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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**



H2

[REDACTED]

FILE: [REDACTED] Office: VIENNA

Date: OCT 28 2011

IN RE: Applicant: [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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge (OIC), Vienna, Austria. The Administrative Appeals Office (AAO) denied a subsequent appeal.

The applicant is a native and citizen of Yugoslavia and a citizen of Macedonia 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 director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The OIC 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 AAO found that the applicant's crimes of robbery and sexual act with a minor child involve moral turpitude and were violent or dangerous, and that the Secretary of Homeland Security will not favorably exercise discretion in the applicant's case except in an extraordinary circumstance. *See* 8 C.F.R. § 212.7(d). The AAO concluded that the record failed to reflect that the applicant's spouse or children would suffer exceptional and extremely unusual hardship, and that a favorable exercise of discretion was warranted. A notice of intent to dismiss the appeal was thereby issued.

In response to the notice of intent to dismiss counsel contends that the applicant's lawful permanent resident son and U.S. citizen daughter have substantial ties to the United States. Counsel states that the applicant's son recently divorced and is the father of three U.S. citizen children who are 9, 6, and 5 years old. Counsel further states that the applicant's son has been a resident since December 2000, and owns a home. Counsel avers that the applicant's daughter has been a U.S. citizen since 2003 and is married and the mother of a seven-year-old daughter. Counsel indicates that the applicant's daughter and son are employed, his son is a business owner and his daughter works full time and has a full benefit package from her employer. Counsel avers that the applicant's wife has minor health problems (joint pain) and receives treatment in the United States that she would not receive in Macedonia. Counsel states that the applicant's wife spends her time in the United States helping care for her grandchildren. Counsel declares that the applicant's wife cannot afford her frequent trips to Macedonia and burdens her son and daughter by asking for financial assistance. Counsel maintains that family separation is an exceptional hardship for the applicant's wife and son and daughter. Counsel states that the applicant's son and daughter cannot return to Macedonia as they have assimilated to the United States, and that the applicant's son would not be permitted to take his children to Macedonia and must remain in the United States to pay child support. Counsel avers that the applicant's crimes occurred 30 years ago and that he is no danger to the community. Counsel indicates that if the waiver application is not approved the applicant's family will be separated for many years as a result of crimes that occurred 30 years ago.

The record contains the permanent resident card of the applicant's son, the naturalization certificate of his daughter, birth certificates, a family court judgment, a letter of employment, an invoice relating to real estate, a medical record, and other documentation.

The applicant must show that "extraordinary circumstances" warrant approval of the waiver. 8 C.F.R. § 212.7(d). 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 lawful permanent resident wife and son and his U.S. citizen daughter.

In *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001), the Board of Immigration Appeals (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 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 the precedent decision issued the following year, *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 finds that the applicant has demonstrated that his son would experience exceptional and extremely unusual hardship if he chose to join his father to live in Macedonia. Family court records convey that the applicant’s son and daughter-in-law divorced on May 19, 2010, and that his son shares physical placement of his three children, who are 9, 6, and 5 years old. The court’s judgment states that the applicant’s son must have the consent of the children’s mother and the court before moving the children’s residence outside the state. Thus, it is possible that the applicant’s son will be separated from his young children if consent is not granted. Moreover, we take note that the applicant’s son has substantial financial responsibilities in the United States: he owns a business and is responsible for paying child support and providing medical benefits for his children. However, other than the emotional hardship of separation from his father and the financial assistance that the applicant’s son provides to his mother to visit his father in Macedonia, the record fails to establish that the applicant’s son would experience exceptional and extremely unusual hardship if he remained in the United States without his father.

Thus, we find that the applicant has not demonstrated “exceptional and extremely unusual hardship” or other extraordinary circumstances as required in 8 C.F.R. § 212.7(d), and we therefore find that there are not extraordinary circumstances warranting a favorable exercise of discretion in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

**ORDER:** The appeal is dismissed.