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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: APR 04 2014 Office: SAN SALVADOR, EL SALVADOR FILE [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v), 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(h) and 1182(i)

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Salvador, El Salvador. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 been convicted of a crime involving moral turpitude; pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa by fraud or willful misrepresentation; and pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for one year or more and seeking readmission within 10 years of his last departure. The applicant's spouse and children are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, dated June 26, 2013. The Field Office Director also found that the applicant committed a violent act and did not establish exceptional or extremely unusual hardship to his spouse. The Field Office Director concluded that the applicant's crime was a violent or dangerous crime and applied the heightened standard of exceptional and extremely unusual hardship, as specified in 8 C.F.R. 212.7(d), to his application.

On appeal, counsel asserts that the applicant has been rehabilitated, he did not commit fraud or willful misrepresentation, and his spouse and children would experience extreme hardship if his waiver application is not approved. *Brief in Support of Appeal*, undated.

The record includes, but is not limited to, statements by the applicant, his spouse, and family members; photographs; medical records; financial records; educational records for his son; and information about Mexico. The entire record, except for the untranslated Spanish-language documents, was reviewed and considered in rendering a decision on the appeal.[1]

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

[1] The AAO notes that some of the documents in Spanish could not be considered because they lacked translations, as required by 8 C.F.R. § 103.2(b)(3).

Section 212(i) of the Act provides that:

> (1) The Attorney General [now Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that when the applicant applied for his immigrant visa in 2011, he failed to disclose his arrest and conviction for evading arrest with a vehicle, in violation of Texas Criminal Code § 38.04, a crime involving moral turpitude. After his visa interview, a U.S. consular officer found him inadmissible for making a material misrepresentation to procure an immigration benefit.

Counsel states that the applicant is not familiar with the legal system and whether his arrests were for crimes involving moral turpitude; the applicant "is a very poor communicator"; and instead of deceit, this was an unfortunate misunderstanding caused by a breakdown in communication. Counsel appears to assert that the applicant's misrepresentation was not willful.

The term "willful" should be interpreted as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161(BIA 1956). Although the applicant may not know the definition of the legal phrase "crime involving moral turpitude," the record does not reflect that he was asked about his prior arrests using this specific phrase. The applicant was responsible for disclosing all of his arrests and convictions at his visa interview, and he provides no evidence showing that he did not understand this requirement. As such, the record reflects that his misrepresentation was willful.

In addition to being willful, the applicant's misrepresentation also must have been material. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or

2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The record reflects that the applicant is inadmissible based on the true facts, as he was convicted of a crime involving moral turpitude. In addition, by not disclosing this arrest and conviction, he cut off a line of inquiry which might well have resulted in a proper determination that he is inadmissible. The AAO therefore finds that his misrepresentation was material and he is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

. . . .

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .

(iii) Exceptions—

(I) Minors-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant entered the United States without inspection in August 1999,[2] and he departed the United States on February 26, 2011. The applicant turned 18 years old on May 11, 2000. The applicant accrued unlawful presence from May 11, 2000, the date he turned 18 years old, until February 26, 2011, the date he departed the United States. The applicant therefore is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of his departure from the United States. The applicant does not contest this ground of inadmissibility.

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

> Criminal and related grounds. —
>
> (A) Conviction of certain crimes. –
>
> (i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

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.)

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[2] The record also includes evidence showing he entered the United States in July 1999; however, the difference of one month in his entry date is not material to the analysis or outcome of his appeal.

For cases arising in the Fifth Circuit, determination of whether a conviction is a crime involving moral turpitude requires a categorical inquiry into the "the inherent nature of the crime, as defined in the statute concerned, rather than the circumstances surrounding the particular transgression." *Okabe v. INS*, 671 F.2d 863, 865 (5th Cir. 1982). This categorical inquiry takes into account only "the minimum criminal conduct necessary to sustain a conviction under the statute." *Hamdan v. U.S.*, 98 F.3d 183, 189 (5th Cir. 1996). A conviction is "a crime involving moral turpitude if the minimum reading of the statute necessarily reaches only offenses involving moral turpitude." *Amouzadeh v. Winfrey*, 467 F.3d 451, 455 (5th Cir. 2006) (citing *Pichardo v. INS*, 104 F.3d 756, 759 (5th Cir. 1997)). If, however, the statute is divisible into discrete subsections of criminal acts, some of which are categorically crimes involving moral turpitude and some of which are not, an adjudicator may make a modified categorical inquiry into the record of conviction to discern whether the applicant has been convicted of a subsection that qualifies as a crime involving moral turpitude. *See Hamdan, supra*, at 187; *see also Amouzadeh*, *supra*, at 455 (citing *Smalley v. Ashcroft*, 354 F.3d 332, 336 (5th Cir. 2003)). The record of conviction is a narrow, specific set of documents which includes the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *See Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009); *see also Shepard v. U.S.*, 544 U.S. 13, 16 (2005) (finding that the record of conviction is limited to the "charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented"). The Fifth Circuit does not permit inquiry beyond the record of conviction. *See Silva-Trevino v. Holder*, 742 F.3d 197, 205 (5th Cir. 2014) (vacating the Attorney General's decision in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)).

The record reflects that on September 29, 2005, the applicant was convicted of evading arrest with a vehicle, in violation of Texas Criminal Code § 38.04. The applicant was sentenced to ten months in jail, with credit for two days served, and court costs. As the applicant has not contested his inadmissibility for committing a crime involving moral turpitude on appeal, and the record does not show that determination to be in error, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) of the Act.

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

> The [Secretary] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the [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 [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 . . .; and

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The Field Office Director determined that the applicant was not eligible for a waiver under section 212(h)(1)(A) of the Act, as 15 years have not passed since the activity resulting in his conviction. Counsel asserts on appeal that the 15-year period "is more of a guideline than an immutable statute," and the applicant has proven that he is a person of good moral character. Counsel provides no legal authority to support her assertion that the statute recommends, rather than requires, 15 years to have passed between the date of the activities resulting in the applicant's conviction and the date of his application for a visa. The AAO finds that the applicant is not eligible for a waiver under section 212(h)(1)(A) of the Act, as 15 years have not passed since the activity resulting in his conviction. However, he has a U.S. citizen spouse and child and thus he is eligible to seek a waiver under section 212(h)(1)(B) of the Act.

Although a waiver of inadmissibility under section 212(h) considers hardship to U.S. citizen and lawful permanent resident children, a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act depend on a showing that the bar to admission imposes extreme hardship on the U.S. citizen or lawfully resident parent or spouse of the applicant. Children are not qualifying relatives under those sections of the Act. The AAO, therefore, will first address waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, as a finding of extreme hardship to the applicant's spouse would also result in a finding of extreme hardship under section 212(h) of the Act.

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-Moralez,* 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 that 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, because as noted by the Field Office Director, the applicant's conviction indicates that he is 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 [Secretary], 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). 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.

This case arises under the jurisdiction of the Fifth Circuit Court of Appeals, which found that a violation of Texas Criminal Code § 38.04 is a crime of violence and an aggravated felony. *See U.S. v. Sanchez-Ledezma*, 630 F.3d 447 (5th Cir. 2011). The AAO finds that pursuant to the holding in *Sanchez-Ledezma* and the plain language of the statute, Texas Criminal Code § 38.04 is a violent or dangerous crime and therefore, the heightened discretionary standard found in 8 C.F.R. 212.7(d) is applicable in this case.

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 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 63-64.

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.

The AAO will first address hardship to the applicant's spouse upon relocation to Mexico. The applicant's spouse states that she was born in the United States; leaving the United States will be stressful for her; she has no family ties in Mexico other than to the applicant; she has strong ties to her parents and siblings in the United States; she lives with her parents; and her diabetic mother gets sick and fears for her safety when she travels to Mexico. The applicant's spouse describes how her parents depend on her; she also is concerned that her brother, who is mentally ill and has had violent outbursts, may harm them.

She states that her depression and anxiety will increase, as she will fear for her safety in Mexico; she would not be able to afford medicine in Mexico; she receives better healthcare in the United States than she would in Mexico; she could not monitor her health conditions, including depression, anxiety and vertigo, in Mexico; and it takes three hours to drive to the nearest hospital from the town where the applicant resides. The record reflects that the applicant's spouse was diagnosed with depression and anxiety and is being treated with medication and regular follow-up visits with her physician. The applicant's spouse's medical records also reflect that she had an episode of vertigo in May 2012 and was treated in an emergency room.

The applicant's spouse states that living conditions in Mexico, if she were to relocate, are substandard. Specifically, the applicant lives with his mother in a one-bedroom home that lacks central air conditioning, heating, indoor plumbing, and hot water; and they would have to sleep on the floor with the applicant's two brothers.

Moreover, the applicant's spouse states that the applicant lives in [redacted] Michoacán; she has read about dismembered bodies found there, as well as U.S. citizens being kidnapped in Mexico; the U.S. Department of State has issued a travel warning for Mexico; and she is scared when she visits the applicant. The record includes articles addressing safety issues in Mexico. The U.S. Department of State issued a travel warning for Mexico on January 9, 2014, that specifically states, "Attacks on Mexican government officials, law enforcement and military personnel, and other incidents of [Transnational Criminal Organization, "TCO"]-related violence, have occurred throughout Michoacán…In many areas of the state, self-defense groups operate independently of the government. Armed members of the groups frequently maintain roadblocks, and although not

considered hostile to foreigners or tourists, are suspicious of outsiders and should be considered volatile and unpredictable. Groups in Michoacán are reputed to be linked to TCOs."

The applicant's spouse also states that it will be impossible to find work in Mexico; the applicant has not yet found employment there; they will not be able to feed their children and afford medical care even if they found employment; and she will not be able to repay her parents, brother and creditors. The record includes evidence of bills for the applicant's spouse's car, hospital stays and auto insurance. The applicant's spouse also states that she would not have the opportunity to return to school and obtain a nursing degree in Mexico. The record includes evidence showing that the minimum wage in Mexico is about $4.60 per day.

The applicant's spouse states their son will have no future due to the crime in Mexico; their poverty would make it impossible for him to have the same childhood as in the United States; the quality and scope of educational opportunities are limited in the applicant's small town; their daughter has asthma and needs frequent medical visits; and both children benefit from a government-assisted health-insurance program in the United States. The record includes information on air pollution in Mexico and evidence of their daughter's asthma and other health issues. The applicant's son's counselor states that he is being treated for his anger and aggression at school and home; he has had crying spells, depressed mood and heightened anxiety. The applicant's son's counselor states that he has showed significant progress towards anger management when he has visited the applicant and talked with him on the phone.

The record reflects that the applicant's spouse would experience extreme hardship, but her hardship must be "'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001). The applicant's spouse was born and raised in the United States and has close family ties to the United States. The applicant's spouse would experience significant emotional hardship due to separation from her parents. She also has a medical issue and mental-health issues, and it is reasonable to conclude that receiving sufficient medical care in Mexico may be difficult, given the family's location. Her potential living conditions, as described, also would cause her hardship. In addition, the record reflects serious security issues in Michoacán. The applicant's spouse would also experience hardship based on the hardship that their children would experience, including their medical and educational issues. The record also reflects that she would experience financial hardship in Mexico, because of the difficulty in finding employment and low wages in Mexico. Based on the totality of the hardship factors presented, the AAO finds that the applicant's spouse would experience exceptional and extremely unusual hardship if she relocated to Mexico.

The AAO will now address hardship to the applicant's spouse upon remaining in the United States. The applicant's spouse states that she has been attending regular psychotherapy sessions since July 9, 2013; her therapist describes her anxiety, depression and panic attacks; and she is taking medication to control her panic attacks. The applicant's spouse told her therapist that she has not been able to sleep because she worries about the applicant's safety in Mexico; she has experienced panic attacks; her mother needs constant medical attention; and her father has medical issues, specifically chronic back pain. The applicant's spouse's physician states that she has been diagnosed with anxiety and

depression, for which she takes medication. The record includes prescription notes for the applicant's spouse's medications and Internet articles about depression and anxiety disorders. A psychologist diagnosed her with major depressive disorder, single episode, moderate. Additionally, the applicant's spouse's medical records reflect that she had an episode of vertigo in May 2012.

The applicant's spouse states that their son has been receiving therapy for anger management; and he also has frequent crying spells, depressed mood and heightened anxiety; her stress levels increase seeing his uncontrollable anger and anxiety; if the applicant does not return, she is concerned that their son will do "bad things"; and he is also attending psychotherapy every two weeks to reduce his anxiety and emotional weakness. The applicant's son's counselor states that he began treatment for ongoing anger and aggression at school and home in August 2012; and he has shown an immediate decline in mood with some increased isolative behaviors and depressed mood when he was told that the applicant may not return. He was diagnosed with adjustment disorder with mixed emotions and conduct. The applicant's children's pediatrician states that their son is attached to the applicant; he has had behavioral and academic issues since the applicant departed; their daughter has asthma; and children with involved fathers are more likely to be emotionally secure. The record also reflects that the applicant's son was diagnosed with attention deficit disorder.

Concerning her financial hardship if she remains in the United States, the applicant's spouse states that she has borrowed money from her parents to make her car payments; the applicant financially supported their family and paid rent to her father; and she cannot afford to pay her credit-card bills. She also must repay a student loan that is in her mother's name. The record includes a list of her estimated expenses. The applicant's spouse's father states that she is not working due to her emotional suffering related to the applicant's absence, and he helps her and the children economically. The record includes evidence of late charges added to the applicant's spouse's car and phone bills, remittances from the applicant's spouse to the applicant, and evidence of medical bills.

The record reflects that the applicant's spouse would experience significant emotional and psychological hardship without the applicant. As mentioned, she currently is experiencing anxiety, depression and panic attacks. She would be raising two young children, one with serious emotional issues and one with medical issues, without the applicant, while also taking care of her aging and infirm parents. In addition, she would experience significant financial hardship without the applicant, because she would have difficulty working due to her emotional suffering and she would not have his financial assistance. Based on the totality of the hardship factors presented, the AAO finds that the applicant's spouse would experience exceptional and extremely unusual hardship if she remained in the United States.

The AAO also finds that the extraordinary circumstances presented- exceptional and extremely unusual hardship- are not outweighed by the gravity of the applicant's crime. In determining the gravity of the applicant's offense, the AAO must not only look at the criminal act itself, but also engage in a traditional discretionary analysis and "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-Moralez,* 21 I&N Dec. 296, 300 (BIA 1996)(Citations omitted).

The favorable factors include the applicant's U.S. citizen spouse and children; hardship to his spouse and children, including several serious medical and emotional issues affecting their daily lives; the filing of tax returns; and statements related to his good character. The applicant has also expressed remorse for his behavior. He states that he regrets his behavior; he was young and scared; he does not drink anymore; and he has not been in trouble in Mexico. The unfavorable factors include the applicant's crimes, unlawful presence, unauthorized employment, entry without inspection, and misrepresentation.

The AAO finds that the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In application proceedings it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.