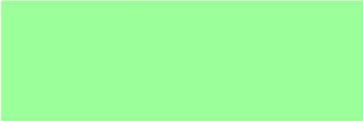




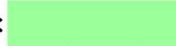
**U.S. Citizenship
and Immigration
Services**

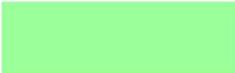
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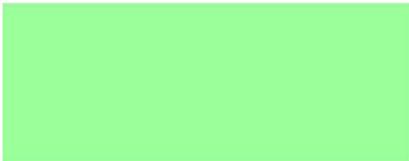
Office: PORTLAND, MAINE

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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, appearing to read "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Portland, Maine. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application approved.

The applicant is a native and citizen of Cape Verde. 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 spouse. In a decision dated December 10, 2008, the field office director found the applicant to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of committing crimes involving moral turpitude. The field office director concluded that the applicant had failed to establish that his inadmissibility would impose extreme hardship on a qualifying relative, and his Application for Waiver of Ground of Excludability (Form I-601) was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated January 6, 2009, counsel asserted that the field office director abused his discretion by failing to give proper consideration to all relevant factors in the record and to articulate these reasons in his denial.

In a decision, dated January 24, 2012, the AAO affirmed the field office director's finding that the applicant was inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of committing crimes involving moral turpitude. We found further that although the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility, he had not met the heightened discretionary standards of 8 C.F.R. § 212.7(d), which he must satisfy because his conviction is for a violent crime.

On motion, counsel provides additional documentation of hardship to the applicant's spouse.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
 - (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 record indicates that on July 15, 2003 in the Dorchester District Court, Dorchester, Massachusetts the applicant was found guilty of the following offenses: 1) Assault and Battery with a Dangerous Weapon under Massachusetts General Laws (MGL) chapter 265 §15A(b), 2) Assault with a Dangerous Weapon under MGL chapter 265 §15B, and 3) Threat to Commit a Crime under MGL chapter 275 §2. The applicant has not challenged the finding of inadmissibility on motion.

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 –

(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 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.

At the time of the applicant's appeal, the record of hardship included: counsel's brief, letters from the applicant's stepchildren, a 2008 U.S. Individual Tax Return, country condition reports for Cape Verde, a letter from the applicant's spouse's doctor, and photographs of the applicant and his spouse.

In his brief on appeal, counsel stated that the applicant's spouse has lived in Maine for the last twenty years and worked two full time jobs from 1996 until 2007. He stated when the applicant's spouse married and began living with the applicant, her life changed in that she had a history of depression, which went away with the emotional support of the applicant. However, counsel stated that according to the applicant's spouse's primary care physician she was suffering from major depression over concern for the applicant's immigration status. Counsel stated that the applicant helps his wife with the expenses of home ownership and raising her U.S. citizen children. Counsel stated further that the applicant's spouse is a 53 year old laborer with no formal education who is unlikely to be able to find employment in Cape Verde. He also stated that the applicant's spouse raised her children as a single parent and continues to play a critical role in their lives.

In her statement on appeal, dated November 4, 2008, the applicant's spouse stated that she fears if the applicant leaves the United States she will fall into depression again and that except for her children, without the applicant, life would not be worth living. The record included a letter from the

applicant's spouse's doctor, [REDACTED] who stated that the applicant's spouse's health had deteriorated and she is currently suffering from major depression. She stated that in all of her years as the applicant's spouse's physician, she had never seen the applicant's spouse in this kind of condition. She stated that the major trigger for the applicant's spouse's depression is the applicant's immigration status.

The letters submitted by the applicant's stepchildren supported that the applicant's spouse relies on the applicant for emotional support and that the applicant is like a father figure to them. The record also indicated that the applicant's stepchildren are 24 and 26 years old. In addition, the 2008 U.S. Individual Income Tax Return in the record showed that the applicant and his spouse earned \$74,756 in that year, with the applicant earning approximately \$28,000 toward their combined income.

Finally, the record included a 2006 U.S. State Department Country Report on Human Rights Practices for Cape Verde which states that for an entry level worker the wage is generally \$146 per month, that the majority of jobs did not provide the worker and his/her family with a decent standard of living, and that many workers relied on second jobs or assistance from extended family.

In our prior decision, we found that given the applicant's spouse's history of depression and that the applicant contributed to almost half of the family income, the applicant's spouse would suffer extreme hardship as a result of separation. We also found that the applicant's spouse would suffer extreme hardship upon relocation because of her age, her education, the presence of U.S. citizen children living in the United States, and the work conditions in Cape Verde. However, we could not approve the applicant's waiver based on extreme hardship alone as the applicant had been convicted of a violent crime.

Finding no national security or foreign policy considerations warranted a favorable exercise of discretion, we reviewed the record to determine if denial of admission would result in exceptional and extremely unusual hardship, in addition to extreme hardship, as required for statutory eligibility. We found at that time that the record did not establish that the applicant's spouse would suffer hardship rising to the level of exceptional and extremely unusual.

In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." However, the applicant need not show that hardship would be unconscionable. *Id.* at 61. The AAO notes that the exceptional and extremely unusual hardship standard in cancellation of removal cases is identical to the standard put forth by the Attorney General in *Matter of Jean, supra*, and codified at 8 C.F.R. § 212.7(d).

The Board stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this

country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *Id.*

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

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

23 I&N Dec. at 63-4.

In *Matter of Andazola-Rivas*, the Board noted that, "the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by comparing it to the hardship others might face." 23 I&N Dec. 319, 323 (BIA 2002). The issue presented in *Andazola-Rivas* was whether the immigration judge correctly applied the exceptional and extremely unusual hardship standard in a cancellation of removal case when he concluded that such hardship to the respondent's minor children was demonstrated by evidence that they "would suffer hardship of an emotional, academic and financial nature," and would "face complete upheaval in their lives and hardship that could conceivably ruin their lives." *Id.* at 321 (internal quotations omitted). The Board viewed the evidence of hardship in the respondent's case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The Board noted:

While almost every case will present some particular hardship, the fact pattern presented here is, in fact, a common one, and the hardships the respondent has outlined are simply not substantially different from those that would normally be expected upon removal to a less developed country. Although the hardships presented here might have been adequate to meet the former "extreme hardship" standard for suspension of deportation, we find that they are not the types of hardship envisioned by Congress when it enacted the significantly higher "exceptional and extremely unusual hardship" standard.

23 I&N Dec. at 324.

However, the Board in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as *Andazola-Rivas*, clarified that “the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief.” 23 I&N Dec. 467, 470 (BIA 2002). The Board found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The Board noted that these factors included her heavy financial and familial burden, lack of support from her children’s father, her U.S. citizen children’s unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The Board stated, “We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met.” *Id.* at 470.

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

On motion, counsel submits medical documentation concerning the applicant’s 27 year old son, a medical letter concerning the applicant’s spouse, a statement from the applicant’s spouse, and a police report. The medical documentation in the record indicates that the applicant’s stepson was diagnosed with a psychiatric illness in November 2009 after being hospitalized and has been prescribed medication to help treat his psychosis. The applicant’s spouse states that her son lives with her and needs to be under constant supervision. She states that she works the night shift, while the applicant works during the day so someone can be with him at all times and that she fears that without the applicant she will be unsafe given the needs of her son. A police report in the record shows that in October 2011 the police were called to the applicant’s home because of an assault and battery between the applicant’s spouse’s children. The report indicates that the applicant’s spouse’s son was having a psychotic episode and became violent with his sister. A follow-up letter from the applicant’s spouse’s doctor indicates that the applicant’s spouse’s health continues to deteriorate due to her son’s condition and the applicant’s immigration situation. The applicant’s spouse’s doctor states that she is suffering from major depression.

We now find that the record shows that the applicant’s spouse would suffer exceptional and extremely unusual hardship as a result of the applicant’s inadmissibility. The additional emotional hardship caused by the applicant’s spouse’s son’s condition together with the emotional hardship the applicant’s spouse would suffer as a result of separation rises to the level of exceptional and extremely unusual. In addition, given the applicant’s spouse’s son’s condition and the conditions in Cape Verde, we find that it would be exceptional and extremely unusual hardship to relocate. The applicant has demonstrated extraordinary circumstances.

The AAO finds that the crimes committed by the applicant cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors,

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such that a favorable exercise of discretion is warranted. Accordingly, the motion is granted, and the underlying application is approved.

ORDER: The motion is granted, and the underlying application is approved.