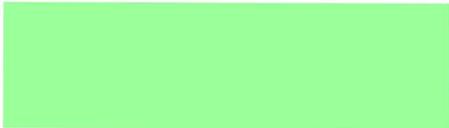


(b)(6)

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

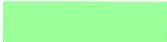


U.S. Citizenship
and Immigration
Services



DATE: MAR 04 2014

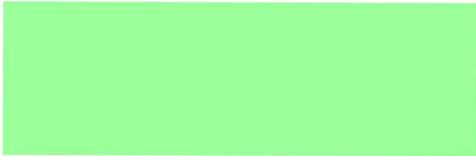
Office: SANTA ANA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Santa Ana, California, denied the waiver application and the Administrative Appeals Office (AAO) dismissed an appeal. The matter is before the AAO on motion. The motion will be granted and the prior AAO decision affirmed.

The applicant is a native and citizen of Mexico who was found to be inadmissible under 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 (CIMT). He seeks a waiver of inadmissibility under 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 wife and permanent resident mother.

The field office director concluded that the applicant had failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of Field Office Director*, June 11, 2008. The AAO's decision on appeal also found that the applicant's convictions for assault and kidnapping were for violent crimes, and thus his waiver application was subject to the heightened discretion standard at 8 C.F.R. § 212.7(d). Finding the applicant had failed to meet the heightened standard, we dismissed the appeal. *Decision of AAO*, June 10, 2011. The applicant filed a motion with new evidence claimed to show that his mother would suffer exceptional and extremely unusual hardship if his waiver application were denied. We granted the motion, but found the record evidence insufficient to establish such hardship, and thus affirmed our previous dismissal. *Decision of AAO*, January 2, 2013. In a new motion, counsel for the applicant contended the AAO incorrectly applied section 212(h)(1)(B) of the Act to the applicant's case where the applicant is eligible for a waiver based on rehabilitation under section 212(h)(1)(A) of the Act. Concluding the applicant had not shown our previous decision applying the heightened requirements of 8 C.F.R. § 212.7(d) to the applicant's case was in error, we dismissed the second motion.

In a third motion, the applicant asserts the AAO erred in not considering the cumulative weight of all the evidence on record and thus in finding the applicant had shown no extreme or unusual hardship. In rendering a decision on the motion, the AAO again reviews all the evidence on record by aggregating newly provided documentation with the existing record.

It is uncontested that the applicant was convicted of a crime involving moral turpitude for which he is inadmissible and that his convictions were for violent and dangerous crimes subjecting him to the heightened discretion standard of 8 C.F.R. § 212.7(d).

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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

Both subsections establish that a waiver depends on a favorable exercise of the Secretary's discretion. *See* section 212(h)(2) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The record reflects that the field office director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a CIMT. On appeal, the AAO determined assault with a firearm and kidnapping are violent crimes and he must thus meet the heightened discretionary burden under 8 C.F.R. § 212.7(d) and show that "extraordinary circumstances" warrant approval of the waiver under either section of 212(h)(1) of the Act.

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. *See* 8 C.F.R. § 212.7(d). The record in this case contains no evidence of foreign policy, national security, or other extraordinary equities warranting favorable discretion in this case involving violent crimes.

Again finding no evidence of foreign policy, national security, or other extraordinary equities, the AAO will consider whether the applicant clearly demonstrates that his denial of admission as an immigrant would cause exceptional and extremely unusual hardship to a qualifying relative.

In *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001), the BIA determined that exceptional and extremely unusual hardship "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." 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 *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. [...] 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.

The following year in *Matter of Andazola-Rivas*, 23 I&N Dec. 319, 323 (BIA 2002), 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.” The BIA there determined that the hardship did not rise to the level of exceptional and extremely unusual:

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.

The BIA 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.” *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 470 (BIA 2002). However, the BIA stated, “[w]e 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.

As with the extreme hardship standard, the AAO notes that exceptional and extremely unusual hardship to a qualifying relative must be established both in the event that he or she accompanies the applicant and in the event that he or she remains in the United States. As the AAO previously found the applicant had established exceptional or extremely unusual hardship to a qualifying relative only from relocation, we consider whether the applicant has shown such hardship would result from separation.

On motion, counsel asserts that the applicant demonstrated the requisite hardship by showing the applicant’s mother suffers from colon cancer and is supported solely by the applicant. In support, counsel resubmits a July 2011 statement from the applicant’s mother, previously-submitted medical records and medical information in English and Spanish, a supportive

statement from a relative, and a non-precedent decision¹ of the AAO. The record also includes documentation submitted in support of the waiver request, including, but not limited to, supportive statements, medical records, the applicant's criminal records and certificate of rehabilitation, and reference letters.

Counsel states that the applicant's mother will suffer exceptional and extremely unusual hardship upon separation from the applicant because of her medical condition. No new evidence is provided regarding her medical conditions or the emotional and financial support supplied by the applicant. A 2008 medical letter confirms that her diabetes and high blood pressure were well controlled by medication. Although previously-submitted 2009 medical discharge summaries note the qualifying relative's rectal cancer being treated surgically and by radiation therapy, the record fails to establish either her prognosis following treatment or the seriousness of her current condition. The AAO again notes the lack of any explanation why her elder son, a U.S. citizen, cannot offer the same assistance the applicant provides, while indicating that the applicant's mother still lives independently from her sons. The record thus fails to establish that the qualifying relative's condition is sufficiently serious to be incapacitating or require a high degree of assistance or that her U.S. citizen son is unable to fill the applicant's role. Further, review on motion finds no evidence contradicting our previous conclusion that the record fails to show she depends financially on the applicant. Also absent from the record is any statement from the applicant regarding his role in assisting his mother or explaining how his departure will cause her the hardship claimed. The evidence instead indicates that she receives health benefits and Medicare, as well as social security benefits, to cover her medical and living expenses.

We thus find that although the hardships illustrated here may be considered "extreme," the applicant has failed to demonstrate that they rise to the heightened level of exceptional and extremely unusual. Although we give considerable weight to factors here such as the applicant's mother's advanced age and ill health, we do not find that the applicant has established that his mother is solely reliant on him. *See generally, Matter of Monreal*, 23 I&N Dec. at 63-64. While we recognize that the applicant's mother has serious health concerns and that she wishes for the applicant's physical and emotional support, we find the record lacking in evidence that would demonstrate that she would face hardship "substantially" beyond the ordinary hardship that is expected upon separation. The record reflects that the AAO has properly considered the available evidence in ruling on an appeal and two previous motions.

The record does not contain sufficient evidence that the hardships faced by a qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of exceptional and extremely unusual hardship. *Matter of Monreal-Aguinaga*, 23 I&N Dec.

¹ "The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. Thus, non-precedent AAO decisions do not provide a basis for changing adjudication standards. **USCIS officers may not rely upon, nor cite to, non-precedent AAO decisions as legal authority in other decisions.**" [emphasis in original] *Policy Memorandum: Precedent and Non-Precedent Decisions of the Administrative Appeals Office (AAO)*, November 18, 2013; see 8 C.F.R. § 103.3(c).

56, 62 (BIA 2001). The AAO thus finds that the applicant has failed to show extraordinary circumstances as required under 8 C.F.R. § 212.7(d).

Although the applicant has shown his mother would experience the requisite hardship by relocating to remain with her son, as with extreme hardship, we will find exceptional and extremely unusual hardship warranting a waiver of inadmissibility only where an applicant has demonstrated such hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. at 886. Furthermore, to relocate and suffer exceptional and extremely unusual hardship, where remaining the United States and being separated from the applicant would not result in exceptional and extremely unusual hardship is a matter of choice and not the result of inadmissibility. *Matter of Ige*, 20 I&N Dec. at 886.; *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated exceptional and extremely unusual hardship from separation, we will not find that refusal of admission would result in extraordinary circumstances of exceptional and extremely unusual hardship.

In proceedings for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The prior decision of the AAO dismissing the appeal is affirmed.