



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JAN 29 2013

Office: PORT-AU-PRINCE

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:

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,

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Port-au-Prince, Haiti, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti 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)(II), for having been convicted of crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen mother.

In a decision dated June 24, 2011, the field office director denied the Form I-601 waiver application, finding the applicant failed to establish that his U.S. citizen mother would experience extreme hardship as a consequence of his inadmissibility. The field office director also found that the applicant failed to submit evidence of rehabilitation and noted the applicant's criminal history as grounds for denying the waiver application in the exercise of discretion.

On appeal, counsel for the applicant states that the field office director erred by applying the extreme hardship standard under section 212(h)(1)(B) to the facts of the applicant's case. Counsel asserts that the convictions for which the applicant is inadmissible occurred more than 15 years ago. As such, he states that the applicant is eligible for a waiver of inadmissibility pursuant to section 212(h)(1)(A) of the Act. Counsel contends that the director erred in finding that he is not rehabilitated, as the evidence in the record demonstrates that the applicant's admission would not be contrary to the welfare and security of the United States and the record contains ample evidence of rehabilitation.

The record includes, but is not limited to: counsel's brief; a statement by the applicant's U.S. citizen mother; copies of the birth and naturalization certificates of the applicant's immediate family members; documentation regarding the applicant's removal proceeding; an offer of employment letter; country conditions documentation; 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.

Section 212(a)(2)(A) of the Act provides, in pertinent part:

- (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.)

The record indicates that on or about May 6, 1994, the applicant was convicted of various crimes in Florida, including: discharging a firearm into a school in violation of Florida Statutes § 790.115(i); shooting into an occupied dwelling in violation of Florida Statutes § 790.19; and grand theft in violation of Florida Statutes § 812.014(2). For these offenses, the applicant was sentenced on May 18, 1994, to a three-year term of probation, court costs, and completion of a "boot camp" program with the Florida Department of Corrections. The record also indicates that on or about July 19, 1994, the applicant was convicted of vehicle theft in violation of Florida Statutes § 812.014(1)(c)(6). For this theft offense, the applicant was sentenced to a two-year term of probation. 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 resulting from these various convictions on appeal, and the record does not show the determination to be erroneous, the AAO will not disturb the finding of the director.

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,
- (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 July 19, 1994. 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.

In his brief on appeal, counsel states that the evidence in the record demonstrates the applicant has rehabilitated. Counsel asserts that the applicant's "lack of a criminal history since his last conviction, employment in Haiti, and his character" show efforts toward rehabilitation. Further, counsel states that the applicant has admitted guilt and has expressed remorse for his criminal conduct. Specifically, counsel contends that the applicant's admissions of guilt, post-conviction behavior, and acceptance of responsibility provide a strong basis for rehabilitation. According to counsel, the applicant recognizes the seriousness of his crimes, that he acted foolishly during the commission of the same, and that the applicant did not think of the consequences of his actions. Additionally, counsel explains that the applicant complied with the conditions imposed by the courts in connection with his sentences and that the applicant has lived a productive life in Haiti.

The applicant's mother asserts in her statement dated January 19, 2011, that she constantly worries about the applicant's well-being. She states that separation from the applicant has affected her emotionally, as he has no other family members or relatives in Haiti. She also asserts that separation has brought financial difficulties upon her, given that she sends him remittances and "exports food [to him] by boat." The applicant's mother further states that the applicant deserves a second opportunity in the United States so he may take care of his daughter, whom she explains is at an age requiring the presence and support of her father. She avers that the applicant has no future in Haiti and that his immediate family resides in Miami, Florida.

While the AAO acknowledges these statements, it observes that the applicant's mother makes no mention of the applicant's past criminal activities, nor how the applicant has specifically rehabilitated himself. Also, though counsel indicates on appeal that the applicant is remorseful and has accepted responsibility for his crimes, the record does not contain documentary evidence supporting these assertions. It is well-established that the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Here, the AAO notes that the record does not include a statement or declaration from the applicant himself in support of his claim that he has rehabilitated. There is no statement from the

applicant discussing his prior criminal convictions and how he has changed his life since that time. The record evidence also does not demonstrate remorse from the applicant. Additionally, the record does not include reference letters from friends or additional family members attesting to the positive character of the applicant. Nor is there evidence in the record from which to conclude that the applicant has been employed in Haiti since his removal from the United States to that country. Consequently, counsel's unsupported assertions regarding the applicant's efforts towards rehabilitation have no evidentiary value. It is noted that the record includes a letter of employment for the applicant from one [REDACTED] who states that the applicant has a job pending with [REDACTED] as a stock manager. However, this letter is undated and makes no mention of Mr. [REDACTED] position at the company. Based on the evidence included in the record, the AAO does not find that the applicant has demonstrated that he has been rehabilitated.

The AAO further finds that the seriousness of the applicant's criminal history raises concerns when assessing whether his admission would be contrary to the national welfare, safety, or security of the United States. The applicant's convictions for shooting into an occupied dwelling and discharging a firearm into a school denote a disregard for the lives and safety of others and are contrary to the national safety and security of the United States. Additionally, the applicant's convictions for grand theft and vehicle theft in 1994, coupled with the applicant's arrests for disorderly conduct in 1997, possession of burglary tools in 1994, larceny in 1997, and resisting an officer by disguise in 1997 constitute additional negative factors. The applicant has failed to present evidence demonstrating that he is no longer involved in activities that would endanger the lives of others and are contrary to the safety or security of the United States. Accordingly, the AAO finds that the applicant has not demonstrated that his admission would not be contrary to the national safety and welfare of the United States. The AAO therefore finds the applicant does not qualify for a section 212(h) waiver for being inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.

Additionally, even assuming that the applicant had demonstrated on appeal he meets the statutory requirements for a section 212(h)(1)(A) waiver, or 212(h)(1)(B) by showing extreme hardship to a qualifying relative, the AAO would still deny the waiver application in the exercise of discretion. In most discretionary matters, the alien bears the burden of proving eligibility simply by showing equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). However, the AAO cannot find, based on the facts of this particular case, that the applicant merits a favorable exercise of discretion solely on the balancing of favorable and adverse factors. The applicant's convictions indicate that he may be subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly

demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The AAO notes that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and the AAO is aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. 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 determination of whether a crime is "violent or dangerous" in the Eleventh Circuit requires "an adequate consideration of the nature of the alien's crime." *See Makir-Marwil v. U.S. Att'y Gen.*, 681 F.3d 1227, 1235 (11th Cir. 2012). The Eleventh Circuit noted in *Makir-Marwil* that "[s]ome crimes may be so serious and depraved that the [immigration adjudicator] need only consider the elements of the offense to determine that the alien is violent or dangerous." *Id.* "Sometimes the [immigration adjudicator] may delve into the facts and circumstances of the prior offenses to determine whether the alien is violent or dangerous." *Id.* The adjudicator is thus instructed to make an appropriate determination under the circumstances as to whether the alien is violent or dangerous.

Here, a conviction under Florida Statutes § 790.19 for "shooting into an occupied dwelling" requires the "wanton or malicious act of shoot[ing] at, within, or into ... any public or private [occupied] building, shall be guilty of a felony of the second degree." Florida Statutes § 790.19. In *State v.*

Kettell, the Supreme Court of Florida noted that to establish that shooting at, within, or into a building was done wantonly or maliciously, the state must prove: (1) that the act was done intentionally and recklessly without regard for the consequences and that the defendant knew either (2) that damage is likely to be done to some person, for acting wantonly, or that injury or damage will or may be caused to another person or the property of another person, for acting maliciously. 980 So. 2d 1061, 1067.

With regards to the nature and circumstances surrounding the applicant's offense, the arrest affidavit dated October 7, 1993, indicates that the applicant:

"[E]ntered onto the property of the [redacted] while having an argument with the victim who is an ex-girlfriend. During the verbal altercation the [applicant] pulled from his waistband a silver colored semiautomatic pistol and fired one shot at the victim while she ran towards the school office. The projectile struck the west wall of the main office which was occupied at the time."

Based upon the statutory elements of the offense of "shooting into an occupied dwelling," which requires an actual awareness of the risk of damage or injury to another person, and the nature and circumstances of the offense as reflected in the arrest affidavit, the AAO finds that the applicant's conviction under Florida Statutes § 790.19 is a dangerous crime that renders him subject to the heightened discretion standard of 8 C.F.R. § 212.7(d). Having found the applicant subject to this heightened discretionary standard, the AAO need not consider whether the applicant's conviction for discharging a firearm into a school in violation of Florida Statutes § 790.115(i) constitutes a "violent or dangerous crime."

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.”).

On appeal, counsel contends that the applicant submitted evidence that the denial of the immigrant visa would cause his United States citizen parents, siblings, and child a continued hardship. Counsel states that the applicant has strong family ties in the United States and that if granted a waiver, the applicant will permanently reside in Miami, Florida with his mother and stepfather. Counsel asserts that the applicant would also “take this opportunity to reconnect with his daughter, and attempt to play an active role in her life.”

In support of counsel’s claims, the record contains copies of the naturalization and birth certificates of the applicant’s parents, child, and siblings. The record also contains a letter prepared by the applicant’s mother. In her statement, the applicant’s mother indicates that separation from the applicant has affected her. She states that she suffers from high blood pressure and stress, as she worries about the applicant’s safety in Haiti. She further asserts that she constantly sends remittances to the applicant and “exports food to him by boat so he can have some food to eat.” The applicant’s mother indicates that the situation is causing her psychological and financial hardship.

Here, the record evidence does not contain any medical documentation corroborating the applicant’s mother’s assertions regarding her experiencing high blood pressure or stress. The record does not contain evidence demonstrating that the applicant’s mother suffers from health problems, or that these conditions are associated with the applicant’s immigration situation. Moreover, the record does not contain any documentary evidence establishing that the applicant’s mother provides financial assistance to the applicant, or that supporting the applicant financially is causing the

applicant's mother hardship that 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. at 61. Neither does the record contain any evidence that proves the applicant's mother is experiencing psychological and mental difficulties as a consequence of separation from the applicant.

Furthermore, the applicant's mother has not asserted the reasons why she fears for the applicant's safety in Haiti. It is noted that the record contains general country conditions documentation indicating safety concerns in Haiti and the devastating results of the 2010 earthquake; however, counsel notes in his brief that the applicant was not directly affected by the earthquake. Though counsel asserts that the applicant is suffering in the earthquake's aftermath, he fails to provide any specific, cogent reasons which might lead to a determination that the applicant is experiencing difficulties in Haiti as a result of the 2010 earthquake, or how these difficulties affect the applicant's qualifying relative. 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)). Lastly, though the AAO recognizes that the applicant's immediate family members reside in the United States, it concludes that the hardship described by the applicant's mother, and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the level of extreme 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). Therefore, the record does not establish that the difficulties that would be faced by the applicant's qualifying relative as a result of his inadmissibility, even when considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of exceptional and extremely unusual hardship. *Matter of Monreal-Aguinaga*, 23 I&N Dec. at 62.

The documentation in the record fails to establish the existence of rehabilitation and that the applicant's admission would not be contrary to the safety and national security of the United States. Even had the applicant satisfied this requirement, his waiver application would not be granted as the AAO finds that he has failed to establish that he merits a favorable exercise of discretion under the regulation at 8 C.F.R. § 212.7(d).

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(h) of the Act, the burden of proving eligibility rests 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.