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

U.S. Citizenship and Immigration Services

Date: FEB 13 2013 Office: CIUDAD JUAREZ FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and (i), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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 AAO inappropriately applied the law 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 with the field office or service center that originally decided your case by filing a Form I-190B, 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 a 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 Shumway

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application and the application for permission to reapply were denied by the Field Office Director, Ciudad Juarez, Mexico, in a single decision and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico 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 further 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 to the United States through fraud or willful misrepresentation of a material fact. He seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. § 1182(h) and (i), in order to reside in the United States with his U.S. citizen spouse.

In a decision dated August 10, 2010, the field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The field office director further denied the waiver application as a matter of discretion after finding that the applicant's convictions and material misrepresentations to immigration officials showed a willful disregard for U.S. immigration laws.

On appeal, the applicant asserts that the field office director erred in finding that the record evidence did not establish that the applicant's bar to admission would result in extreme hardship to his spouse. The applicant states that the evidence outlining psychological, medical, emotional and financial difficulties to the applicant's spouse demonstrate extreme hardship to his qualifying relative.

The record contains, but is not limited to: the applicant's statement; statement's by the applicant's wife; medical documentation; a letter regarding the psychological state of the applicant's wife; financial documentation; evidence of the applicant's home short sale; employer reference letters; country conditions documentation; statements prepared by the applicant's immediate family members; and documentation regarding the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

The AAO will first address the finding of inadmissibility under section 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or willful misrepresentation of a material fact.

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 record reflects that on August 21, 2008, the applicant attempted to reenter the United States at the Paso Del Norte Port of Entry in El Paso, Texas by presenting a duly issued Form I-551, bearing his name and photograph, and stating that he had traveled to Ciudad Juarez, Mexico to receive medical attention and that he was returning to his home in California. A routine query revealed that the applicant was removed from the United States in 2001 and that he was not in possession of valid entry documents. The applicant was processed and returned to Mexico. Based upon this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding on appeal.

The field office director also found the applicant inadmissible under section 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude. That section provides that:

> (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, or

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

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

alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

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

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

The record shows that on or about November 7, 1997, the applicant was convicted in the Municipal Court, Stanislaus County, California, of assault with a deadly weapon upon a peace officer, in violation of section 245(c) of the California Penal Code. The applicant was sentenced to 150 days in jail, three years of probation, and court costs for this offense. The field office 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.

Cal. Penal Code § 245(c) provides that:

> Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

As the applicant has not disputed the finding of inadmissibility based on this conviction, and we do not find that determination to be in error, we will not disturb the finding of inadmissibility.

The record also indicates that the applicant was convicted on June 18, 1998, October 21, 1998, and March 9, 2000, of driving under the influence of any alcoholic beverage or drug in violation of Cal. Penal Code § 23152.

Cal. Penal Code § 23152 provides, in pertinent part, that:

> It is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle. It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

The AAO has reviewed the elements of the above-mentioned driving offenses and finds that none of them are crimes involving moral turpitude. In *Matter of Torres-Varela*, the Board held that simple driving under the influence of alcohol does not constitute a crime involving moral turpitude, as it is a marginal crime that does not include aggravating factors. 23 I&N Dec. 78, 85 (BIA 2001); *see also Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999) (simple driving while intoxicated would not likely be a crime involving moral turpitude). Additionally, the Board in *Torres-Varela* clarified that nonturpitudinous conduct is not rendered turpitudinous through multiple convictions for the same offense. 23 I&N Dec. at 85. Accordingly, the applicant's convictions for driving under the influence do not render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, the applicant remains inadmissible as an alien having been convicted of a crime involving moral turpitude for his 1997 conviction for assault with a deadly weapon other than a firearm on a law enforcement officer. As stated, the applicant does not dispute this finding on appeal.

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [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,
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> (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 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 is established to the satisfaction of the Attorney General [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 . . . .

The AAO notes that the applicant's most recent conviction for a crime involving moral turpitude occurred on or about November 7, 1997. As the conduct underlying the conviction took place over 15 years ago, he meets the requirement of section 212(h)(1)(A)(i) of the Act, the AAO will assess his eligibility for a waiver under the additional requirements of section 212(h)(1)(A) of the Act. An

application for admission or adjustment is a "continuing" application, and inadmissibility is adjudicated on the basis of the law and facts in effect at the time of admission. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992). Section 212(h)(1)(A) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated. If the foregoing requirements are established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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 that the applicant merits a favorable exercise of discretion solely by balancing the applicant's favorable and adverse factors. The applicant's conviction indicates that he may be subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

The applicant was convicted of assault with a deadly weapon. 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.

As stated, the applicant was convicted on November 7, 1997 of felony assault with a deadly weapon other than a firearm in violation of Cal. Penal Code § 245(c). The statutory elements of the crime require the actual use or attempt to use the deadly weapon. From the plain language of the statute, it can be concluded that the applicant has been convicted of a violent crime pursuant to 8 C.F.R. § 212.7(d). Therefore, even if the applicant satisfied the rehabilitation requirement of section 212(h)(1)(A) and the extreme hardship requirement of section 212(i) of the Act, he would still be subject to the heightened hardship requirement of showing exceptional and extremely unusual hardship to warrant a favorable exercise of discretion under section 212(h)(2) of the Act. The regulation at 8 C.F.R. § 212.7(d) requires a showing of a higher level of hardship for applicants who have committed violent or dangerous crimes.

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." *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), 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 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. These 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 upon the qualifying relatives; 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-Aguinaga*, 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 in this case. *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 record reflects that the applicant is 65 years old and his wife is 60 years old. The applicant was physically removed from the United States in 2001 pursuant to an order from an immigration judge. The applicant has been residing in the town of Churintzio, in Michoacán, Mexico, since his deportation. The record reflects that the applicant's immediate family members, including his two daughters, his son, and grandchildren, all reside in the United States.

The applicant's wife indicates in her letter dated November 22, 2011 that she continues to experience hardships and difficulties caused by the applicant's deportation and subsequent denials of admission into the United States. The applicant's wife states that she is a seasonal worker for and that her period of employment runs from July through the middle of November. Evidence in the record in the form of an employer reference letter corroborates this assertion. Further, the applicant's wife indicates that she lost their house after listing it as a short sale in 2009 because she was unable to make monthly mortgage payments with her income. She states that the applicant contributed financially to the household and that since his removal to Mexico she has encountered financial difficulties. There is evidence in the record indicating that the applicant held steady employment as a farmer in the United States from 1971 through his removal in 2001. The record includes a letter from a representative of in which he indicates that the company employed the applicant from 1971 through 1999 on their peach and almond farm. Further, there is a letter from a representative of the in which it is stated that the applicant worked for the company in the past, and that he was a reliable employee. Additionally, the record includes copies of documents related to the short sale of the applicant's house. However, the record does not contain pay stubs or copies of income tax returns to demonstrate the inadequacy of the applicant's wife earnings from seasonal employment. Further, no evidence detailing expenses related to the household or to the care of the applicant's wife

were submitted with the appeal. Moreover, there is no evidence in the record demonstrating how his earnings met the family's financial needs through his employment prior to his removal to Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's wife asserts that she fears for her husband's safety in Michoacán, Mexico. She states that "bad things have happened" and that the applicant's husband has been a theft victim on two occasions. She states that she experiences anxiety and excessive worry over her husband's safety and that she is scared her husband might be the victim of a shooting. Other than her statement, the applicant has not submitted documentary evidence corroborating her assertion that the applicant has twice been a theft victim. The statements of the applicant's wife do constitute evidence; however, the applicant has submitted at least three statement letters in support of his application and he has failed to address these incidents in his declarations. Moreover, though the applicant has submitted official documentation from the municipalities of Churintzio and Changuitiro, in Michoacán to corroborate that he is employed as a farmer there, that he does not have a criminal record in Mexico, and that he has received treatment at some of their medical clinics, he has not produced police reports or other documentation corroborating that he has been a victim of theft. Additionally, the applicant has failed to include country conditions documentation corroborating her assertions and the dangers of living in Churintzio, Michoacán. However, the AAO notes that the U.S. Department of State updated its Travel Warning for United States citizens traveling to Mexico on November 20, 2012. The Travel Warning notes that since 2006, the Mexican government has engaged in an extensive effort to combat transnational criminal organizations (TCOs).

The Travel Warning further indicates that TCOs, meanwhile, engage in a wide-range of criminal activities that can directly impact United States citizens, including kidnapping, armed car-jacking, and extortion that can directly impact United States citizens. According to the Travel Warning, the number of U.S. citizens reported to the Department of State as murdered under all circumstances in Mexico was 113 in 2011 and 32 in the first six months of 2012. Regarding the state of Michoacán, the Travel Warning indicates that U.S. citizens "should defer non-essential travel to the state of Michoacán," as attacks on Mexican government officials, law enforcement and military personnel, and other incidents of TCO-related violence, have occurred throughout the state. Based on the increased violence in Mexico and the Travel Warning issued to U.S. citizens, the AAO notes the risks U.S. citizens face when traveling to certain areas in Mexico, including the area where the applicant currently resides. Therefore, the AAO recognizes that the ability of the applicant's wife to visit the applicant in Michoacán, Mexico is limited. However, as the Board noted in *Matter of Monreal-Aguinaga*, "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." 23 I&N Dec. at 63-4.

With regard to medical and psychological difficulties to the applicant's wife, the record includes a letter dated December 4, 2009, prepared by In her letter, Dr. indicates that the applicant's wife suffers from depression and significant anxiety. She states that the applicant's wife symptoms have worsened since the separation from her husband, and that in 2009 the applicant's wife experienced a severe anxiety attack. Dr. does

not indicate in her statement the tests performed to conclude that the applicant's wife is experiencing anxiety and depression as a result of her husband's removal from the United States. That is, the statement does not indicate the methodology she used to reach her findings. The conclusions rendered by Dr. in her letter do not provide sufficient detail regarding the applicant's wife's psychological conditions. Therefore, they do not reflect the insight derived from any extensive testing or observation of the applicant's wife. Additionally, there is no evidence in the record indicating that the applicant's wife has any history of mental health disorders such as anxiety or depression, or any tendencies toward such disorders, or that she underwent any psychological treatment before her visits to Dr. Accordingly, the AAO finds the statement from Dr. does not demonstrate more than the emotional hardship commonly associated with inadmissibility or removal.

Thus, when the evidence of hardship in the record is considered collectively, we find that the applicant has not shown that his spouse will endure "exceptional and extremely unusual hardship" if she remained in the United States without him. Though the age of the applicant and his wife are factors to consider when evaluating exceptional and extremely unusual hardship, and there is evidence in the record indicating that adverse country conditions exist in Michoacán, Mexico, these factors, by themselves, are insufficient to demonstrate exceptional and extremely unusual hardship. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. at 63. Accordingly, the applicant has not demonstrated that the psychological, medical, and financial hardship to his qualifying relative meets the "exceptional and extremely unusual hardship" standard as required in 8 C.F.R. § 212.7(d).

With regard to joining the applicant to live in Michoacán, Mexico, the asserted hardship factors are her close familial ties in the United States and concern about her personal safety and that of the applicant. In her statement dated November 22, 2011, the applicant's wife indicates that she cannot relocate to Mexico for she is helping her daughter with the care of her children. Here, the AAO acknowledges that the applicant's wife will experience some emotional difficulties if she relocates to Mexico to reside with the applicant resulting from the separation from her children and grandchildren, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be exceptional and extremely unusual. The evidence in the record is insufficient to demonstrate that the applicant's wife is the sole caretaker of her grandchildren, or that the applicant's wife's daughter depends entirely upon the applicant's wife for the daily care of her children. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the difficulties described by the applicant's wife, and as demonstrated by the evidence in the record, are the common results of removal or inadmissibility and do not rise to the level of exceptional and extremely unusual hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991).

The applicant's wife states that life in the area where the applicant currently resides is unsafe, as individuals who are not from Michoacán, Mexico are being kidnapped for ransom demands. As previously noted, the United States Department of States has issued a Travel Warning advising of the risks of travel to Mexico. Regarding the specific area where she would be residing in Mexico in the event of relocation, the Travel Warning indicates that U.S. citizens "should defer non-essential travel to the state of Michoacán," as attacks on Mexican government officials, law enforcement and

military personnel, and other incidents of TCO-related violence, have occurred throughout the state. Relocation to Mexico would thus require the applicant abandon her residence in the United States to move to a part of Mexico that has become unstable. However, the travel warning indicates that violence in Michoacán is concentrated against government officials and law enforcement personnel. Though we recognize that this factor, together with the additional asserted factors might be sufficient to find extreme hardship to the applicant's qualifying relative, the Board has noted that adverse country conditions, by themselves, are insufficient to demonstrate exceptional and extremely unusual hardship. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. at 63-4.

Thus, when the evidence of hardship in the record is considered collectively, we find that the applicant has not shown that his spouse will endure "exceptional and extremely unusual hardship" if she relocates to Michoacán, Mexico to reside with him. Accordingly, the applicant has not demonstrated that the emotional hardships to his qualifying relative and the country conditions of the country of relocation meet the "exceptional and extremely unusual hardship" standard as required in 8 C.F.R. § 212.7(d).

In regards to the applicant's application for permission to reapply, the AAO notes that in *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964), it was held that an application for permission to reapply for admission will be denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act. Thus, no purpose would be served in further review of the applicant's Form I-212 application. The appeal of the field office director's denial of the Form I-212 will be dismissed as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.