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



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **MAY 14 2013**

Office: MOSCOW

FILE: [Redacted]

IN RE:

Applicant: [Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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, Moscow, Russia. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO) on May 25, 2011. The matter is now before the AAO on motion to reopen. The motion will be granted and the underlying application approved.

The applicant is a native and citizen of Russia 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 crimes involving moral turpitude. The applicant is married to a U.S. citizen. 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 April 16, 2010, the field office director found the applicant had shown that his inadmissibility is having an adverse effect on his spouse, but that the hardship faced by his spouse does not rise to the level of extreme hardship. The field office director further denied the waiver in the exercise of discretion. In a subsequent decision, dated January 27, 2011, related to a second waiver application filed on November 10, 2010, the field office director found the applicant had established that his spouse would experience extreme hardship if she chose to relocate to Russia, but not in the event of separation from the applicant and denied the waiver application accordingly.

In a decision dated May 25, 2011, the AAO found that the applicant's March 6, 1996 criminal conviction for robbery in violation of California Penal Code section 211 was a "violent or dangerous crime" pursuant to 8 C.F.R. § 212.7(d), which rendered the applicant subject to the higher discretionary standard of establishing that his denial of admission would amount to exceptional and extremely unusual hardship. The AAO further found that the applicant failed to demonstrate that his qualifying relative would experience the requisite hardship and dismissed the appeal accordingly.

On June 19, 2011, counsel for the applicant submitted a Form I-290B (Notice of Appeal or Motion), indicating in Part 2 that the applicant was filing a motion to reopen the AAO's decision. Counsel indicated in Part 3 that she filed additional factual evidence for the AAO to review and consider on motion.

On motion, counsel for the applicant submits new evidence which she contends overcomes the reasons for dismissal of the applicant's appeal. Counsel submits evidence regarding country conditions, employment opportunities, language barriers and safety issues in Russia, which she argues is sufficient to demonstrate that the applicant's qualifying relative will experience exceptional and extremely unusual hardship. Counsel contends that the evidence submitted on motion, together with the previously submitted evidence outlining medical, financial, and emotional hardships to the applicant's wife demonstrates exceptional and extremely unusual hardship to his qualifying relative. Counsel contends that the facts and circumstances regarding the applicant's 1996 robbery conviction demonstrate that he was not convicted of a violent or dangerous crime under 8 C.F.R. § 212.7(d).

The regulation at 8 C.F.R. § 103.5(a) states, in pertinent part, that:

- (a) Motions to reopen or reconsider

....

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. . . .

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The record includes the following new or additional evidence: Russian 2011 Crime and Safety Report by the United States Department of State; documentation concerning Russia's unemployment rate; documentation regarding Russia's immigration laws; documentation concerning employment opportunities for English language attorneys and certified public accountants in Russia; Russian Society and Culture documentation; and excerpts and transcripts from the applicant's criminal proceedings and his subsequent attempts to appeal and vacate the 1996 robbery conviction.

Here, the AAO finds that the additional evidence meets the requirements of a motion to reopen found in 8 C.F.R. § 103.5(a)(2). The evidence points to new facts not previously addressed, which are supported by documentary evidence.

The record shows that the applicant was convicted on May 7, 1995, of petty theft in violation of section 484(a) of the California Penal Code; on March 6, 1996, of robbery in violation of section 211 of the California Penal Code; and on April 5, 1998, of petty theft in violation of section 484(a) of the California Penal Code. The applicant is inadmissible 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 crimes involving moral turpitude. The applicant did not contest inadmissibility on appeal, and he has not contested his inadmissibility on motion. Accordingly, the AAO will not disturb the previous finding that the applicant is inadmissible to the United States for having been convicted of crimes involving moral turpitude. Because the applicant's last criminal offense involving moral turpitude took place within the last 15 years, he is statutorily eligible for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

As discussed in the AAO's dismissal of the applicant's appeal, even if the applicant were to satisfy the requirements of section 212(h)(1)(B) regarding "extreme hardship" to a qualifying relative, he would still have to demonstrate "extraordinary circumstances" such as "exceptional and extremely unusual hardship" to deserve a favorable exercise of discretion, given that his 1996 robbery offense is a "violent or dangerous crime" under 8 C.F.R. § 212.7(d). On motion, counsel for the applicant contends that the applicant's robbery offense is not a "violent or dangerous crime" and asserts that the applicant was convicted under California's *Estes Robbery* theory, which counsel argues does not meet the plain and common meaning of violent nor dangerous.

Section 211 of the California Penal Code provides that:

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 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.

As discussed in the May 25, 2011 decision, 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.

Moreover, the AAO notes that the regulation at 8 C.F.R. § 1212.7(d) says nothing about the "violent or dangerous crime" standard being applicable to only crimes of significant gravity or only to those who intended to cause substantial injury. Rather, the only criterion identified in the regulation is that the applicant's crime be "violent or dangerous." See *Waldron v. Holder*, 688 F.3d 354, 359 (8th Cir. 2012). Additionally, U.S. Circuit Courts of Appeals have opined that the determination of whether an offense constitutes a "violent or dangerous crime" requires an adequate consideration of the nature of an applicant's crimes. See e.g., *Makir-Marwil v. U.S. Att'y Gen.*, 681 F.3d 1227, 1235 (11th Cir. 2012). Some crimes may be so serious and depraved that the immigration adjudicator need only consider the elements of the offense to determine that the applicant committed a "violent or dangerous crime," while other times the adjudicator may delve into the circumstances of the offenses to determine whether the applicant committed a "violent or dangerous crime." *Id.*

The record reflects that the applicant was convicted by jury of robbery after the applicant shoplifted merchandise from a Nordstrom store and then assaulted a store agent after being confronted outside of the store. In *People v. Estes*, 147 Cal.App. 3d 23 (1983), the Court of Appeals of California, First Appellate District, found that a robbery occurs when a defendant uses force or fear in resisting attempts to regain the property or in attempting to remove the property from the owner's immediate presence regardless of the means by which the defendant originally acquired the property. *People v. Estes*, 147 Cal.App.3d at 28. Importantly, the Court of Appeals noted that:

The crime of robbery is a continuing offense that begins from the time of the original taking until the robber reaches a place of relative safety. It is sufficient to support the conviction that [a defendant] used force to prevent the guard from retaking the property and to facilitate his escape. The crime is not divisible into a series of separate acts. Defendant's guilt is not to be weighed at each step of the robbery as it unfolds.

Id. Counsel contends on motion that the applicant received ineffective assistance of counsel during his robbery criminal proceeding and that "the applicant used force against the Nordstrom personnel not to avoid arrest, but as a lawful response to excessive force." Notwithstanding, it is clear that immigration adjudicators cannot entertain a collateral attack on a judgment of conviction, unless that judgment is void on its face, and cannot go behind the judicial record to determine the guilt or innocence of an alien. See *Matter of Madrigal*, 21 I&N Dec. 321, 327 (BIA 1996); *Matter of Fortis*, 14 I & N Dec. 576, 577 (BIA 1974); see also *Trench v. INS*, 783 F.2d 181 (10th Cir.); *Avila-Murrieta v. INS*, 762 F.2d 733 (9th Cir.1985); *Zinnanti v. INS*, 651 F.2d 420 (5th Cir.1981) (per curiam). Additionally, the AAO notes that the applicant was found guilty of the charged crime, and the record of proceedings indicates that his conviction constitutes a final conviction for immigration purposes. *Matter of Ozkok*, 19 I & N Dec. 546, 551 (BIA 1988); see also *Marino v. INS*, 537 F.2d 686 (2d Cir.1976). The applicant's asserted collateral attack of his conviction therefore does not

affect his inadmissibility nor the “violent or dangerous crime” determination on the facts presently before us.

Here, it is undisputed that the applicant was convicted of robbery under section 211 of the California Penal Code, which clearly covers conduct that either causes physical injury by a defendant’s use of physical force, or places a person in danger of suffering an injury. Further, an examination of the nature of the offense reveals that the culpable conduct covered by the aforementioned statute is also dangerous conduct in that it creates a heightened risk of violence and places others at substantial risk of injury. Regarding the facts and circumstances of the applicant’s crime, it appears that the jury found the applicant guilty of robbery for assaulting and forcibly resisting the store agent’s efforts to apprehend the applicant after he had left the store with the stolen merchandise.

The AAO notes that the plain language of California Penal Code § 211 applies to “violent or dangerous crimes.” Based on the statute the applicant was convicted under, and the offense conduct as understood by the jury when rendering the guilty verdict for robbery, the AAO finds that the applicant committed a “violent or dangerous” crime under 8 C.F.R. § 212.7(d). Accordingly, the applicant’s waiver application is subject to the higher standard of demonstrating “exceptional and extremely unusual hardship.”

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.

23 I&N Dec. at 63-4.

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.”).

The record reflects that the applicant is 47 years old and that his qualifying relative spouse is 54 years of age. The applicant wed [REDACTED], a U.S. citizen on February 19, 1994, in San Diego, California. The applicant and his spouse have been married 19 years.

With regards to relocation to Russia, the applicant’s wife asserts in a declaration dated March 22, 2011 that she has never lived outside the United States and speaks only the English language. The applicant’s spouse’s birth certificate reflects that she was born in Michigan on June 14, 1958. The applicant’s wife states that all of her immediate family members, including her 82-year-old mother, two sisters, brother, nieces and nephews, and uncles, all reside in the United States. The record includes a declaration by the applicant’s spouse’s mother dated September 6, 2009, in which she indicates that she depends on her daughter’s help and understanding since her husband passed away in 1999. The applicant’s spouse’s mother states that her daughter is her mainstay and deserves to be happy. The applicant’s wife further states that she has no family ties or relatives, other than her husband, who reside in Russia. The applicant’s wife indicates that she does not speak, write, nor understand the Russian language. She further states that if she relocates to Russia, she will lose everything she worked “so hard for over the last thirty years, and would become a stranger in a strange land, unable to communicate, unable to [secure employment], unable to support [herself], and unable to seek the medical treatment [she requires].

The AAO acknowledges the declarations and statements from the applicant’s spouse’s family members which demonstrate that the applicant’s spouse has a strong family bond with her mother because she is involved in her care, assists her mother with various financial issues, and is her closest relative in the event of an emergency. Therefore, the AAO can conclude that the applicant’s spouse would suffer emotional hardship if she were separated from her mother and immediate family members and relocated to Russia.

The record reflects that the applicant has been diagnosed with numerous chronic medical conditions and that she has a record of being treated for these conditions in the United States for over ten years. In a letter dated May 5, 2010, [REDACTED], a Family Nurse Practitioner at the [REDACTED] in San Diego, California, indicates that the applicant's wife has been their patient since 2000. [REDACTED] states that the applicant's wife has been diagnosed with hypertension, hormonal imbalance, arthritis, cholelithiasis, back problems and depression. [REDACTED] further states that the applicant's wife's conditions have worsened since the applicant's removal and that she is currently receiving treatment in the United States for the aforementioned conditions. As corroborating evidence, the applicant furnished reports on her conditions and the level of treatment needed. In addition, the applicant's wife was diagnosed in June 2000 with sleep apnea, a breathing disruption while asleep. The applicant's spouse states that [REDACTED] is her treating physician for this condition, and that her condition requires her use of a continuous positive airway pressure machine, as well as consultations with doctors specializing in sleep problems. Moreover, the applicant underwent a hysterectomy and is prescribed hormone supplements.

The record reflects that the applicant has health and dental insurance through her employment which covers the applicant. The applicant's spouse indicates that her current employment includes health insurance benefits which she would lose upon relocating to Russia. The applicant's wife asserts that she would be unable to communicate her distress and discuss medical treatment and options with Russian physicians if she relocates to that country, given that she does not speak, write, nor understand the Russian language. The applicant's spouse states that her husband suffers from a degenerative disk disease and that he has not been able to receive treatment in Russia. She indicates that she needs to maintain her health insurance in the United States in the event they were to find the right medical treatment for him in Russia. The applicant's wife indicates she feels "helpless knowing that [she] has the ability to make [the applicant's] life easier, but [she] can do nothing because [he] is out of the country." The applicant's wife and her physicians indicate that she will not receive the standard of medical care she requires if she relocates to Russia. The record includes documentary evidence indicating that the standard of medical care in Russia does not meet the standards of the United States, and the U.S. Consulate advises travelers who have chronic illnesses to consider the standard of medical care and costs of medical evaluations before traveling to St. Petersburg, Russia, which is the city in which the applicant presently resides.

On motion, the applicant submitted country conditions evidence indicating the unavailability of suitable medical care in Russia. The applicant submitted the 2011 U.S. Department of State Crime and Safety Report, which states that medical and emergency care standards within Russia are inferior to those of most developed nations. The report mentions that though Western standard medical and dental clinics do exist in Moscow, availability elsewhere can vary. Likewise, the U.S. Department of State Russian Embassy webpage states that the quality of medical services in Russia "ranges from the unacceptable to merely uncomfortable." The informational webpage also mentions that "medical evacuation to another country [for healthcare treatment] is an expensive option." The U.S. Department of State Bureau of Consular Affairs indicates that "medical care in most [Russian] localities is below Western standards due to shortages of medical supplies, differing practice standards and the lack of comprehensive primary care." Further, "[the] facilities in St. Petersburg do not necessarily accept all cases." Importantly, the U.S. Department of State informs that "[a]ccess to

these [medical] facilities usually requires cash or credit card payment at Western rates at the time of service.” Moreover, it warns that “those with existing health problems may be at particular risk.”

Accordingly, based upon the documentary evidence regarding medical hardships and the various U.S. Department of State reports submitted on motion, the AAO notes that the availability and quality of medical care in Russia is inferior and those with preexisting medical conditions may be at particular risk. In the event of relocation, it is likely that the applicant’s spouse would not have access to the appropriate medical care she requires to treat her chronic medical conditions. Additionally, relocation to Russia would likely result in the applicant’s wife losing her health insurance benefits, as she would have to leave her employment of over 14 years with [REDACTED].

With regards to financial hardship upon relocation, the applicant’s wife asserts that her family would suffer financially if she relocated to Russia. A review of the record shows that the applicant’s wife has supported her household through gainful employment in the United States as a Certified Public Accountant with [REDACTED]. The record further indicates that the applicant’s wife is also an attorney. The record reflects that the applicant’s wife’s yearly income is approximately [REDACTED]. The record further reflects that the applicant is unemployed in Russia and that the applicant’s wife’s income supports both households. The AAO acknowledges that if the applicant’s spouse relocated with him to Russia, she would have to obtain employment in Russia that would enable her to support their household and pay for medical insurance that would cover treatment for their documented medical conditions.

The applicant’s wife states that she is unable to determine whether she will find employment in the event of relocation. The applicant’s spouse indicates that her husband, a Russian citizen, has been unemployed since his return to Russia in August 2008. The record reflects that the applicant is a mechanical engineer by profession. On motion, counsel has submitted country conditions documentation concerning Russia’s labor market. The documentation reflects that securing employment in Russia is difficult because the unemployment rate is 7.2%. The documentary evidence indicates that to obtain employment authorization in Russia, an employer needs to issue an invitation and then obtain a work permit from the Russian immigration authorities. All employers who are interested in hiring foreign workers must obtain the proper authorization; there is no exception for the spouse of a Russian national. On motion, the applicant submitted evidence indicating that job announcements for certified public accountants and tax attorneys in Russia are scarce, and that the positions available require: knowledge of Russian accounting standards; excellent command of the Russian language, with the ability to prepare written reports; knowledge of Russian tax accounting; and knowledge of Russian law. As previously mentioned, the applicant’s wife does not speak, read, or write Russian. Additionally, the record reflects that the applicant’s wife’s financial hardships upon relocation would likely cause emotional hardship as well, given that the record evidence indicates that travel to the United States from Russia costs about \$1,400 and the applicant’s wife would not be able to afford travel costs to visit her family if she is unemployed.

It is evident from the record that, were the applicant’s wife to relocate to Russia, she would have to abandon her stable employment of over 14 years as a certified public accountant to join her unemployed husband. The presented evidence regarding the labor market in Russia demonstrates that the applicant’s wife will most likely face difficulty in finding employment abroad. First, the

record reflects that she was trained in U.S. law and accounting standards. Second, she would need a Russian employer to sponsor her work authorization in that country. This sponsorship is made more difficult by the fact that the applicant's wife does not speak or understand Russian. Additionally, as her current professions require an expertise in technical terminology, it is probable that she would be unable to practice these professions in Russia due to language barriers. Furthermore, the applicant would likely be unable to continue receiving health insurance. Therefore, the circumstances presented in this case show that the applicant's wife would likely experience financial hardship upon relocation to Russia, and that without stable employment both the applicant and his spouse would be unable to provide for their household.

The applicant's wife further states that during one visit to Russia, she was detained by the police for approximately eight hours after she tried to register with the Russian visitor's department. The applicant's wife indicates that she felt unsafe during her exchange with the police officers. Also, the applicant's wife states that during a visit to the Kremlin, three boys pointed at her and shouted "Amerikanski" several times. The 2013 U.S. Consular Country Specific Information Sheet for Russia indicates that:

Incidents of unprovoked, violent harassment against racial and ethnic minorities regularly occur throughout the Russian Federation. The U.S. Embassy Moscow and Consulates General continue to receive reports of U.S. citizens, often members of minority groups, victimized in violent attacks by "skinheads" or other extremists. Travelers are urged to exercise caution in areas frequented by such individuals and wherever large crowds have gathered. U.S. citizens most at risk are those of African, South Asian, or East Asian descent, or those who, because of their complexion, are perceived to be from the Caucasus region or the Middle East. These U.S. citizens are also at risk for harassment by police authorities.

In sum, the record shows that the applicant's wife is integrated into her community and work, and has immediate family ties in the United States. The applicant's wife has special medical needs and has been diagnosed with chronic medical conditions. The applicant would have to learn the Russian language and find employment in Russia to help support for their household, as the applicant has been unable to secure employment since his removal to that country in August 2008. The prospect of being unemployed in Russia would cause the applicant's wife financial and emotional hardship. The AAO finds similarities with the applicant's case and the facts set forth in *Gonzalez-Recinas*. In particular, the AAO notes the applicant's wife's heavy financial contributions and familial burden, her unfamiliarity with the culture and environment of the country of relocation, the applicant's wife's special medical needs, and the residence in the United States of the applicant's immediate family. The applicant will be separated from their family ties of the applicant's mother, siblings, and immediate family members if she moves to Russia. Additionally, the record shows that relocation would likely mean that the applicant would have to discontinue her medical care with the professionals and physicians who have treated her since 2000. As the country conditions reflect, U.S. citizens in Russia experience adverse country conditions. Considering the weight of all of these factors in the aggregate, the AAO finds that relocation of the applicant's wife to Russia would cause her exceptional and extremely unusual hardship. The deficiencies addressed by the AAO in its decision on appeal have been corrected by motion, as there is documentary evidence sufficient to

demonstrate the medical, financial, and emotional difficulties the applicant's wife would experience from relocation.

The record indicates that the applicant's spouse's hardship claims in regard to separation from the applicant are based on the applicant's spouse being diagnosed with depression and separation anxiety, her medical conditions increasing in severity due to separation from the applicant, and the financial burden of having her spouse living in Russia. The record reflects, through letters from the applicant's spouse's physicians that the applicant's spouse is suffering from arthritis, back spondyloses, hypertension, cholelithiasis, hormone imbalance, depression, and separation anxiety. The statement by [REDACTED] indicates that the applicant's spouse's condition is so severe that she requires the applicant remain in the United States as her caretaker. [REDACTED] further indicates that the "psychological trauma of the separation from [the applicant] has extended ramifications on her emotional and physiologic bearing. These considerations not resolved have and continue to compound her [psychological] problems." The AAO notes the applicant's medical hardships resulting from separation and acknowledges the submission of several medical reports, letters, and documents corroborating her assertions regarding the severity of her conditions and the treatment required for each one.

In statements from friends and family, it is asserted that the applicant and his wife have a loving and respectful relationship, and that the applicant's wife sorely misses the companionship of her husband. In a letter dated September 21, 2009, family friend [REDACTED] indicates that being apart from the applicant has been supremely difficult for his wife and that it has taken a toll on her. [REDACTED] further mentions that the applicant's wife "does her best to maintain her composure, but it is evident that this situation has been incredibly stressful for her and has left a huge hole in her life." [REDACTED] a co-worker of the applicant's wife, mentions in his declaration dated September 21, 2009, that he has observed the "obvious changes [in the applicant's wife's] mood and appearance since her husband was initially detained." He further mentions that separation from the applicant has brought his wife "to tears on several occasions due to the stress and frustration of dealing with her husband's legal issues." In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and that "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted). The AAO will therefore give consideration to the emotional hardship that the applicant's qualifying relative is experiencing as a result of her separation from the applicant.

The record also demonstrates that the applicant's wife is experiencing financial difficulties as a result of separation from the applicant. The record evidence reflects that the applicant has been unemployed in Russia since his return to that country in August 2008 and that his wife is the sole provider for their two households. The applicant's wife's expenditures have therefore increased, as she is responsible for her husband's maintenance and living costs. Documentary evidence in the record further reflects that the medical expenses of both the applicant and his wife have increased since their separation, from \$1,161 in 2008 to \$3,910 in 2010, which represents a two-year increase of \$2,749. Further, the submitted financial documentation reflects that the applicant's wife's yearly income has decreased since the applicant's removal. The applicant's wife asserts that the decrease in

income is directly related to the removal of the applicant and the worsening of her medical conditions.

Considering the weight of all of these factors in the aggregate, the AAO finds that the hardships related to separation presented in this case rise to the level of exceptional and extremely unusual hardship. While the emotional hardships the applicant's family members would suffer if separated from the applicant are extreme, the AAO acknowledges that they are, on the surface, among the more common hardships presented in most waiver cases. The determining factors that raise this case to one presenting exceptional and extremely unusual hardship are that: the applicant's spouse would be faced with the prospect of permanent separation from the applicant; the applicant's spouse's documented medical hardships, the psychological impact separation is having on the applicant's wife, and that the applicant's wife would have to continue her financial support of two households with increasing medical expenses of both the applicant and her, and a documented decrease in yearly income. Therefore, the AAO finds that the applicant has established that his spouse will experience exceptional and extremely unusual hardship if his 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-Morales*, 21 I&N Dec. 296, 300 (BIA 1996)(Citations omitted). The primary unfavorable factor in this case is the nature of the applicant's three convictions. Other unfavorable factors include any periods of unlawful presence and employment. On the other hand, the favorable factors presented by the applicant are the exceptional and extremely unusual hardship to his U.S. citizen wife; the applicant's stable work history in the United States; the lack of any other arrests or convictions in the United States and Russia since his last conviction in 1998; and the evidence demonstrating the applicant's sincere efforts at rehabilitation.

On appeal, the applicant provided a detailed statement regarding his encounters with U.S. Immigration and Customs Enforcement (ICE) Agents after his detention in which he states that, at all times during his detention, he was following the advice of his immigration attorney. The applicant stated that any misunderstanding with ICE Agents stems from the filing of a stay of removal petition and a habeas corpus petition filed by his attorney. The applicant states that he thought he was in compliance with ICE and always appeared on time for his scheduled court hearings. The applicant indicates that, though it may have appeared to ICE officers that he was noncompliant by refusing to sign documents, he was simply following the advice of counsel.

The record includes character reference letters. For instance, the record includes a letter dated March 26, 2007, by [REDACTED], the applicant's former employer. He states that the applicant is an extremely hard working individual with high work standards. [REDACTED] asserts that he has not felt "trepidation about the applicant's moral character," and has hired him to work on other projects after learning of his criminal history. [REDACTED] indicates that the applicant sought counseling after being convicted of his crimes and sincerely believes the applicant is "an asset to this country." The record also includes a letter by [REDACTED], a Professor of Russian Studies

with the [REDACTED] in which he indicates that the applicant is “extremely generous and giving, with an immense desire to help other people.” [REDACTED] states that the applicant volunteered to help with his daily needs and other house issues when he received a chemotherapy regimen for cancer in 2001. These letters and statements are 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 convictions, his efforts at rehabilitation, his 14 years of residence in the United States, and the other favorable facts in the record, including his U.S. citizen spouse, the exceptional and extremely unusual hardship she is experiencing as a result of his removal, and his history of steady employment, the lack of arrests and criminal convictions since 1998, 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 criminal conduct. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary of Homeland Security’s discretion is warranted.

In proceedings for an 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 motion to reopen will be granted and the waiver application will be approved.

ORDER: The motion to reopen is granted, and the waiver application is approved.