



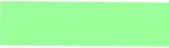
**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **MAY 24 2013**

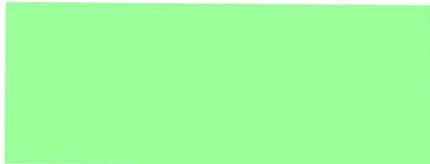
Office: SAN FRANCISCO

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:



INSTRUCTIONS:

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

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California. 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 will be approved.

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 crimes 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 lawful permanent resident spouse and two U.S. citizen sons.

In a decision, dated September 10, 2009, the field office director found the applicant had been convicted of two crimes involving moral turpitude when he was convicted of unlawful sexual intercourse with a minor and inflicting corporal injury on a spouse/cohabitant. He also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated October 9, 2009, counsel stated that the applicant disagreed with the field office director's finding that his conviction for unlawful sexual intercourse with a minor was a crime involving moral turpitude and that his spouse and children would not suffer extreme hardship as a result of his inadmissibility.

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.)

The record shows that on June 6, 2001 the applicant was convicted of Unlawful Sexual Intercourse in violation of CPC § 261.5(c).

At the time of the applicant's conviction, CPC § 261.5 provided, in pertinent part:

(a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.

...

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

In our decision, we noted that the State of California recognized an affirmative defense to a violation of CPC § 261.5 where the perpetrator participates in a mutual act of sexual intercourse, believing his partner to be beyond the age of consent, with reasonable grounds for such belief. *People v. Hernandez*, 39 Cal. Rptr. 361, 364 (1964). In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General found that it is proper to make a categorical finding that a defendant's conduct involves moral turpitude when that conduct results in a conviction on the charge of intentional sexual conduct with a person the defendant knew or should have known was a minor. We noted further that because the applicant pled nolo contendere to violating CPC § 261.5, it could be inferred that either the defense articulated in *People v. Hernandez* was never raised, because it was not reflective of the circumstances of the case, or if it was raised, it was not accepted as a valid defense due to the circumstances of the case. In either situation, we found that the applicant's plea implied that he knew or should have known that his victim was a minor. Thus, we found that the

applicant's conviction for Unlawful Sexual Intercourse under CPC § 261.5 was a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A).

On appeal, counsel asserted that in *Quintero-Salazar v. Keisler*, 506 F.3d. 688 (9th Cir. 2007) the Court found that a conviction alone was insufficient to establish, under the modified categorical approach, that a violation of CPC § 261.5 was a crime involving moral turpitude and that where an act is only statutorily prohibited, rather than inherently wrong, the act generally will not involve moral turpitude. However, we noted that *Matter of Silva-Trevino*, having been decided in 2008, took precedence, so that a finding of moral turpitude was appropriate. We also noted that counsel's assertions regarding the age difference between the applicant and the victim were irrelevant to the issue of moral turpitude given the language of the statute in California.

On motion, counsel asserts that the AAO failed to apply all three steps of the procedural framework in *Silva-Trevino*, citing also too *Matter of Guevara-Alfaro*, 25 I&N De. 417 (BIA 2011). Counsel states that the AAO erred in applying the modified categorical approach to the applicant's conviction because "knowledge of age" is not an element of the offense and the AAO cannot simply presume that his plea of nolo contendere meant that he had this knowledge. Counsel acknowledges that in California there is a defense to the applicant's crime, but that the applicant was unrepresented and may not have known that such a defense existed. She states further that moving on to the third step in *Silva-Trevino*, the AAO should have looked beyond the record of conviction to see if the applicant had knowledge of age. Counsel states that as there is no other evidence in the record regarding the applicant's knowledge about the age of the complaining witness, his conviction is not a crime of moral turpitude and his second conviction meets the petty offense exception.

In *Guevara-Alfaro* the BIA reviewed whether a conviction under CPC § 261.5 was a crime of moral turpitude, ultimately stopping at the third step in a *Matter of Silva-Trevino* analysis, which, as stated above, provides for consideration of probative evidence beyond the record of conviction. The BIA remanded the case to the Immigration Judge to make specific factual findings, based on prior testimony, regarding whether the respondent knew or should have known that his victim was a minor.

We find that our previous decision regarding the applicant's conviction under CPC § 261.5 does not conflict with either *Silva-Trevino* or *Guevara-Alfaro* and that counsel's arguments appear to be based on a misunderstanding of the burden of proof in this case. Unlike a removal proceeding in which the government bears the burden of establishing a respondent's removability, the burden of proof in the present proceedings is on the applicant to establish his admissibility for admission to the United States "to the satisfaction of the Attorney General [Secretary of Homeland Security]." See Section 291 of the Act, 8 U.S.C. § 1361. Thus, in the third stage of the *Silva-Trevino* analysis, it is the applicant's burden to demonstrate that the crime is not a crime involving moral turpitude. 24 I&N Dec. at 699-704, 708-709. Failure to do so results in the finding that the crime is a crime involving moral turpitude. *Id.*, see also *Young v. Holder*, 697 F.3d 976, 989 (9th Cir. 2012) (en banc) (Where the burden of proof is on the alien, the alien cannot carry the burden by showing that the record is inconclusive.) In this case, counsel offers no probative evidence that the applicant did not know or should not have known that his victim was under the age of consent nor does she offer any probative evidence as to why the defense articulated in *People v. Hernandez* was not raised by the applicant. Thus, we affirm our previous determination that the applicant's conviction under CPC § 261.5 is a crime involving moral turpitude.

As stated in our previous decision, the record also indicates that on May 15, 2001 the applicant pled guilty to infliction of corporal injury to a spouse/cohabitant in violation of CPC § 273.5(A). The applicant was sentenced to 15 days in jail and three years probation.

The Ninth Circuit Court of Appeals has held that a conviction under Cal. Penal Code § 273.5(a) is categorically a crime involving moral turpitude. In *Grageda v. INS*, the Ninth Circuit held, “Because spousal abuse is an act of baseness or depravity contrary to accepted moral standards, and willfulness is one of its elements . . . spousal abuse under section 273.5(a) is a crime of moral turpitude.” 12 F.3d 919, 922 (9th Cir. 1993); *See Guerrero de Nodahl v. INS*, 407 F.2d 1405, 1406-07 (9th Cir. 1969) (“[W]e rule that inflicting ‘cruel or inhuman corporal punishment or injury’ upon a child is so offensive to American ethics that the fact that it was done purposely or willingly (the California definition of ‘willful’) ends debate on whether moral turpitude was involved. When the crime is this heinous, willful conduct and moral turpitude are synonymous terms.”). We found that the applicant’s conviction is for a crime involving moral turpitude. The applicant does not contest this determination on motion.

We then found that because the applicant was convicted of two crimes involving moral turpitude he did not qualify for the petty offense exception and was inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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 [Secretary] that –

- (i) 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 [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 applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first

upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). In most discretionary matters, the alien bears the burden of proving eligibility simply by showing equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). However, the AAO cannot find, based on the facts of this particular case, that the applicant merits a favorable exercise of discretion solely on the balancing of favorable and adverse factors. The applicant's conviction under Cal. Penal Code § 273.5(a) indicates that he may be subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The AAO notes that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and the AAO is aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, *or* any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in 8 C.F.R. § 212.7(d). Thus, we find that the statutory terms "violent or dangerous crimes" and "crime of violence" are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependent on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other

common meanings of the terms “violent” and “dangerous”. The term “dangerous” is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms “violent” and “dangerous” in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). 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 the applicant’s conviction for infliction of corporal injury to a spouse/cohabitant in violation of CPC § 273.5(A) renders him subject to the heightened discretionary 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. 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 BIA 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 BIA 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 BIA 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 BIA 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 BIA 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 BIA 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 BIA 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 BIA 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 BIA 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 BIA found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The BIA 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 BIA 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 AAO notes that exceptional and extremely unusual hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

On appeal, the record of hardship included: counsel’s brief, a psychological evaluation for the applicant’s children and spouse, a statement from the applicant, statements from the applicant’s spouse, financial documentation, educational documentation, and country conditions information for Mexico.

The applicant’s spouse claimed extreme psychological hardship in the form of depression and psychological impairment. The applicant claims that his children would suffer extreme psychological hardship as a result of being separated from their parents.

The AAO found that the record supported the applicant’s spouse’s claims regarding extreme psychological hardship. The psychological evaluation submitted indicated that the applicant’s spouse was suffering from Major Depressive Disorder and residual Post Traumatic Stress Disorder. In the evaluation, [REDACTED] stated that the applicant’s spouse suffers from a long history of untreated depression and posttraumatic stress disorder and because of past experiences is predisposed to experience severe depression and anxiety. This evaluation also stated that the applicant’s two young sons would experience extreme psychological harm as a result of being separated from their father during their formative pre-teen years.

The applicant’s spouse also claimed extreme financial hardship because with her education and work background her earning potential in the United States is only approximately \$20,000 per year and the applicant would not be able to earn enough in Mexico to contribute to the family’s income. The AAO found that the record, including statements from the applicant, his spouse and a report from the U.S. Census Bureau, supported the applicant’s spouse’s claims regarding extreme financial hardship.

In regards to extreme hardship upon relocation, the applicant claimed and the psychological evaluation stated that the applicant’s children would suffer extreme hardship as a result of relocation because they do not speak Spanish well and they were very much assimilated into America culture. In the psychological evaluation for the applicant’s sons, [REDACTED] administered the Acculturation Rating Scale for Mexican Americans (ARSMA) and found that the applicant’s adolescent sons spoke only in English and did not know much Spanish. He also found that although they are bicultural, they are more oriented toward American or Anglo culture making a transition to Mexico very difficult for them. We noted that relocation to another country for adolescent children is difficult, but given the applicant’s children’s background and that they understood the Spanish language, their difficulties would not rise to the level of extreme hardship.

Furthermore, we acknowledged that the country condition reports showed that parts of Mexico were experiencing high levels of narco-related violence. However, we noted that the record indicated that the applicant is from Oaxaca and his spouse is from Guanajuato. The U.S. State Department Travel Warning for Mexico indicated that there were no advisories in effect for these areas. The record also failed to show that the applicant and his spouse would not be able to find employment in the Mexico. Thus, we found that the applicant had not established that his spouse and/or children would suffer extreme hardship as a result of relocating to Mexico.

We now find that the applicant has shown that his spouse and children will suffer exceptional and extremely unusual hardship as a result of his inadmissibility. First, the applicant's spouse will suffer exceptional and extremely unusual hardship as a result of separation. As previously stated, the psychological evaluation in the record indicates that the applicant's spouse is suffering from Major Depressive Disorder and residual Post Traumatic Stress Disorder. In the evaluation, [REDACTED] states that the applicant's spouse has suffered from a long history of untreated depression and posttraumatic stress disorder and because of past experiences, including a prolonged separation from her mother during her adolescents, post-partum depression, and her husband's infidelity, she is predisposed to experience severe depression and anxiety. In addition, to psychological hardship the applicant's spouse will suffer exceptional and extremely unusual financial hardship. The record indicates that the applicant's spouse has only completed the sixth grade and works as an agricultural worker in rural California. The record indicates that the applicant earns approximately \$18,000 per year and his spouse, approximately, \$15,000 per year, establishing that in the absence of the applicant, his spouse and children would lose 54% of their household income. Furthermore, given the applicant's spouse's lack of education it is not likely that she would be able to find employment earning additional income. Thus, we find that the applicant's spouse has established that the psychological and financial hardships she would face as a result of separation, taken together, rise to the level of exceptional and extremely unusual.

We find further that the cumulative hardships faced by the applicant's spouse and children as a result of relocation also rise to the level of exceptional and extremely unusual. Again, the applicant's spouse's history of mental health problems, the lack of education between the applicant and his spouse, and the overall lack of opportunities in the areas of Mexico where the applicant and his spouse are from combined to rise to the level of exceptional and extremely unusual hardship. The record indicates that the applicant's spouse is 43 years old, has been living in the United States and working in agriculture since she was 17 years old. The record also indicates that she does not have any schooling beyond sixth grade. The 2010 U.S. State Department Human Rights Report for Mexico, submitted on motion, indicates that the minimum wage for a Mexican worker is \$4.50 per day, which does not provide a decent standard of living for a worker and his family. Moreover, the record indicates that the areas where the applicant and his spouse are from in Mexico are economically disadvantaged with Guanajuato having 46% of its population living in poverty and Oaxaca being the second poorest state in Mexico, with 76% of its population living in poverty. The record indicates that the applicant's spouse has no family living in Mexico, that all of her siblings and father live in the United States. The applicant asserts that although his mother and sister live in Oaxaca, they rely on money that he sends them from his work in the United States. In addition, to the financial hardship the family would experience upon relocation and the mental health problems relocation may cause for the applicant's spouse, the applicant's children would have very little educational opportunities upon relocating. Counsel states that the applicant's sons are in junior high school, but in rural areas of Mexico, the availability of education beyond elementary school ranges

from inadequate to nonexistent. She submits a report from a non-profit organization substantiating these claims. Finally, counsel asserts that the applicant's spouse will lose her lawful permanent residence status if she were to relocate to Mexico. Thus, taking together the totality of the circumstances in the applicant's case, we find that the applicant's spouse and his children would suffer extreme hardship as a result of relocation.

We also find that evidence in the record indicates that the applicant has been rehabilitated. The applicant's crimes took place in March and May of 2001, when the applicant was 24 years old. At this time he had been married for two years, and had one child. It has now been 12 years since the applicant's convictions, he has been married to his spouse for 14 years, and they have two teenage sons. The applicant has no other criminal record aside from the events occurring in 2001. The record also indicates that the applicant has had a steady record of employment, completed a 52-week domestic violence program, and, as evidenced by three letters of recommendation in the record, is a hardworking person dedicated to his family.

Thus, we find that the applicant has now established his eligibility for a waiver under section 212(h) of the Act, and he has demonstrated that he merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d). The motion will be granted and the underlying application will be approved.

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