse and stepdaughter.

In rendering this decision, the AAO will consider all of the evidence in the record including birth certificates, letters, wage statements, and other documentation.

In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." However, the applicant need not show that hardship would be unconscionable. *Id.* at 61. The AAO notes that the exceptional and extremely unusual hardship standard in cancellation of removal cases is identical to the standard put forth by the Attorney General in *Matter of Jean, supra*, and codified at 8 C.F.R. § 212.7(d).

The Board stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *Id.*

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

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

23 I&N Dec. at 63-4.

In *Matter of Andazola-Rivas*, the Board noted that, "the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by

comparing it to the hardship others might face.” 23 I&N Dec. 319, 323 (BIA 2002). The issue presented in *Andazola-Rivas* was whether the Immigration Judge correctly applied the exceptional and extremely unusual hardship standard in a cancellation of removal case when he concluded that such hardship to the respondent’s minor children was demonstrated by evidence that they “would suffer hardship of an emotional, academic and financial nature,” and would “face complete upheaval in their lives and hardship that could conceivably ruin their lives.” *Id.* at 321 (internal quotations omitted). The Board viewed the evidence of hardship in the respondent’s case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The Board noted:

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

23 I&N Dec. at 324.

However, the Board in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as *Andazola-Rivas*, clarified that “the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief.” 23 I&N Dec. 467, 470 (BIA 2002). The Board found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The Board noted that these factors included her heavy financial and familial burden, lack of support from her children’s father, her U.S. citizen children’s unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The Board stated, “We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met.” *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate. See *Gonzalez Recinas*, 23 I&N Dec. at 469 (“While any hardship case ultimately succeeds or fails on its own merits and on the particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship.”). The 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.

The applicant’s wife asserts in the letter dated August 17, 2006, that she has been married to the applicant for four years, and that he has been confined to Canada because he uttered threats to his mother by telephone for taking his daughter away from him. The applicant’s wife indicates that she and her daughter have a close relationship with the applicant. She states that the applicant worked as

a truck driver with [REDACTED] Trucking in the United States, and that since he has not returned to the United States she had to file bankruptcy and place his vehicle in bankruptcy proceedings, so he has no means of finding decent work. The applicant's wife states that she had to get a second job and may need a third job in order to make ends meet to support both her daughter and her husband, who relies on the Canadian welfare system. The applicant's wife indicates that she has visited her husband five times in the last year and a half, and that her daughter has only visited him twice. The applicant's wife avers that she cannot move to Canada because of the job availability in Windsor, which is where her husband resides, and because her divorce stipulation requires that she live in Iowa until her daughter is 16 years old. Lastly, the applicant's wife indicates that while her husband was in the United States he helped her with her mother, who has cancer. We note that the record contains the custody stipulation and agreement wherein the applicant's wife is awarded the physical care and custody of her daughter ([REDACTED]), and her former husband is awarded reasonable visitation. The document indicates that the applicant's wife would not move from Iowa until her daughter is 16 years old.

The applicant's mother-in-law states in the letter dated August 17, 2006, that her daughter and granddaughter moved in with her and her husband because of the applicant's immigration problem. The applicant's father-in-law avers in his letter of the same date that his daughter struggles to pay bills and is having trouble with her former husband because he allows their daughter to get into trouble. He states that his daughter tried to obtain government benefits, but her wages exceed the requirement for assistance. The applicant's father-in-law indicates that his daughter has a second job "that gave her an apartment" and that she is able to be with her daughter, so she does not need a babysitter as often. The record shows that the applicant's wife was employed as a data entry operator in 2006.

The applicant states in his letters that he was convicted for uttering threats toward his mother and for carrying a concealed weapon, which he carried for protection due to hitch hiking in July 2000. He asserts that his mother telephoned him and told him that Children's Aid Services was at her house and that she had called them. The applicant indicates that after this incident he decided to move away from his mother, undergo counseling for anger management, and stop drinking.

With regard to remaining in the United States without the applicant, the stated hardship factors in the instant case are the emotional and financial impact to the applicant's wife and stepdaughter, who is now 16 years old. The record demonstrates that after the applicant left the country his wife has had financial difficulties. However, the applicant's father-in-law indicates that his daughter now has a job which provides enough income for her to have own apartment and spend more time with her daughter. The applicant has demonstrated that his wife and stepdaughter will experience emotional hardship as a result of separation from him, and the applicant's father-in-law conveys that the applicant's stepdaughter has behavioral problems. Nevertheless, the applicant's father-in-law does not particularize the nature of his granddaughter's problems, so we cannot determine how they impact the applicant's stepdaughter or wife. When all of the asserted hardship factors are considered in the aggregate, we find that they, collectively, do meet the significantly higher "exceptional and extremely unusual hardship" standard.

The asserted hardship factors associated with joining the applicant to live in Canada are not finding employment in Windsor, where her husband resides, and leaving family members in the United

States, particularly the applicant's mother-in-law, who has cancer. We note that because the applicant's stepdaughter is now 16 years old, the geographic restrictions of the custody agreement no longer apply. We further observe that no documentation has been provided to establish the applicant is unable to obtain employment in Canada and that his wife will also be unable to secure employment. Lastly, although we acknowledge the anxiety that the applicant's wife will experience in living apart from her parents, particularly her mother, we note that the record shows that the applicant's mother-in-law is taken care of by her husband. When the stated hardship factors are considered collectively, we find they fail to demonstrate that the hardship of the applicant's wife and stepdaughter as a result of joining the applicant to live in Canada would be exceptional and extremely unusual.

Accordingly, the applicant failed to demonstrate that he merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d), and the appeal will be dismissed.

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. The applicant has not met that burden.

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.