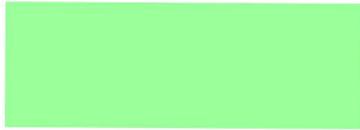




U.S. Citizenship  
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Services

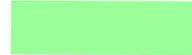
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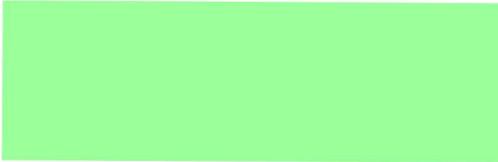
IN RE:

Applicant:



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.

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Poland 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 a crime involving moral turpitude. The applicant is married to a U.S. citizen. On May 7, 2012, she filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her U.S. citizen husband and mother.

In a decision dated July 6, 2012, the field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that her U.S. citizen husband and mother would experience extreme hardship as a consequence of her inadmissibility. The field office director noted that the applicant did not show that the qualifying relatives' hardship was more severe than that suffered by the relatives of any individual who is refused admission into the United States. In addition, the field office director denied the waiver application in the exercise of discretion, finding the applicant's positive equities insufficient to overcome the "serious adverse factors affecting [her] application."

On appeal, counsel for the applicant contends that the applicant's "failure to report an accident" conviction does not involve moral turpitude. Counsel states that the statute of conviction is divisible and that the record evidence does not establish a clear basis to classify the conviction as one involving moral turpitude. Counsel further states that even were the AAO to find the applicant inadmissible for having been convicted of a crime involving moral turpitude, the submitted evidence and documentation outlining psychological and emotional difficulties to the applicant's U.S. citizen husband and mother demonstrate extreme hardship to her qualifying relatives.

The record includes, but is not limited to: counsel's brief; the applicant's declaration; an affidavit by the applicant's husband; an affidavit by the applicant's mother-in-law; copies of birth, marriage, and naturalization certificates; a copy of the applicant's passport; copies of income tax returns and utility bills; documentation regarding the applicant's pregnancy; medical documentation; a copy of a judgment of dissolution of marriage concerning the applicant's mother and stepfather; documentation concerning the applicant's successful completion of probation; the applicant's mother's psychological evaluation; support letters by the applicant's two probation officers; character reference letters from family members and friends of the family; 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, 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 . . . is inadmissible.

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

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. 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 reflects that on January 19, 2011, the applicant was convicted in the Circuit Court of [REDACTED] of failure to report an accident in violation of section 625-5/11-401(b) of the Illinois Compiled Statutes (ILCS). The applicant was sentenced to 30 months of probation and was ordered to serve 130 hours of community service. The field office director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude.

625 ILCS 5/11-401 provides:

(a) The driver of any vehicle involved in a motor vehicle accident resulting in personal injury to or death of any person shall immediately stop such vehicle at the scene of such accident, or as close thereto as possible and shall then forthwith return to, and in every event shall remain at the scene of the accident until the requirements of Section 11-403 have been fulfilled. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who has failed to stop or to comply with said requirements shall, within 3 hours after such motor vehicle accident, or, if hospitalized and incapacitated from reporting at any time during such period, within 48 hours after being discharged from the hospital, report the place of the accident, the date, the approximate time, the driver's name and address, the registration number of the vehicle driven, and the names of all other occupants of such vehicle, at a police station or sheriff's office near the place where such accident occurred. . . .

For purposes of this Section, personal injury shall mean any injury requiring immediate professional treatment in a medical facility or doctor's office.

(c) Any person failing to comply with paragraph (a) shall be guilty of a Class 4 felony.

(d) Any person failing to comply with paragraph (b) is guilty of a Class 3 felony if the motor vehicle accident does not result in the death of any person. Any person failing to comply with paragraph (b) when the accident results in the death of any person is guilty of a Class 2 felony, for which the person, if sentenced to a term of imprisonment, shall be sentenced to a term of not less than 3 years and not more than 14 years.

625 ILCS 5/11-403 provides:

The driver of any vehicle involved in a motor vehicle accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give the driver's name, address, registration number and owner of the vehicle the driver is operating and shall upon request and if available exhibit such driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or the making of arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment, if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

If none of the persons entitled to information pursuant to this Section is in condition to receive and understand such information and no police officer is present, such driver after rendering reasonable assistance shall forthwith report such motor vehicle accident at the nearest office of a duly authorized police authority, disclosing the information required by this Section.

Any person failing to comply with this Section shall be guilty of a Class A misdemeanor.

The AAO is unaware of any published Seventh Circuit Court of Appeals cases addressing whether the crime of failure to report accident/death/injury under section 401(b) is a crime of moral turpitude. However, we note that in *Garcia-Maldonado v. Gonzales*, 491 F.3d 284 (5th Cir. 2007), the Fifth Circuit Court of Appeals analyzed whether violation of Texas Transportation Code § 550.021, failure to stop and render aid after involvement in an automobile accident, was a crime involving moral turpitude.<sup>1</sup> The Fifth Circuit found that section 550.021 of the Texas Transportation Code

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<sup>1</sup> Texas Transportation Code § 550.021 provides, in pertinent part:

(a) The operator of a vehicle involved in an accident resulting in injury to or death of a person shall:

(1) immediately stop the vehicle at the scene of the accident or as close to the scene as possible;

(2) immediately return to the scene of the accident if the vehicle is not stopped at the scene of the accident; and

(3) remain at the scene of the accident until the operator complies with the requirements of Section 550.023.

Section 550.023 of the Code, in turn, sets forth the following requirements:

could be violated both by reprehensible conduct (leaving the scene of an accident) and by conduct that was not morally turpitudinous (failing to affirmatively report identifying information), and, consequently, was not categorically a crime involving moral turpitude. *Id.* at 289. In applying the modified categorical approach, the Fifth Circuit held that the defendant's failure to stop and render aid following a fatal motor vehicle accident in violation of Texas Transportation Code § 550.021 involved moral turpitude "because the offense reflects an intentional attempt to evade responsibility and is intrinsically wrong." *Id.* at 290.

The Illinois Appellate Court of the Second District stated in *People v. Kerger*, 191 Ill.App.3d 405, 411, 548 N.E.2d 36, 138 Ill.Dec. 806 (2d Dist.1989), that to avoid prosecution under section 11-401(b), a driver involved in a motor vehicle accident must either comply with the requirements under section 11-403 or section 11-401(b), and that a driver will be prosecuted if he fails to comply with the reporting requirements of section 11-403 or 11-401(b). *Id.* at 411-412. With regard to the *mens rea* element of section 401, the Illinois Supreme Court held that to support a conviction under section 11-401, the prosecution must prove that the defendant knew that an accident occurred. *People v. Nunn*, 77 Ill.2d 243, 252, 32 Ill.Dec. 914, 396 N.E.2d 27 (1979); *People v. Janik*, 127 Ill.2d 390, 399, 130 Ill.Dec. 427, 537 N.E.2d 756 (1989). The AAO observes that in *People v. Jack*, 282 Ill.App.3d 727, 668 N.E.2d 622 (1996), the Appellate Court of the Second District held that satisfying the *mens rea* element of the offense required the State to prove that the defendant knew he was in an accident (but not that he knew the accident could result in injury to another party) and failed to fulfill his duty under section 11-403 of the statute, which includes a duty to reasonably investigate. *Id.* at 733-734.

In *People v. Digirolamo*, 227 Ill. Dec. 779 (1997), the Supreme Court of Illinois held that the offense of failing to report accident resulting in person's death requires proof that accused driver had knowledge that he or she was involved in an accident that involved another person, although proof of knowledge that injury or death resulted is not required; proof that accused driver had knowledge

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The operator of a vehicle involved in an accident resulting in the injury or death of a person or damage to a vehicle that is driven or attended by a person shall:

- (1) give the operator's name and address, the registration number of the vehicle the operator was driving, and the name of the operator's motor vehicle liability insurer to any person injured or the operator or occupant of or person attending a vehicle involved in the collision;
- (2) if requested and available, show the operator's driver's license to a person described by Subdivision (1); and
- (3) provide any person injured in the accident reasonable assistance, including transporting or making arrangements for transporting the person to a physician or hospital for medical treatment if it is apparent that treatment is necessary, or if the injured person requests the transportation.

that his or her vehicle was involved in accident, without proof that accident involved another person, is insufficient to establish such offense.

Viewed against the background of reported Illinois state court decisions and the holding in *Garcia-Maldonado*, wherein failure to comply with reporting and identification requirements was found not to be morally turpitudinous, but failure to render aid to an injured person was, the AAO finds that violation of 625 ILCS 5/11-401 does not categorically involve moral turpitude because the statute encompasses acts which both do (failure to render aid to an injured person) and do not (failure to render reasonable assistance to an injured person) involve moral turpitude. Since a conviction for failure to report accident/death/injury in violation of 625 ILCS 5/11-401 is not categorically a crime involving moral turpitude, the Seventh Circuit then applies the modified categorical approach and may consider evidence beyond the charging papers or judgment of conviction in determining whether the specific conduct of which the applicant was convicted involved moral turpitude. *Ali v. Mukasey*, 521 F.3d 737, 743 (7th Cir.2008).

In this case, the record does not establish that this statute was applied to conduct not involving moral turpitude in the applicant's own criminal case. Though counsel states on appeal that "neither the categorical nor modified categorical approaches establish a clear basis to classify the present conviction as a CIMT," the AAO notes that the applicant has not submitted the full record of conviction or demonstrated that it is unavailable. The applicant submitted a certified statement of conviction/disposition indicating that on January 19, 2011, the applicant pled guilty to count 1 of the indictment. However, the record of proceedings in this case does not contain other documents comprising the record of conviction, such as the indictment, jury instructions, a signed guilty plea, and the plea transcript. It is noted that, unlike a removal hearing in which the government bears the burden of establishing an alien's removability, the burden of proof (including the burden of production) in the present proceedings is on the applicant to establish that she is not inadmissible. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not submitted the relevant documents comprising the judicial record of conviction to establish that her failure to report an accident involving death conviction was for a violation of the reporting and identification requirements of 625 ILCS 5/11-401 and 625 ILCS 5/11-403.

Thus, the only remaining step in the *Silva-Trevino* methodology is the third, which provides for consideration of probative evidence outside the record of conviction, such as an admission by the alien or testimony before an immigration adjudicator. *See Matter of Guevara Alfaro*, 25 I&N Dec. 417, 422 (BIA 2011) ("[I]f the record of conviction is inconclusive, ..., probative evidence beyond the record of conviction (such as an admission by the alien or testimony before the Immigration Judge) may be considered when evaluating whether [a crime] involves moral turpitude."). Here, the record does not include admissions by the applicant nor transcripts or summary of the applicant's testimony before the immigration adjudicator. However, the record does include five police reports, four of which were prepared on the night of the incident that led to the applicant's conviction. It is stated in the report, based on reports from several eyewitnesses, the applicant drove a white sports utility vehicle in reverse and struck two subjects. One of the subjects was trapped under her vehicle and subsequently died. According to the information contained in the reports, three eyewitnesses observed the applicant exit the vehicle and walk away from the scene of the accident. Further, the applicant indicates in a sworn statement dated May 2, 2012, that upon exiting the vehicle and

rendering aid to the female victim, she noticed another victim trapped under the vehicle. It was at this time that she “lost control,” ran inside the banquet hall and yelled the remaining guests to “call 911,” and exited the building and walked “in a random direction.”

From the information provided in the police reports and the sworn statement, it can be concluded that the nature of the applicant’s conviction was, at a minimum, failure to render aid to the individual trapped under the vehicle after involvement in an automobile accident, which is a crime involving moral turpitude. Consequently, the AAO finds that the applicant’s violation of 625 ILCS 5/11-401(b) constitutes a crime involving moral turpitude. The applicant is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

A discretionary waiver is available for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Section 212(h) of the Act provides, in pertinent part, that:

(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 –

. . .

(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 begins its analysis by noting that a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the applicant asserts that denial of her admission will impose extreme hardship upon her U.S. citizen husband and mother. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

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 she may be subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

The applicant was convicted of failure to report an accident in violation of section 625-5/11-401(b) of the Illinois Compiled Statutes (ILCS). 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). Black's Law Dictionary, Seventh Edition (1999), defines violent as "of, relating to, or characterized by strong physical force" and dangerous as "likely to cause serious bodily harm." 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.

Here, from the plain language of 625 ILCS 5/11-401(b) requiring a person involved in an accident to render aid, and the fact that the statute of conviction requires a motor vehicle accident involving the death or serious injury of a person, it can be concluded that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) for the commission of a "dangerous crime" that renders her subject to the heightened discretionary standard under 8 C.F.R. § 212.7(d).

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 Board determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that “must be ‘substantially’ beyond the ordinary hardship that would be expected when a close family member leaves this country.” However, the applicant need not show that hardship would be unconscionable. *Id.* at 61.

The Board stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. 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 Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *Id.*

In *Monreal-Aguinaga*, 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.

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 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.”).

In deciding whether an applicant has met the exceptional and extremely unusual hardship standard, consideration should be given to the age, health, and circumstances of the qualifying family members. *Matter of Monreal*, 23 I&N Dec. at 63.

The applicant has a U.S. citizen husband and mother, both of whom are qualifying relatives in these proceedings. She was brought to the United States by her parents in 1995 when she was eight years of age and has resided in the United States since that time. The record reflects that the applicant has no immediate family in Poland, as her mother, husband, stepfather, sister, uncles and aunts all reside in the United States. Unlike the situation in *Monreal* and *Andaloza*, the record evidence reflects that the applicant's immediate family members reside lawfully in the United States. We find this significant because they are unlikely to be subject to immigration enforcement and will probably remain in the United States indefinitely. See *Matter of Gonzalez-Recinas*, 23 I&N Dec. at 472.

With regards to exceptional and extremely unusual hardship upon separation from the applicant, counsel asserts on appeal that the applicant's husband would experience emotional hardships if he remains in the United States without the applicant and their newborn son. In his statement dated May 2, 2012, the applicant's husband asserts that separation would have a profound mental and emotional impact to his well-being. The applicant's husband indicates that as of the date of filing an appeal, the applicant was pregnant with their first son, and that the possibility of being separated from his wife and newborn continues to affect his emotional state. The applicant's husband indicates that he has a close relationship with his wife, and that he is concerned his newborn child will be raised fatherless in Poland they return to that country without him. A psychological report dated March 27, 2012 by [REDACTED] confirms that the applicant's husband has been experiencing anxiety and depression as a result of his wife's immigration situation and the prospect of separation from his wife and newborn son. [REDACTED] mentions in his report that the applicant's husband is concerned about the emotional development of their son if the applicant is denied admission and returns to Poland without him. He concludes that the applicant's husband's absence from the family would be psychologically damaging to the child, and would negatively impact the child's sense of trust. Letters in the record by the applicant's husband's mother and siblings confirm the close relationship he has with the applicant and the emotional impact that separation would have on the applicant's husband.

Counsel asserts on appeal that the applicant's mother would experience extreme hardship if the applicant is forced to return to Poland while she remained in the United States. Counsel states on appeal that the record evidence establishes that the applicant's mother is experiencing severe depression and that, due to the applicant's mother's recent divorce, the applicant is now her primary caretaker. The record evidence includes a Judgment for Dissolution of Marriage, dated, July 19, 2012, corroborating counsel's assertion that the applicant's mother and stepfather divorced due to irreconcilable differences. The applicant also submitted an affidavit dated July 27, 2012, by [REDACTED] the applicant's former husband. He states that the applicant's mother relies on her daughter for her well-being due to her emotional problems. [REDACTED] asserts that the applicant is the one that cares for her mother, given the applicant's mother's history of depression. He indicates that "there is no one else she is close enough to or trusts, especially when it comes to the emotional support and consistency and keeping a stable life." The record also includes a psychological report by [REDACTED], Psychiatrist, in which he indicates that the applicant's mother is under his professional care and supervision due to "a nervous breakdown and severe depression, with her depressive symptoms intensifying after she learned that her daughter [REDACTED] may be deported from the United States." [REDACTED] corroborates that the applicant is her mother's primary caretaker and source of emotional and practical support. He mentions that the applicant's mother's treatment includes cognitive psychotherapy and pharmacotherapy. The record

includes prescription records which indicate that the applicant's mother is being prescribed antidepressants. In [REDACTED] professional opinion, the applicant's mother is slowly deteriorating medically, and she identifies the possible deportation of the applicant as a major trigger of her depression and mental disturbances. [REDACTED] concludes that the applicant may be the only person who may provide the psychological support and comfort her mother needs to reach mental stability. Letters in the record confirm the applicant's mother depression and that the applicant is her primary caretaker.

It is well established that the effect of family separation must be considered in determining extreme hardship. In *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) the Ninth Circuit discussed the effect of emotional hardship on the alien and her husband and children as a result of family separation. The Ninth Circuit stated that "the most important single hardship factor may be the separation of the alien from family living in the United States" and that there must be a careful appraisal of "the impact that deportation would have on children and families." *Id.* at 1293. Furthermore, the Ninth Circuit indicated that "considerable, if not predominant, weight," must be attributed to the hardship that will result from family separation. *Id.* In *Yong v. INS*, 459 F.2d 1004 (9th Cir. 1972), the Ninth Circuit reversed a BIA decision denying an application for suspension of deportation, noting that "[s]eparation from one's spouse entails substantially more than economic hardship." *Id.* at 1005. Similarly, the Third Circuit in *Bastidas v. INS*, 609 F.2d 101 (3rd Cir.1979) explicitly stressed the importance to be given the factor of separation of parent and child.

Here, the AAO notes that the applicant's mother is dependent on the applicant for emotional support and medical care. There is no indication that the applicant's stepfather would remain involved in the applicant's mother's life in any manner after their divorce, as statements in the record reflect that the nature of his business requires him to constantly travel the United States. Statements in the record further indicate that the applicant's sister Izabela is not in contact with the family. Additionally, the record shows that the applicant's mother has a nine-year-old child and that, due to her depression, the applicant is the person relied upon to help with the child's care. These factors increase the level of hardship the applicant's mother would face in the event of separation from the applicant, as she would lose the assistance of the one individual who provides for her particular emotional and psychological needs given her history of depression.

Considering the weight of all of these factors in the aggregate, and in view of the substantial weight that is given to family separation in the hardship analysis, the documentary evidence demonstrating significant emotional impact to the applicant's husband, and the documented extreme psychological impact to the applicant's mother if separated from her daughter, the AAO finds that the hardships related to separation in this case rise to the level of exceptional and extremely unusual hardship. While the emotional hardships the applicant's husband would suffer if separated from the applicant is extreme, the AAO acknowledges the exceptional and extremely unusual hardship standard is not so restrictive that only a handful of applicants will qualify for relief. *Matter of Gonzalez-Recinas*, 23 I&N Dec. at 470. The Board has suggested that applicants who have qualifying relatives with serious medical conditions may meet the standard. *Id.* Here, the determining factors that raise this case to one presenting exceptional and extremely unusual hardship are the applicant's mother's documented history of severe depression and her dependence on the applicant to provide for not only her psychological and emotional needs, but also for the applicant's help in raising a nine-year-old child. Therefore, the

AAO finds that the applicant has established that her husband and mother will experience exceptional and extremely unusual hardship if her waiver application is denied.

With regards to relocation to Poland, the field office director found that the record evidence established that the applicant's husband would experience extreme hardship should he relocate to that country. The field office director noted the significant challenges that would arise if he relocates to Poland. Specifically, the director noted that the record demonstrates the applicant's husband speaks minimal Polish; he does not read nor write Polish; the applicant's husband has significant family and community ties to the United States, he was born and raised in Illinois; he has established through documentation financial difficulties upon relocation to Poland; and has "a successful career in a line of work that does not exist in Poland."

The record evidence further establishes hardships to the applicant's mother should she relocate to that country. For instance, relocation would require the applicant's mother abandon her community and potentially her family, including her two daughters. Also, [REDACTED] indicates in his report that he strongly recommends the applicant's mother continue professional psychiatric care in the United States. It is noted that relocation would require she discontinue her treatment with the psychiatrist familiar with her diagnosis, pharmacological regimen, and her therapy treatment. Additionally, it does not appear that she will be reunited with family members upon her return to Poland, as the record establishes that her immediate family members all reside in the greater Chicago area. Consequently, it is likely that relocation to Poland would further deteriorate the applicant's mother's psychological condition.

Also, the record reflects that the immediate families of the applicant's qualifying relatives reside in the United States. The applicant's husband indicates in his affidavit dated July 30, 2012 that he does not have connections or relationships with family in Poland, and that separating from his relatives is unthinkable. Letters in the record indicate that the applicant's husband has a close relationship with his family. The loss of this support would further increase the hardship that he would suffer if compelled to return to Poland, where no support structure exists.

Considering all of these factors in the aggregate, the AAO finds that the hardships related to relocation rise to the level of exceptional and extremely unusual hardship to the applicant's qualifying relatives.

The determining factors that raise this case to one presenting exceptional and extremely unusual hardship are that: the applicant's mother's special psychological needs and the disruption that relocation would cause on her treatment and mental state; the applicant would have to find employment in Poland to help support her family while caring for an infant son and a mother with a history of severe depression; the applicant's husband's unfamiliarity with the environment of the country of relocation, given that he was born and raised in Chicago, Illinois; and that the applicant's qualifying relatives will be separated from their family ties if they move to Poland. Therefore, the AAO finds that the applicant has established that her family members would experience exceptional and extremely unusual hardship if her waiver application is denied.

Additionally, while 8 C.F.R. § 212.7(d) permits us to deny the waiver as a discretionary matter based on the gravity of the applicant's offense, we note that, in general, a traditional discretionary analysis

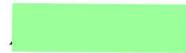
requires that the AAO “balance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 300 (BIA 1996)(Citations omitted).

The favorable factors in this matter are the exceptional and extremely unusual hardship the applicant’s husband and mother would face if the applicant were denied admission to the United States, regardless of whether they accompanied the applicant to Poland or stayed in the United States; the applicant’s acceptance of her crime and immigration violations; the applicant’s community and family ties; and the general hardship to the applicant’s son in the event of separation from the applicant. The unfavorable factors in this matter are the applicant’s criminal history; and the applicant’s periods of unlawful presence and unlawful employment while in the United States.

With regards to efforts at rehabilitation, the applicant submitted an affidavit dated May 2, 2012, in which she accepts responsibility for her 2010 crime. She indicates that she has paid her dues with regard to her crime and that she continually prays for forgiveness for what she did. The record includes two letters of support prepared by the applicant’s two probation officers. Both attest to the applicant’s good moral character, her full compliance with the terms and conditions of her probation, and her genuine and affectionate marriage. The officers’ further state that the applicant’s progress confirmed her commitment to completing the Intensive Probation Program and that she never acted in a manner which conflicted with the probation policies.

Additionally, the record includes 12 affidavits by friends and family members attesting to the applicant’s good moral character, fitness and desirability as a resident of the United States, and the genuine marriage to her husband. Some of the letters suggest that the applicant went through difficult times in her childhood and that she has encountered difficulties in her life. However, her family members and friends state that she has surpassed these difficulties and now concentrates her efforts on maintaining her family and caring for her mother. Thus, the character reference letters in the record support a finding that the applicant has become a more conscientious person and has directed her efforts at taking care of her spouse and mother. These are all favorable indicators of efforts at rehabilitation which, when evaluated in the aggregate, demonstrate that the applicant has rehabilitated.

Here, the AAO has weighed the severity of the applicant’s criminal conviction, her efforts at rehabilitation, her 18 years of residence in the United States, and the other favorable facts in the record, including her U.S. citizen mother and husband, and her history of steady employment, and finds that the applicant merits a favorable exercise of discretion. The AAO recognizes that it is favorably exercising discretion in a case presenting serious and severe criminal conduct. However, the AAO finds that the applicant has been rehabilitated.. The applicant is now an architect and is a productive member of her community. Given these factors, coupled with the hardship that would be experienced by her U.S. citizen husband and mother upon her removal, we find that the positive factors outweigh the negative factors in this case. Therefore, a favorable exercise of discretion is warranted.



(b)(6)

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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, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

**ORDER:** The appeal is sustained.