**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**

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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[redacted]

Date: JUN 2 1 2012 Office: LOS ANGELES, 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 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,

Michael Humway

for Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the Field Office Director, Los Angeles, 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 Mexico. 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 contends that the director disregarded hardship to the applicant's family members if they joined the applicant to live in Mexico. Counsel argues that the director ignored that in relocating to Mexico the applicant's U.S. citizen wife will struggle financially, forego her college education, and separate from her U.S. citizen sisters and mother in the United States. Counsel contends that the applicant's U.S. citizen children have spent their entire lives in the United States and never lived in Mexico. Counsel asserts that their school instruction is in English and they do not speak Spanish well enough to succeed in school in Mexico. Counsel refers to submitted evidence as showing that transitioning from school in the United States to school in Mexican is difficult, often resulting in delayed academic progress and loss in educational quality. Counsel cites *Matter of Kao and Lin*, 23 I&N Dec. 45, 50 (BIA 2001), as holding that uprooting a respondent's 15-year-old daughter from the United States, where her housing, food, clothing, education and community needs were met, to live in a country where she was not fluent in the language, would be a significant disruption constituting extreme hardship. Counsel argues that *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002) recognizes that inability to speak the language of a respondent's home country is a significant factor in the exceptional and extremely unusual hardship determination. Counsel asserts that the applicant's son has a scholarship to train with an elite ballet group and will not have this opportunity in Mexico. Counsel states that the applicant's daughter visits an eye doctor for keratits and blepharitis and as a result has difficulties reading and requires special assistance and will not have in Mexico comparable special assistance and healthcare. Counsel declares that the applicant's wife previously received treatment and medication for mental health issues and will be stressed in relocating to Mexico. Counsel states that the applicant's mother-in-law has poor health and requires assistance, and even though the applicant and his wife are not her sole financial providers, they are her primary caretakers. Counsel cites *Tukhowinich v. I.N.S.*, 64 F.3d 460, 463 (9th Cir. 1995), as finding that the Board failed to consider emotional hardship where the respondent was the sole provider for herself and eight other family members. Counsel states that the applicant's family will lose their financial stability in relocating to Mexico, and that in *Matter of Gonzalez Recinas* the Board found that the almost total loss of one's financial stake in the United States was a significant factor in finding exceptional and extremely unusual hardship. 23 I&N Dec. at 471. Counsel states that the inability to provide for her children in Mexico will cause hardship to the applicant's wife which is identical to what was recognized by the Ninth Circuit in *Tukhowinich*. *See* 64 F.3d at 463.

Counsel argues that the applicant's wife and children will be emotionally traumatized if they remain in the United States without the applicant. Counsel argues that the severance of close family ties is a

significant factor in finding extreme hardship. (citing *Gutierrez-Centeno v. I.N.S.*, 99 F.3d 1529 (9th Cir. 1996); *Ramirez-Durazo v. I.N.S.*, 794 F.2d 491 (9th Cir. 1986). Counsel states that in losing the applicant's income the applicant's wife will need to work full time, giving up her college education. Counsel cites *Matter of Chong*, 12 I&N Dec. 793 (BIA 1968), as finding exceptional hardship where the denial of the waiver would prevent the applicant's wife from completing her graduate studies.

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-
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> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The record reflects that on February 25, 1991 the applicant was charged with attempted burglary and attempted grand theft. The applicant pled nolo contendere to the charge of attempted burglary, for which he was convicted. The judge suspended imposition of the sentence and placed the applicant on summary probation for three years and ordered that he serve five days in jail. On June 14, 1995, the applicant was charged with three counts of assault with a firearm. The applicant pled nolo contendere to the charges and was convicted. The judge suspended imposition of the sentence for each count and placed the applicant on formal probation for three years and ordered that he serve 340 days in jail.

The director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

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

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

Counsel stated in the letter dated May 7, 2010 that as 15 years have passed since the commission of the offense rendering the applicant inadmissible, he is eligible for a waiver of inadmissibility pursuant to section 212(h)(1)(A) of the Act, requiring showing rehabilitation. However, assault with a firearm is a violent crime which may subject the applicant to the heightened discretion standard of 8 C.F.R. § 212.7(d). The regulation at 8 C.F.R. § 212.7(d) provides:

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

The AAO notes that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and the AAO is aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, *or*

any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in 8 C.F.R. § 212.7(d). Thus, we find that the statutory terms "violent or dangerous crimes" and "crime of violence" are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not 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.

The AAO finds that assault with a firearm is a violent crime. In the instant case, as we find that there are 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.

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 applicant's wife stated in the undated declaration that her children, who are now 13 and 10 years old, have a close bond with the applicant, and that she has had a strong relationship with him since 1997. She stated that they live with her mother because she has high blood pressure and diabetes and has, on one occasion, fainted and hurt her shoulder from falling. The applicant's wife described the applicant as having a close relationship with her mother and taking her to appointments and grocery shopping as well as helping to pay her bills. She stated that two years ago she went back to college part time to earn a degree. The record contains a transcript from the Los Angeles Community College District for the applicant's wife. The applicant's wife described the applicant as very involved in the lives of their children and stated that they would all "suffer immeasurably without him." She declared that grew up without a father and does not want this to happen to her children. The applicant's wife stated that she has anxiety and in the past had taken medication for her condition. She stated that she feels stress, fear and anxiety and started to work part time due to their legal bills. The applicant's wife conveyed that if she remained in the United States without her husband, she would have to support him due to Mexico's poor economy, lack of jobs, and high poverty.

The applicant's wife stated that they have no ties to Mexico to help them, and the applicant would have a slim chance of finding work there that will pay enough to provide for their expenses and housing. She expressed concern that her daughter has eye allergies and blepharitis, which lasts for months at a time and requires visits to an ophthalmologist, and that her daughter will not have proper health care in Mexico. The applicant's wife conveyed that her Spanish skills "are not up to par for full residency in Mexico" and she will not qualify for a job, her schooling would mean nothing there, and she would have to forgo her education in the United States. She indicated that her children are not "fluent Spanish speakers," which would negatively impact their education. She expressed anxiety about crime in Mexico. The applicant's wife asserted that she would separate from her family and sisters in the United States and would not be able to afford traveling to visit them.

The asserted hardship factors in relocating to Mexico are difficulty in finding jobs providing a wage for a decent standard of living, loss of their financial stability and economic stake in the United States, not having comparable medical care for the applicant's daughter, obstacles to the education of the applicant's children and wife due to language and cultural barriers, not having the same educational opportunities for the applicant's children as in the United States. A lower standard of living or adverse country conditions in the country of return, the financial impact of departure from this country, and the extent of ties to that country are factors to consider in the exceptional and extremely unusual hardship determination. The applicant's wife's claim — because of Mexico's poor economy, high unemployment and poverty, as well as a lack of social and family connections to Mexico, it is unlikely that she and her husband will find jobs in Mexico that will provide a sufficient wage for their expenses and housing — is not substantiated by the submitted documentation about Mexico's economy, as the evidence relates to Mexico's economy from 2000 to

2003 and does not discuss socio-economic conditions as of the date of the applicant's appeal. The applicant and his wife live with the mother of the applicant's wife. They do not own any real estate or business in the United States.

We also consider significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country of relocation. The assertion that the applicant's daughter has a history of corneal keratitis, blepharitis, and allergies is consistent with the submitted medical record dated November 3, 2009 showing she was prescribed eye drops and ointment, and previously was prescribed antibiotic-corticosteroid and baby shampoo eyewashes. However, their daughter's medical records do not suggest that her condition will worsen or require more than her current treatment.

The applicant's wife's concern about violent crime in Mexico is not corroborated by the articles submitted about kidnapping as they state that the victims are primarily from the middle and upper classes and the record does not infer that the applicant and his family comprise that socio-economic class.

The applicant's wife's concern about educating her children in Spanish in Mexico is corroborated by the submitted Journal of Immigrant and Refugee Studies describing the obstacles of students who relocate to Mexico from the United States: language barriers, poverty, disjointed school experience, curriculum discontinuities, lack of familiarity with Mexican school customs, and psychological stress. [redacted] *and Back Again: Transnational Students in Mexico. Id.* at 65. Counsel correctly states that the Board found extreme hardship to the respondent's 15-year-old daughter in *Matter of Kao and Lin, supra.* ("We are satisfied that to uproot the oldest daughter, Claire, at this stage in her education and her social development and to require her to survive in a Chinese-only environment would be a significant disruption that would constitute extreme hardship."). The submitted school records reflect that the applicant's daughter had difficulties in school in the United States, and counsel states on appeal that she has made progress in her studies. We recognize that the hardship to the applicant's children in relocating to Mexico is comparable to that of the respondent's daughter in *Matter of Kao and Lin.*

We reject counsel's contention that in view of *Matter of Chong, supra,* the applicant's wife will experience "exception hardship" in not being able to complete her college education. In *Matter of Chong,* the Board addressed "exceptional hardship" in the context of the two-year foreign residence requirement of section 212(e) of the Act, as amended. 12 I&N Dec. 793, 794. In the instant case we are applying "exceptional and extremely unusual hardship" in the heightened discretion standard of 8 C.F.R. § 212.7(d), which is not the same as the "exceptional hardship" standard in *Matter of Chong.* The presence of a lawful permanent resident or United States citizen spouse or parent in the United States is a factor to consider. We acknowledge that the applicant's wife and children will separate from U.S. citizen family members in the United States and that the applicant has helped his mother-in-law. We also recognize that the applicant's wife stated that she has a history of anxiety for which she had taken medication. However, no medical records have been submitted of the health problems of the applicant's mother-in-law or his wife. In sum, when the hardship factors are considered in the aggregate, the AAO finds that the hardship to the applicant's spouse and children in their relocation to Mexico is not exceptional and extremely unusual hardship as their hardship is

not "'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001).

In regards to remaining in the United States without the applicant, the asserted hardships are emotional and financial in nature. The submitted letters from family members and friends attest to the close relationship between the applicant and his immediate and extended family members. We also consider the financial impact of the applicant's departure from this country on the qualifying relative. The applicant's wife's claims they will struggle financially without her husband's income. However, this has not been substantiated by the record as it shows that she has a place to live, with her mother, and that has income from working part time at a bank. Thus, the family is not completely dependent on the applicant's income. In addition, the applicant's wife has not provided documentation of her household expenses and shown that her income is not sufficient for her expenses as well as for providing some financial assistance to her husband while he seeks a job in Mexico. We acknowledge that the applicant's wife will not be able to spend as much time with her children if she works full time. When we consider the asserted these factors in the aggregate, we find that they do not support a finding of exceptional and extremely unusual hardship. The hardship to the applicant's wife and children is not that which is "'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001).

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.