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

U.S. Citizenship and Immigration Services

[redacted]

H2

Date: JUL 2 6 2012 Office: SAN JOSE, CA FILE: [redacted]

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Humphrey

for Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Nicaragua. He 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 director stated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act. 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.

On appeal, counsel challenges the director's finding that the applicant's convictions for false imprisonment and driving under the influence (DUI) while under a suspended drive license are not crimes involving moral turpitude. Counsel contends that, assuming *arguendo* the AAO concludes the applicant's convictions are crimes involving moral turpitude, the applicant is eligible for a waiver under section 212(h)(1)(A) of the Act since the activities for which the applicant is inadmissible occurred more than 17 years ago; or alternatively, that the Form I-601 is not required since the applicant's crimes occurred more than 15 years ago. Counsel asserts that the applicant is rehabilitated as the applicant has not had any alcohol-related incidents with the police since 1990, and is a responsible father, husband, taxpayer, and community member. Furthermore, counsel contends that the submitted evidence established the applicant's wife and children will experience extreme hardship if the waiver is denied.

We will first address the finding of inadmissibility.

Inadmissibility for having been convicted of committing a crime involving moral turpitude is under section 212(a)(2)(A)(i)(I) of the Act, which 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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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.

(Citations omitted.)

The record reflects that the applicant was arrested for committing false imprisonment between May 21, 1992 and June 27, 1992 in violation of Cal. Penal Code §§ 236 and 237. On August 13, 1992, the applicant pleaded guilty to the charge. The judge suspended imposition of sentence and placed the applicant on felony probation for three years, and ordered that the applicant serve 12 months in jail, attend substance abuse counseling, and have no contact with the victim.

Furthermore, the record reflects that on November 29, 1990 the applicant pleaded guilty to and was convicted of violation of sections 23152(b)- 23175 of the Cal. Veh. Code (DUI with 3 priors), and driving with a suspended/ revoked license in violation of section 14601.2(a) of the Cal. Veh. Code. The judge suspended imposition of sentence and placed the applicant on felony probation for four years, and ordered that the applicant serve 12 months in jail and live in a drug/alcohol program for six months.

Counsel argues that the director erroneously concluded that the applicant's convictions involve moral turpitude. Counsel contends that Cal. Penal Code §§ 236 and 237 "can be a divisible statute which is not considered a crime of violence or of moral turpitude if it involved fraud or deceit. USCIS cannot hold this crime as a crime of violence or of moral turpitude if the [applicant's] Record of Proceeding does not identify violence or menace."

The applicant's case arises within the jurisdiction of the Ninth Circuit Court of Appeals. To determine if a crime involves moral turpitude, the Ninth Circuit Court of Appeals first applies the categorical approach. *Nunez v. Holder*, 594 F.3d 1124, 1129 (9th Cir. 2010) (citing *Nicanor-Romero v. Mukasey*, 523 F.3d 992, 999 (9th Cir.2008). This approach requires analyzing the elements of the crime to determine whether all of the proscribed conduct involves moral turpitude. *Nicanor-Romero, supra* at 999. In *Nicanor-Romero*, the Ninth Circuit states that in making this determination there must be "a realistic probability, not a theoretical possibility, that the statute would be applied to reach conduct that did not involve moral turpitude. *Id.* at 1004 (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007). A realistic probability can be established by showing that, in at least one other case, which includes the alien's own case, the state courts applied the statute to conduct that did not involve moral turpitude. *Id.* at 1004-05.

The Ninth Circuit's adoption of the "realistic probability" test is consistent with the Attorney General's decision in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), which the Ninth Circuit has not rejected. In *Silva-Trevino*, 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.

At the time of the applicant's conviction, false imprisonment was defined as "the unlawful violation of the personal liberty of another." *See* Cal. Penal Code § 236.

Cal. Penal Code Ann. § 237 provided further:

> False imprisonment is punishable by fine not exceeding five hundred dollars ($500), or by imprisonment in the county jail not more than one year, or by both. If such false imprisonment be effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment in the state prison.

In *Saavedra-Figueroa v. Holder*, 625 F.3d 621, 623 (9th Cir. 2010), the Court examined the differences between misdemeanor and felony false imprisonment. The Court stated that false imprisonment "may be committed by acts or by words, or both, and by merely operating upon the will of the individual or by personal violence, or both." *Id.* at 625. The conduct may involve the simple act of making of a citizen's arrest without probable cause, and causing the police to take the victim into custody. *Id.* (citing *People v. Henderson,* 19 Cal.3d 86, 93; 560 P.2d 1180 (1977)).

However, the Court stated that felony false imprisonment is effected by violence, menace, fraud, or deceit. 625 F.3d at 626. "A false imprisonment is "effected by violence" where the defendant uses greater force than reasonably necessary to effect the restraint." *Id.* (citing *People v. Castro,* 138 Cal.App.4th 137, 143 (2006) (defendant who pulled victim towards his car committed felony false imprisonment by using more force than necessary to restrain her). The Ninth Circuit stated that felony false imprisonment is committed when menacing words are used to victimize. *Id.* (citing *People v. Aispuro,* 157 Cal.App.4th 1509, 1513 (2007) (defendant was guilty of felony false imprisonment when he ordered two minor children to sit in the middle of the street, threatened to harm them if they did not, and did not respond to their pleas not to hurt them). 625 F.3d at 626.

The Ninth Circuit determined that false imprisonment under Cal. Penal Code § 236 could not be categorically a crime involving moral turpitude because section 236 did not require the element of the intent to harm necessary for the crime to be "base, vile, or depraved." 625 F.3d at 626. The Ninth Circuit found that a section 236 misdemeanor conviction had only two elements: the violation of another's personal liberty, and the unlawfulness of that violation. *Id.* The Ninth Circuit noted, however, that its holding was shared by the California courts, which require "the addition of [violence, menace, fraud, or deceit] to the simple violation of personal liberty of another [to] make[ ] the crime one involving moral turpitude." *Id.* at 627. (citing *People v. Cornelio,* 207 Cal.App.3d 1580, 1584 (1989).

The Ninth Circuit did not make a determination of whether felony false imprisonment under Cal. Penal Code § 237, which is committed with intentional violence, menace, fraud, or deceit, is categorically a crime involving moral turpitude. 625 F.3d 627. However, the Ninth Circuit stated: "Where we have not resolved whether a particular crime is a categorical CIMT, we look to other federal and state courts for guidance." *Id.* (citing *United States v. Santacruz,* 563 F.3d 894, 896 n. 3 (9th Cir. 2009)).

The AAO is not aware of any published federal cases addressing whether the crime of felony false imprisonment under California law is a crime of moral turpitude. However, in *People v. Cornelio*, the California court determined that the addition of one or more of the elements of violence, menace, fraud or deceit to the simple violation of personal liberty of another makes the crime of false imprisonment one involving moral turpitude. 207 Cal.App.3d 1580 at 1583-1584. The Court defined 'moral turpitude' to mean a "general readiness to do evil" such as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man," which is virtually identical to the definition adopted by the BIA. *Id.* (citing *People v. Castro*, 38 Cal.3d 301 (1985); *In re Craig,* 12 Cal.2d 93, 97, 82 P.2d 442 (1938); 2 Bouvier's Law Dict. (3d rev. 1914) p. 2247; 1 Witkin, Cal. Procedure (3d ed. 1985) Attorneys, § 375, pp. 424-426; Annot. 23 A.L.R. Fed. 480, 488 (1975) involving exclusion or deportation of aliens under Federal Immigration and Naturalization Act.). The AAO finds the *Cornelio* ruling persuasive, that felony false imprisonment under Cal. Penal Code § 237 is "inherently base, vile, or depraved" and categorically a crime involving moral turpitude. The AAO is not aware of, and the applicant has not pointed to, any case which applies Cal. Penal Code § 237 to conduct which does not involve moral turpitude.

In the instant case, the applicant was convicted under Cal. Penal Code §§ 236 and 237. Based on the necessary presence of the element of violence, menace, fraud or deceit, and the fact that we are not aware of any case which applies Cal. Penal Code § 237 to conduct which does not involve moral turpitude, we find that the crime of felony false imprisonment is one that categorically involves moral turpitude.

Accordingly, we find the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

As the applicant's felony false imprisonment conviction renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, we will not address his DUI convictions.

We disagree with counsel's argument that the Form I-601 application is not required because the

applicant's crimes occurred more than 15 years ago. There Act does not contain any provision eliminating prior inadmissibility, and the necessity of section 212(h) waiver, for a conviction for a crime involving moral turpitude based on the passage of 15 years. Counsel is correct that the applicant is eligible for consideration of a waiver under section 212(h)(1)(A) of the Act because the activities for which the applicant is inadmissible occurred more than 17 years ago. However, the applicant's the applicant's felony complaint and disposition stated that the applicant's crime of false imprisonment was effected by "violence, menace, fraud, and deceit." 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 dependent on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms "violent" and "dangerous". The term "dangerous" is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms "violent" and "dangerous" in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). 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.

In *People v. Reed*, 78 Cal.App.4th 274, 208 (2000), the Court stated that the term "violence' in Cal. Penal Code § 237 means "the exercise of physical force used to restrain over and above the force reasonably necessary to effect such restraint," and "menace" is "a threat of harm express or implied by word or act."

Thus, in view of the reference to violence and menace in the criminal record, we find that the applicant's conviction for felony false imprisonment is a violent or dangerous crime. Therefore, our discretion is limited by 8 C.F.R. § 212.7(d). As we find no national security or foreign policy considerations that would warrant a favorable exercise of discretion, we will consider whether denial of admission would result in exceptional and extremely unusual hardship. We note that the applicant has presented evidence of hardship to his qualifying relatives to satisfy the "extreme hardship" standard, and we therefore can make a determination concerning "exceptional and extremely unusual hardship" based on the evidence presented. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center or field office does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.*

We note that 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 evidence in this case includes declarations, photographs, social security records, birth certificates, tax records, a marriage certificate, medical records, financial records, and other documentation.

The applicant's wife stated in the declaration dated May 10, 2008 that she has had close relationship with her husband since they met in 1991. She indicated that her husband was in jail due to trouble in the past (alcohol-related) when they had their first child, who is now 15 years old. The applicant's wife conveyed that she has asthma attacks for which she uses an inhaler, and depends on her husband's job for healthcare. The applicant's wife stated that her husband is under a doctor's care for [redacted], and in [redacted] had surgery which was related to the disease.

The submitted birth certificates reflect the applicant's U.S. citizen children were born on August 5, 1989, April 28, 1993, and April 22, 2004. The applicant therefore has one child who is a minor. The marriage certificate indicates that the applicant and his wife married in April 2006. Declarations in the record including those from a pastor, relatives, family members, and friends describe the applicant as having a close relationship with his family members. Medical records are consistent with the applicant's wife claim that her husband has [redacted] and underwent eye surgery for bulging eyes due to the disease. But the medical record does not specify the severity of the applicant's disease and the full effect it has on him. Only general information about the disease is provided. Medical records reflect that the applicant's wife and son have asthma. The submitted income tax records for 2007 show the applicant was employed as a restaurant manager and his wife was a housewife and self-employed. The applicant did not submit more current financial records such as wage statements or income tax records as of the date of the appeal. Thus, in consideration of the asserted hardships and the evidence in the record before the AAO, we find that the applicant has not established that his wife and children would experience exceptional and extremely unusual emotional hardship if they remained in the United States without him.

Furthermore, the applicant has not described the hardships that his wife and children would experience if they joined him to live in Nicaragua. Consequently, we find that the applicant has not established that his wife and children would experience exceptional and extremely unusual hardship if they joined him to live in Nicaragua.

In conclusion, the applicant has not demonstrated that the hardships meet the "exceptional and extremely unusual hardship" standard 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.