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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

H₂

FILE:

Office: SAN FRANCISCO, CA

Date:

FEB 17 2011

IN RE:

APPLICATION:

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

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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of England who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation on November 23, 2005. The record indicates that the applicant is married to a United States citizen, is the beneficiary of an approved Petition for Alien Relative (Form I-130), and has one U.S. citizen child. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse and child.

In a decision dated August 10, 2007, the field office director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated September 5, 2007, counsel states that it appears the field office director erred in finding the applicant inadmissible because his foreign conviction for blackmail may not constitute a crime involving moral turpitude and that the applicant may not have made willful misrepresentations in applying for admission into the United States under the visa waiver program. Finally, counsel states that the applicant's inadmissibility will cause his U.S. citizen spouse extreme hardship.¹

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-

¹ The AAO notes that at one time the applicant was represented by [REDACTED], but this representation has since been withdrawn. The AAO received a letter, dated August 19, 2009, from [REDACTED] stating that he no longer represents the applicant. Thus, this decision will be furnished solely to the applicant.

(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.)

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.” *Silva-Trevino*, 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. *Id.* at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The record indicates that the applicant was convicted on January 9, 2004 in Leicester, England of blackmail under section 21(1) of the 1968 Theft Act. He was sentenced to one year in prison and made to pay restitution. The record also indicates that on May 9, 2001 the applicant was convicted of assault occasioning actual bodily harm under section 47 of the 1861 Offenses Against the Person Act and was sentenced to 80 hours of community service. On October 3, 2003 the applicant was convicted of using an insurance document with the intent to deceive and using a vehicle while uninsured.

Section 21(1) of the 1968 Theft Act states:

21.-(1) A person is guilty of blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief-

(a) that he has reasonable grounds for making the demand; and

(b) that the use of the menaces is a proper means of reinforcing the demand.

(2) The nature of the act or omission demanded is immaterial, and it is also immaterial whether the menaces relate to action to be taken by the person making the demand.

(3) A person guilty of blackmail shall on conviction on indictment be liable to imprisonment for a term not exceeding fourteen years.

U.S. courts have found that blackmail is a crime involving moral turpitude. *Lehman v. Carson*, 353 U.S. 685 (1957). (Ohio conviction for blackmail held to be a crime involving moral turpitude, subjecting alien to deportation, despite a grant of a conditional pardon by governor). In his brief, counsel states, citing to *Fernandez-Ruiz v. Gonzales*, 468 F.3d 1159, 1167 (9th Cir. 2006), that the Ninth Circuit has recently found that crimes involving threats alone do not constitute crimes involving moral turpitude. The AAO notes that in *Fernandez-Ruiz*, the Ninth Circuit held, “a simple assault statute, which permits a conviction for acts of recklessness, or for mere threats, or for conduct that causes only the most minor or insignificant injury is not limited in scope to crimes involving moral turpitude.” 468 F.3d at 1167.

The AAO finds that a conviction for the crime of blackmail involves elements beyond mere threats and is more akin to the crime of robbery than to simple assault. Blackmail requires that a threat be made for the purpose of acquiring something from the victim. Counsel has failed to establish that a prior case exists where blackmail under the statute in question, or any other statute, was found not to be a crime involving moral turpitude. Thus, the AAO finds that the applicant’s conviction is for a crime involving moral turpitude.

Section 47 of the 1861 Offenses Against the Person Act states:

47. Whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm shall be liable to be kept in penal servitude.

The AAO notes that assault may or may not involve moral turpitude. *See Matter of Danesh*, 19 I&N Dec. 669, 670 (BIA 1988). The BIA has stated that offenses characterized as “simple assaults” are generally not considered to be crimes involving moral turpitude. *See Matter of Perez-Contreras, supra; Matter of Short*, 20 I&N Dec. 136, 139 (BIA 1989). In addition, the BIA has recognized that not all crimes involving the injurious touching of another person reflect moral depravity on the part of the offender. *See Matter of Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006).

More recently, in *Matter of Solon*, 24 I&N Dec. 239, 242 (BIA 2007), the BIA stated:

[I]n the context of assault crimes, a finding of moral turpitude involves an assessment of both the state of mind and the level of harm required to complete the offense. Thus, intentional conduct resulting in a meaningful level of harm, which must be more than mere offensive touching, may be considered morally turpitudinous. However, 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. Moreover, where no conscious behavior is required, there can be no finding of moral turpitude, regardless of the resulting harm.

In accordance with *Matter of Solon*, we find that for the applicant's crime to constitute a crime involving moral turpitude, it must have *resulted* in serious bodily harm. In a statement, dated September 29, 2007, the applicant stated that this conviction was a result of punching a man in the head with his fist causing a large laceration. Thus, the AAO finds that the applicant's conviction for assault, occasioning actual bodily harm, amounts to assault resulting in serious bodily injury and is a crime involving moral turpitude. The AAO also notes that although the applicant was only sentenced to 80 hours of community service, a conviction for assault, occasioning actual bodily harm is punishable for up to five years imprisonment.

Section 173 of the Road Traffic Act of 1988 states:

Forgery of documents, etc:

(1) A person who, with intent to deceive—

(a) forges, alters or uses a document or other thing to which this section applies, or

(b) lends to, or allows to be used by, any other person a document or other thing to which this section applies, or

(c) makes or has in his possession any document or other thing so closely resembling a document or other thing to which this section applies as to be calculated to deceive,

is guilty of an offence.

(2) This section applies to the following documents and other things—

...

(h) any certificate of insurance or certificate of security under Part VI of this Act,

(j) any document produced as evidence of insurance in pursuance of Regulation 6 of the M1 Motor Vehicles (Compulsory Insurance) (No. 2) Regulations 1973,

(3) In the application of this section to England and Wales "forges" means makes a false document or other thing in order that it may be used as genuine.

In regards to the applicant's conviction for using an insurance document with the intent to deceive, the AAO notes that U.S. courts have found that any crime involving fraud is a crime involving moral turpitude, and that applicant has not shown a prior case in which a violation of the statute in question was found not to involve moral turpitude. *See Burr v. INS*, 350 F.2d 87, 91

(9th Cir. 1965), *cert denied*, 383 U.S. 915 (1966). Thus, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of three crimes involving moral turpitude.

The AAO now turns to the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act. In her decision, the field office director concluded that when the applicant entered the United States on November 23, 2005 under the visa waiver program he must not have disclosed his criminal record on his Arrival-Departure Record I-94W Form because if he had he would not have been admitted to the United States.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.

The AAO notes that the question pertaining to arrests and/or criminal convictions on the I-94W Form states, "have you ever been arrested or convicted for an offense or crime involving moral turpitude or a violation related to a controlled substance; or have been arrested or convicted for two or more offenses for which the aggregate sentence to confinement was five years or more; or been a controlled substance trafficker, or are you seeking entry to engage in criminal or immoral activities?" The AAO finds that despite the applicant's criminal record, his answering "no" to this question cannot be found to be a willful misrepresentation. The term "moral turpitude" is a legal term of art not in common usage, and the determination of whether a crime is a crime involving moral turpitude for purposes of U.S. immigration law is often a complex determination. It is reasonable to conclude that a lay person asked to respond to questions on the Form I-94W prior to arrival in the United States would not know or be able to seek legal counsel to determine that his or her past offenses are crimes involving moral turpitude. The record does not indicate that the applicant had ever been informed or knew that his crimes could be considered crimes involving moral turpitude under U.S. immigration law. Furthermore, the aggregate sentence for the applicant's crimes did not amount to five years or more, and none of the applicant's crimes involved a controlled substance. Therefore, the AAO finds that there is insufficient evidence in the record to support a finding that the applicant *willfully* misrepresented a material fact to procure an immigration benefit and, as a result, the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO notes that the applicant's ground of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude is eligible for a waiver under section 212(h) of the Act.

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—

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

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien’s application for a visa, admission, or adjustment of status,

(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

(iii)the alien has been rehabilitated; or

(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 applicant experiences upon removal is not considered in 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 child.

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 for assault, occasioning actual bodily harm 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. However, 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 term "violent". The term "dangerous" is not defined by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we also

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 applicant’s conviction for assault, occasioning actual bodily injury is a violent crime making him subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

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.*

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 to his qualifying relatives under section 212(h) of the Act is not sufficient. He must meet the higher standard of exceptional and extremely unusual hardship. Therefore, the AAO will at the outset determine whether the applicant meets this standard.

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 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 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.

The record of hardship includes: two letters from the applicant’s spouse, medical documentation for the applicant’s spouse, a statement from the applicant, two statements from the applicant’s spouse, a brief from former counsel, a psychological evaluation for the applicant, and a psychological evaluation for the applicant’s spouse.

In a letter dated July 14, 2010, the applicant’s spouse states that she is three months pregnant with her second child and that giving birth to her second child anywhere but the United States is unimaginable and not having her family and friends to support her is causing her a great amount of stress. She states that they are incredibly well settled in San Francisco and she cannot imagine uprooting her family and settling anywhere else. In a letter dated February 5, 2010 the applicant’s spouse states that she and the applicant just had a baby girl and moved into a two bedroom apartment. She states that she does not know how she could raise her daughter away from the love and support of her family and friends. She states that the thoughts of having to move away are causing her extreme worry and unimaginable stress.

The AAO notes that medical documentation submitted supports the applicant’s spouse’s statement that she and the applicant had a baby girl on October 19, 2009. In addition, a letter dated August 23, 2007 was submitted which stated that the applicant’s spouse had been suffering from intermittent lower back pain for the past year and that she had been referred to an orthopedist for further evaluation. No other documentation regarding the applicant’s spouse’s back pain have been submitted.

In a statement dated August 11, 2009, the applicant's spouse expresses concern over the massive financial loss relocating to England would cause her family. She states that the relocation would be mentally and physically detrimental as well as unfair to their baby girl. She states that they would not have a home or employment and that leaving her loved ones in the United States behind would be the most devastating and heartbreaking experience of her life. The applicant's spouse expresses further concern over having to change doctors and health insurance upon relocation. In a statement dated September 29, 2007, the applicant's spouse states that she and the applicant met in the Spring of 2004 while she was vacationing in England for three weeks. She states that if the applicant is forced to leave the United States she will financially, emotionally, and physically be devastated. She states that she has a lower back pain and a pinched nerve which causes her pain and spasms. She states that some days she cannot even get out of bed and the applicant must help her. She states that these episodes of excruciating pain and immobility happen as often as three times per week and last from one hour to all day. Furthermore, the applicant's spouse states that the applicant helps her to care for her elderly parents and her sickly brother. Finally, she states that while visiting England she experienced racism for the first time and does not want to move to a foreign country.

In a statement dated September 29, 2007, the applicant explains the incidents surrounding his criminal conviction and that it was a very hard time in his life after he had lost two siblings, one to cancer and one who immigrated to Canada. He also states how his wife is very close to her family and that moving to England would be a hardship for her.

In a psychological evaluation, dated September 9, 2007, [REDACTED] states that he interviewed the applicant's spouse on August 27, 2007 and that his evaluation found that she is suffering Major Depressive Episode with the fear of her husband not being able to stay in the United States as the significant cause of the disorder. [REDACTED] recommends that the applicant's spouse seek psychiatric medical evaluation and that her spouse be able to remain in the United States. The AAO notes that the record also contains a psychological evaluation for the applicant, dated September 22, 2007 and performed by [REDACTED] states that he interviewed the applicant by telephone on September 10, 2007 and found that the applicant was experiencing emotional distress due to his possible deportation and the destabilization of his marriage. [REDACTED] also states that he believes the applicant suffered a major depressive disorder when he lost contact with his brother and has since recovered. [REDACTED] finds that the applicant poses no future risk of criminal behavior.

The AAO finds that the hardships related to separation and relocation presented in this case do not rise to the level of exceptional and extremely unusual hardship. The AAO acknowledges that the applicant's spouse would experience hardship as a result of separation and as a result of relocation, but that this hardship does not rise to the level of exceptional and extremely unusual. The applicant submitted no supporting documentation regarding her family's need for her care and attention or regarding the applicant's spouse's ability to find employment or health care in England. Moreover, the record does not indicate that the applicant's spouse would experience

hardship on account of any racism in England that is extreme when considered with other factors. Furthermore, no further evidence was submitted regarding treatment for the applicant's lower back pain or her mental health problems, thus diminishing the weight given to these factors when considering exceptional and extremely unusual hardship.

The applicant has not demonstrated that the evidence in the record in the aggregate shows that the hardships of relocation or separation produce a "truly exceptional situation" that would meet the exceptional and extremely unusual hardship standard. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 at 62. Accordingly, the hardships to the applicant's spouse and children that arise from his inadmissibility do not meet the heightened hardship standard set forth in 8 C.F.R. § 212.7(d).

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.

ORDER: The appeal is dismissed.