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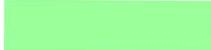
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
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Washington, DC 20529-2090

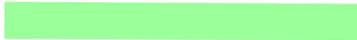


U.S. Citizenship  
and Immigration  
Services



DATE: **MAR 22 2013** OFFICE: LOS ANGELES

FILE: 

IN RE: 

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching 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 in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse and her children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and that the applicant did not merit a favorable exercise of discretion, and denied the application accordingly. *See Decision of the Field Office Director*, dated November 18, 2011.

On appeal, the applicant asserts that his spouse would suffer exceptional and extremely unusual hardship, even greater than the extreme hardship standard, if his waiver application were denied. The applicant contends that his spouse cannot reside in Mexico because she would leave behind her children, one with a medical condition. The applicant further contends that his spouse would suffer financial and medical hardship, and challenges related to country conditions if she relocated.

In support of the waiver application and appeal, the applicant submitted a letter from his spouse, medical documentation concerning her son, identity documents, evidence of the applicant's spouse's employment, and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if—

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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.)

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.

The record reflects that the applicant was convicted in the Superior Court of California, County of Los Angeles, on April 13, 1992, of robbery in the second degree, in violation of section 211 of the California Penal Code. The applicant was sentenced to a suspended sentence of three years of imprisonment.<sup>1</sup>

The field office director found the applicant to inadmissible for having been convicted of a crime involving moral turpitude. The applicant has not disputed this determination on appeal. As the applicant has not disputed inadmissibility on appeal and the record does not show the director's finding of inadmissibility to be erroneous, the AAO will not disturb the field office director's inadmissibility finding. It is noted that the Ninth Circuit Court of Appeals, in *Mendoza v. Holder*, 623 F.3d 1299 (9th Cir. 2010), determined that a conviction under section 211 of the California Penal Code is a crime involving moral turpitude. It is also noted that robbery in the second degree is a felony offense under the California Penal Code and carries a sentence of two, three, or five years imprisonment.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status.

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General

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<sup>1</sup> It is noted that the record indicates that the applicant was convicted and sentenced for two offenses on the same date. The record does not contain any further information concerning the applicant's other conviction.

[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 . . . .

As the applicant's CIMT conviction took place on April 13, 1992, well over 15 years prior to the date of the applicant's instant appeal, he is eligible to apply for a waiver pursuant to section 212(h)(1)(A) of the Act. The applicant asserts that his record reflects that he has been rehabilitated since his criminal act over 20 years ago. The applicant does not make any other statements concerning his rehabilitation.

The record indicates that the applicant married his spouse in 1997. The applicant's spouse submitted a letter asserting the hardship she would face without the applicant, but makes no representation concerning his rehabilitation. The record does not contain any other letters of support. Based on the record, the AAO finds that the evidence is insufficient to demonstrate that the applicant has demonstrated rehabilitation pursuant to section 212(h)(1)(A) of the Act.

Further, as the applicant has been convicted of robbery in the second degree, in violation of section 211 of the California Penal Code a dangerous and violent crime, he must also demonstrate that the denial of his application would result in exceptional and extremely unusual hardship whether he seeks a waiver under section 212(h)(1)(A) or 212(h)(1)(B) of the Act.

8 C.F.R. § 212.7(d) provides, in pertinent part:

Criminal grounds of inadmissibility involving dangerous or violent crimes. The Attorney General [Secretary], in general, will not favorably exercise discretion under section 212(h)(2) of the Act . . .in cases involving violent or dangerous crimes, except...in cases in which the 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. . . .

Section 211 of the California Penal Code provides:

Robbery defined. Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

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). It provides that a "crime of violence," as defined under 18 U.S.C. § 16, for which the term of imprisonment is at least one year, is an aggravated felony. As such, "crime of violence" is limited to those crimes specifically listed in 18 U.S.C. § 16. It is not a generic term with application to any crime involving violence, as that term may be commonly defined. That the DOJ chose not to use the language of section 101(a)(43)(F) of the Act or 18 U.S.C. § 16 in

promulgating 8 C.F.R. § 212.7(d) indicates that “violent or dangerous crimes” and “crime of violence” are not synonymous. The Department of Justice clarified the relationship between these distinct terms in the interim final rule codifying 8 C.F.R. § 212.7(d):

[I]n general, individuals convicted of aggravated felonies would not warrant the Attorney General's use of this discretion. In fact, the proposed regulations stated that even if the applicant can meet the "exceptional and extremely unusual hardship" standard for the exercise of discretion, depending upon the severity of the offense, this might "still be insufficient" to obtain the waiver. See 67 FR at 45407. That language would substantially limit the circumstances under which an individual convicted of an aggravated felony would be granted a waiver as a matter of discretion. Therefore, the Department believes that this language achieves the goal of the commenter while not unduly constraining the Attorney General's discretion to render waiver decisions on a case-by-case basis.

67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Therefore, the fact that a conviction constitutes an aggravated felony under the Act may be indicative that an alien has also been convicted of a violent or dangerous crime, but it is not dispositive. 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.” The AAO interprets the phrase “violent or dangerous crimes” in accordance with the plain or common meaning of its terms, consistent with any published precedent decisions addressing discretionary denials under 8 C.F.R. § 212.7(d) or the standard originally set forth in *Matter of Jean*. Given that the applicant’s crimes involve the threat of and actual physical attack, the AAO finds that the applicant’s conviction renders him subject to the heightened discretion standard of 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.*

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), merely showing extreme hardship to his qualifying relatives under section 212(h) of the Act is not sufficient. He must meet the higher standard of exceptional and extremely unusual hardship.

The record reflects that the applicant is a 47-year-old native and citizen of Mexico. The applicant’s spouse is a 59-year-old native of Mexico and citizen of the United States. The applicant’s stepchild is a 36-year-old native and citizen of the United States. The applicant resides with his spouse and stepchild in Paramount, California.

The applicant's spouse asserts that if she were separated from the applicant, her family unity would be jeopardized and she would experience exceptional and extremely unusual hardship. It is acknowledged that separation from a spouse, child, or parent nearly always creates hardship for both parties and the record indicates that the applicant's spouse and stepchild would suffer a degree of emotional hardship upon separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's qualifying relatives would suffer exceptional and extremely unusual hardship upon separation from the applicant.

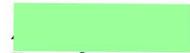
The applicant's spouse asserts that she cannot relocate to Mexico because she has three U.S. citizen children in the United States. The applicant's spouse asserts that she has a close relationship with her two younger children who reside with her former spouse. The applicant's spouse also contends that the U.S. is her home and she has been employed as a computer operator for the same company since 1990 and receives benefits. The record contains supporting documentation of the applicant's spouse's employment in the United States. The applicant's spouse asserts that she would be unable to financially provide for her family if she relocated to Mexico. It is noted that the record does not contain country conditions reports concerning Mexico. The record also does not contain letters of support from any of the applicant's spouse's children concerning their relationship. It is noted that the applicant's spouse is a native of Mexico and her Form G-325A indicates that her mother resides in Mexico.

The applicant's spouse states that her oldest child resides with her, suffers from enlarged tonsils, dwarfism, headaches and dizziness, and has never been employed. The applicant's spouse asserts that her son suffers psychological problems because of his medical condition and would receive the best continued medical care if he resided in the United States. The record contains medical notes and test results concerning the applicant's spouse's son. There is no updated medical information for the applicant's spouse's son beyond January 2002 and there is no letter or evaluation indicating the need for continued medical care. Absent an explanation in plain language from the treating physician of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. There is also no psychological evaluation concerning the applicant's spouse's son's current condition. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record contains insufficient evidence to find that the applicant's qualifying relatives would suffer exceptional or extremely unusual hardship upon relocation to Mexico.

In this case, the record does not contain sufficient evidence to show that denial of the present waiver application would result in exceptional and extremely unusual hardship. As the applicant has not established the requisite level of hardship, the applicant does not merit a favorable exercise of discretion.

In proceedings for 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

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U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.