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

U.S. Citizenship and Immigration Services

DATE: JUN 11 2013 Office: OAKLAND PARK FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Oakland Park, Florida, 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 under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude; and section 212(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1182(a)(1)(A)(iii)(I), for having a mental disorder with associated behavior that has posed a threat to the safety of others. He 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 parents and his son.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated October 3, 2012. The field office director also found that the applicant had failed to show that he merited a waiver in the exercise of discretion. The applicant filed a timely appeal.

On appeal, counsel contends that the field office erred in finding that the applicant's qualifying relatives would not experience extreme hardship if his waiver application were denied.

The record includes, but is not limited to: statements from the applicant and his mother; employment and financial information relating to the applicant's parents; documentation relating to the applicant's criminal history; medical records regarding the applicant's parents; information regarding the applicant's mental and physical health; documentation of the applicant's child support obligations and payments; and records of the applicant's community service.

The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2) of the Act states in pertinent part:

> Criminal and related grounds. —
>
> (A) Conviction of certain crimes. –
>
> (i) In general. – Except as provided in clause (ii), any 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 (BIA) 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 applicant's case arises within the jurisdiction of the Eleventh Circuit Court of Appeals, which has reaffirmed the traditional categorical approach for determining whether a crime involves moral turpitude, declining to follow the "administrative framework" set forth by the Attorney General in *Matter of Silva-Trevino,* 24 I&N Dec. 24 I&N Dec. 687 (A.G. 2008). *See Fajardo v. Attorney General*, 659 F.3d 1301, 1310 (11th Cir. 2011) (finding that Congress intended the traditional categorical or modified categorical approach to be used to determine whether convictions were for crimes involving moral turpitude and declining to follow the "realistic probability approach" of *Matter of Silva-Trevino*). In its decision, the Eleventh Circuit defined the categorical approach as "looking only to the statutory definitions of the prior offenses, and not to the particular facts underlying those convictions." 659 F.3d at 1305 (quoting *Taylor v. United States*, 495 U.S. 575, 600 (1990)). The Court indicated, however, that where the statutory definition of a crime includes "conduct that would categorically be grounds for removal as well as conduct that would not, then the record of conviction – i.e., the charging document, plea, verdict, and sentence – may also be considered." 659 F.3d at 1305 (citing *Jaggernauth v. U.S. Att'y Gen.*, 432 F.3d 1346, 1354-55 (11th Cir. 2005)). Accordingly, the AAO will consider the applicant's conviction pursuant to the analytical framework outlined by the Eleventh Circuit in *Fajardo*.

The record reflects that the applicant's criminal history is as follows:

On January 28, 1998, he was arrested for interfering with school or administrative functions in violation of Fla. Stat. § 877.13. Based on the applicant's plea, adjudication was withheld and the applicant was sentenced to six months of probation, a fine, and 40 hours in a Community Betterment Program.

On July 6, 1998, he was arrested for retail theft in violation of Fla. Stat. § 812.015. On July 7, 1998, the court withheld adjudication and, based on the applicant's plea, sentenced him to six months of probation and a fine.

On October 8, 1998, he was found guilty of violation of probation and was sentenced to 30 days of Residential Electronic Monitoring.

On June 4, 1999, he was charged with two counts of aggravated assault with a deadly weapon and two counts of aggravated assault with a deadly weapon (domestic violence), in violation of Fla. Stat. § 784.021, and resisting arrest without violence in violation of Fla. Stat. § 843.02. The applicant entered a plea of nolo contendere to one count of aggravated assault with a deadly weapon and to resisting arrest without violence. On September 27, 1999, the applicant was found guilty of both charges and sentenced to jail with credit for time served for each, plus three years of probation for the aggravated assault charge. The other charges were nolle prossed. The applicant was also ordered to complete 30 hours of community service, pay a fine, attend a batterer's intervention program and a parenting course, and to have no contact with the victims.

On April 13, 2001, he was arrested for solicitation of prostitution in violation of Fla. Stat. § 796.07. On September 7, 2001, he pled no contest, adjudication was withheld, and he was ordered to pay a fine.

On May 4, 2001, he was arrested for violation of state probation. The disposition of that charge is not clear from the record.

On August 27, 2001, he was convicted of violation of probation in violation of Fla. Stat. § 948.06.

On July 17, 2002, he was arrested for violation of community control. He was found not guilty of that offense.

On September 2, 2003, he was arrested for driving with a suspended license in violation of Fla. Stat. § 322.34(2A). The disposition of that charge is not clear from the record.

On April 1, 2004, he was arrested for driving while license suspended or revoked. The disposition of that charge is not clear from the record.

On July 10, 2004, he was arrested under a writ of bodily attachment for child support. The disposition of that case is not clear from the record.

On August 4, 2004, he was arrested for "obtain goods worthless check < $150." The charge was nolle prossed.

On November 27, 2004, he was arrested for resisting arrest without violence and "trespass on property other than structure." On December 23, 2004, he pled guilty to both charges and was sentenced to jail for time served.

On December 15, 2004, he was arrested for criminal mischief in violation of Fla. Stat. § 806.13-1b2. On Februay 7, 2005, he pled no contest and was adjudicated guilty of the offense. He was sentenced to jail for time served and was ordered to pay a fine.

On August 15, 2005, he was arrested for failure to appear and "non-compliance hearing collection court" in violation of Fla. Stat. § 843.15(1B). The disposition of that charge is not clear from the record.

On January 8, 2010, he was arrested for the offense of "fugitive – open container." The charge was nolle prossed.

The AAO will first determine whether the applicant's conviction for aggravated assault with a deadly weapon was a crime involving moral turpitude. At the time of the applicant's conviction in 1999, Fla. Stat. § 784.021 provided:

> (1) An "aggravated assault" is an assault:
> (a) With a deadly weapon without intent to kill; or
> (b) With an intent to commit a felony.
> (2) Whoever commits an aggravated assault shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The definition of "assault" is under Fla. Stat. § 784.011(1), which states, in pertinent part:

> (1) An "assault" is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

In *Matter of O--,* 3 I&N Dec. 193 (BIA 1948), the Board found that assault with a deadly and dangerous weapon in violation of section 6195 of the General Statutes of Connecticut would involve moral turpitude because "it is inherently base . . . because an assault aggravated by the use of a dangerous or deadly weapon is contrary to accepted standards of morality in a civilized society, and . . . always constituted conduct contrary to acceptable human behavior." *Id.* at 197. Moreover, in *Matter of Sanudo,* 23 I&N Dec. 968, 971 (BIA 2006), the Board states that "assault and battery with a deadly weapon has long been deemed a crime involving moral turpitude . . . because the knowing use or attempted use of deadly force is deemed to be an act of moral depravity that takes the offense outside the 'simple assault and battery' category." (Citations omitted.)

We note that aggravated assault in Florida requires proof of a specific intent to do violence. *See Lavin v. State*, 754 So.2d 784, 787 (Fla.App. 3 Dist. 2000). Further, in *Dey v. State*, 182 So.2d 266, 268 (Fla.App. 1966), the Court stated that aggravated assault is an assault with a deadly weapon that is "likely to produce death or great bodily harm." (citing *Goswick v. State*, 143 So.2d 817 (Fla. 1962). In view of the decisions in *Matter of Sanudo* and *Matter of O--*, we find that assault with a deadly weapon is morally turpitudinous because it is committed with the knowing use or attempted use of deadly force. Thus, the applicant's aggravated assault conviction involves moral turpitude.

Because we have found the applicant's conviction for aggravated assault with a deadly weapon to be a crime involving moral turpitude which renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, we need not determine whether his other convictions were also for crimes involving moral turpitude. The applicant has not contested his inadmissibility on appeal.

The director also found the applicant inadmissible to the United States under section 212(a)(1)(A)(iii)(II) of the Act, as an alien classified as having a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior.

Section 212(a)(1) states, in pertinent part:

> (1) Health-related grounds.—
>
> (A) In General
>
> Any alien—
>
> . . .
>
> (iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General [Secretary of Homeland Security])—
>
> (I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or
>
> (II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior . . . is inadmissible.

As evidence of his mental disorder, the applicant furnished a letter from his doctor, MD. Dr. writes that the applicant has a "primary diagnosis of Schizophrenia, paranoid type. He is seen at least monthly for medication management." *Letter from MD,* dated December 15, 2011. Dr. further states that the applicant's "psychiatric symptoms have been stable for the past several years" and that the applicant agrees to continue intensive mental health treatment and medications "to sustain stability in the community." *Id.*

The AAO has reviewed the record and finds that the director's determination that the applicant has a medical condition that renders him inadmissible under section 212(a)(1)(A)(iii)(II) of the Act has not been issued "in accordance with regulations prescribed by the Secretary of Health and Human Services," as required by the statute.

Section 40.1 of the United States Citizenship and Immigration Services (USCIS) Adjudicator's Field Manual provides the following on the procedure for adjudicating a medical ground of inadmissibility:

(a) General

(1) Section 212(a)(1)(A) of the Immigration and Naturalization Act (the Act) provides that aliens with certain health problems are inadmissible. To determine whether aliens are inadmissible under section 212(a)(1)(A), immigrant visa and adjustment of status applicants are required to undergo a medical examination. For immigrant visa applicants, the medical examination is performed by a panel physician designated by the Department of State. For adjustment of status applicants, the medical examination is performed by a civil surgeon designated by a USCIS district director.

(2) The required medical examination must be performed according to guidelines published by the Centers for Disease Control and Prevention (CDC). Civil surgeons in the United States must use *Technical Instructions for the Medical Examination of Aliens in the United States* (hereinafter Technical Instructions), and panel physicians abroad must use *Technical Instructions for Panel Physicians*. The *Technical Instructions* have the force of a regulation and can be accessed at www.cdc.gov/immigrantrefugeehealth/exams/ti/index.html.

(b) Medical Grounds of Inadmissibility Defined

(1) Section 212(a)(1)(A) of the Act

> Establishes four categories of conditions that may render an alien inadmissible. The four categories are:
>
> - communicable disease of public health significance
> - failure to show proof of required vaccinations
> - mental or physical disorder with associated harmful behavior
> - drug abuse or addiction
>
> These constitute Class A conditions and render an applicant inadmissible to the U.S. Class B medical conditions do not constitute a ground of medical inadmissibility and are defined as physical or mental abnormalities, diseases, or disabilities serious in degree or permanent in nature amounting to a substantial departure from normal well-being. 42 CFR 34.2(e).

Because section 212(a)(1)(A) of the Act states that all medical-related grounds of inadmissibility are determined "in accordance with regulations prescribed by the Secretary of Health and Human Services," the applicant's own admission is not sufficient to uphold a finding of inadmissibility on medical grounds. A medical examination performed by panel physician designated by the Department of State or a civil surgeon designated by the district director is required. *See Hill v. INS*, 714 F 2d. 1470 (9th Cir. 1983).

In the present case, the record reflects that the applicant was examined by a designated civil surgeon on October 20, 2011. The civil surgeon's Report of Medical Examination and Vaccination Record (Form I-693), dated October 25, 2011, states that the applicant did not have a current Class A or Class B physical or mental disorder. In Part 2, Question 3 of the Form I-693, the surgeon indicated that the applicant has a "History of Physical/Mental Disorder with Associated Harmful Behavior Unlikely to Recur, Class B." As noted above, a civil surgeon or panel physician must certify a medical condition as Class A in order for the applicant to be inadmissible on medical grounds. The applicant is not inadmissible for a Class B medical condition under section 212(a)(1)(A) of the Act. Therefore, the AAO does not find that the applicant is inadmissible under section 212(a)(1)(A)(iii)(II) of the Act, as an alien having a mental disorder with associated harmful behavior.

The AAO will now address the applicant's eligibility for a waiver of inadmissibility under section 212(h) of the Act, which provides, in pertinent part:

> The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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 . . . .

On appeal, counsel asserts that the field office director failed to sufficiently weigh the effect of the applicant's potential separation from his son; did not consider the individual hardship factors listed in *Matter of Cervantes-Gonzales*; did not consider hardship to the applicant due to country conditions in Haiti; improperly found that the applicant's parents' need for assistance in the future due to their deteriorating health was purely speculative; and improperly applied the "exceptional and extremely unusual" hardship standard rather than the "extreme hardship" standard.

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives in this case are the applicant's parents and son.

Once eligibility for a waiver is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996). A favorable exercise of discretion is limited in the case of an applicant who has been convicted of a violent or dangerous crime. Specifically, 8 C.F.R. § 212.7(d) states:

> 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 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 (Dec. 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms "violent" and "dangerous." The term "dangerous" is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms "violent" and "dangerous" in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual "case-by-case basis." 67 Fed. Reg. at 78677-78.

The AAO finds that aggravated assault with a deadly weapon under Fla. Stat. § 784.021 is a violent crime because it involves knowingly attempting to cause or causing bodily injury to another with a deadly weapon. We therefore conclude that the applicant is 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" to a qualifying relative. *Id.*

In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." However, the applicant need not show that hardship would be unconscionable. *Id.* at 61. The AAO notes that the exceptional and extremely unusual hardship standard in cancellation of removal cases is identical

to the standard put forth by the Attorney General in *Matter of Jean*, *supra*, and codified at 8 C.F.R. § 212.7(d).

The Board has stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *Id.*

In *Monreal*, the Board provided additional examples of the hardship factors it deemed relevant for establishing exceptional and extremely unusual hardship:

> [T]he ages, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives. For example, an applicant who has elderly parents in this country who are solely dependent upon him for support might well have a strong case. Another strong applicant might have a qualifying child with very serious health issues, or compelling special needs in school. A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.

23 I&N Dec. at 63-64.

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 determined that the evidence of 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. *Id.* at 472. The Board stated, "We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met." *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate. *See Gonzalez Recinas*, 23 I&N Dec. at 469 ("While any hardship case ultimately succeeds or fails on its own merits and on the particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship.").

The applicant's mother states that she and her husband will need the applicant's assistance as they get older. She notes that she is 63 years old and that she has back pain, cataracts, and high blood pressure. She states that she and her husband both work at [redacted] as baggers despite their ages and health conditions. Although she concedes that the applicant currently depends on her and her husband because he cannot keep a steady job due to his lack of immigration documents and inability to get a driver's license, she contends that they will soon need him to support them instead. According to the applicant's mother, the applicant is the only one of their children who is available to care for them because their other children all live far away or have their own families. She further alleges that if the applicant were forced to return to Haiti, she and her husband would have to continue working, despite their poor health and being past retirement age, to support him there.

The applicant's mother also states that she arranged for the applicant to come to the United States by boat when he was ten years old. She explains that before she could make arrangements to bring him here legally, a problem arose with the cousin who was caring for the applicant in Haiti so she felt compelled to bring him to the United States for his safety. His mother further asserts that although the applicant has been in trouble with the police, he has not had any problems since he began receiving regular mental health treatment. Finally, she contends that if the applicant were removed, his son, would be forced to grow up without the support and guidance of his father.

In his affidavit, the applicant states that he came to the United States from Haiti by boat at the age of ten, on approximately February 1, 1990. He attended school in Florida and graduated from high school in 1998. He asserts that he loved high school and planned to attend college and earn a Ph.D., but that he has been unable to do so because of mental health problems and a resulting criminal history. According to the applicant, he began having problems with the authorities in 1998, when he was unable to control his behavior at school and was arrested for interfering with school/administrative functions. He notes further criminal problems, including an arrest for using his car as a deadly weapon in an aggravated assault against the mother of his then-infant son. The applicant contends that he began to realize that he was having mental problems, but he did not know what to do about it so the problems went untreated. Finally, he received a mental health evaluation while incarcerated and began prescription medication. He states that medication has controlled the symptoms of his paranoid schizophrenia but that he sometimes experiences severe depression due to his lack of legal immigration status.

The applicant also contends that his inability to obtain work authorization or a driver's license has forced him to remain dependent on his parents and has prevented him from supporting his son as much as he would like. He states that his son, was born in the United States and is now 13 years old. The applicant asserts that lives with his mother but spends vacations with the applicant and his parents. The applicant states that he maintains a relationship with and makes child support payments, but he fears that he will be unable to do so if he must return to Haiti.

Additionally, the applicant alleges that his parents will need his help in the future due to medical problems but that he will be unable to help them while living in Haiti. He states that his mother has back problems for which she wears a brace, cataracts which will eventually require surgery, and high blood pressure which is currently controlled by medication. He indicates that his father uses eye drops for glaucoma and has also been diagnosed with high blood pressure and diabetes. He fears that his parents will soon need assistance and states that his siblings will be unable to manage that responsibility.

The applicant expresses regret for his criminal history. He states that he was young and immature and had an untreated mental health problem, and that he has learned from his mistakes. He notes that he has not been arrested since obtaining mental health treatment. Also, he has

completed a culinary training course, has taken some college courses and hopes to finish college, and pays taxes.

The record contains a letter indicating that the applicant's father works 40 hours per week at as a Front Service Clerk, earning $11.35 per hour. *See Letter from* dated October 13, 2011. The record also contains a letter from the applicant's mother's employer, stating that she works 40 hours per week at and earns $10.55 per hour. *See Letter from Customer Service Manager*, dated April 14, 2011.

Two unsigned and undated letters from state that the applicant's mother currently takes Lisinopril HCT and that his father takes Lisinopril HCT, Amaryl, Metformin, and Zocor.

The record also contains medical documentation regarding the applicant. His psychiatrist, Dr. notes that the applicant has been diagnosed with paranoid schizophrenia and has been undergoing treatment with Dr. since March 2008. *Letter from , MD,* dated December 15, 2011. As noted above, Dr. states that the applicant's "psychiatric symptoms have been stable for the past several years" and that the applicant agrees to continue intensive mental health treatment and medications "to sustain stability in the community." *Id.* Another letter indicates that the applicant is currently taking Lisinopril and Cogentin and receives Haldol Decadron injections. *See Letter from LMHC,* dated April 10, 2012. A document from the dated April 11, 2012, lists additional medications.

The AAO finds that the applicant has failed to meet his burden of demonstrating that a qualifying relative would experience exceptional and extremely unusual hardship if his waiver application were denied. First, the evidence is insufficient to support the applicant's claim that his parents will require his assistance due to their age and health conditions. The only evidence the applicant has submitted regarding his parents' health are two undated, unsigned letters listing the medications his parents are taking. The letters do not specify the illnesses for which the applicant's parents take those medications, nor do they provide any detail about his parents' health conditions or indicate that they need the assistance of a family member or will need such assistance in the future. Furthermore, the record lacks evidence to show that the applicant's parents will need his financial support or that they would struggle to assist the applicant financially if he were in Haiti. The record shows that the applicant's parents currently earn a steady income and there is no information about their monthly expenses to show that their earnings will become insufficient to meet their needs. Even when considered in the aggregate, the evidence is insufficient to show that the applicant's parents would suffer hardship that would "be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 61 (BIA 2001).

The evidence is also insufficient to establish that the applicant's son, , would experience exceptional and extremely unusual hardship if the waiver application were denied. The applicant states that he does not want to grow up without the support and guidance of his father. However, although separation can be a significant factor in a hardship analysis, we do not find that separation here would result in hardship beyond the common results of removal or inadmissibility. resides with his mother and would continue to be in her care if the applicant were removed. While the applicant also makes child support payments, the applicant has submitted no evidence to show that the absence of such payments would create exceptional and extremely unusual hardship for 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)).

Finally, the applicant has not claimed that his qualifying relatives would be unable to relocate to Haiti. Although the U.S. Department of State advises U.S. citizens to "exercise caution" when traveling to Haiti, the applicant has not alleged that his qualifying relatives would suffer any hardship there. *See U.S. Department of State, Travel Warning: Haiti*, dated December 28, 2012. Therefore, the AAO cannot find that relocation would cause exceptional and extremely unusual hardship to the applicant's parents or son. Accordingly, the applicant has failed to meet his burden of establishing exceptional and extremely unusual hardship as required by 8 C.F.R. § 212.7(d), so he has not demonstrated that he warrants a favorable exercise of discretion for a waiver under section 212(h) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.