



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

JUN 08 2015

DATE:

FILE #:

APPLICATION RECEIPT #:

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]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States pursuant to section 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(B), for having been convicted of multiple criminal offenses for which the aggregate sentences to confinement were five years or more. The Field Office Director concluded the applicant failed to provide any evidence of extreme hardship to a qualifying relative, his lawful permanent resident mother, and denied his Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant appealed the denial, and in a notice of intent to dismiss (NOID) the appeal dated January 30, 2015, we determined the record also reflects 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 a crime involving moral turpitude.¹ We further determined the record reflects the applicant's convictions include a violent crime and thereby the applicant is subject to a heightened discretionary standard and must demonstrate that the denial of his admission as an immigrant would result in exceptional and extremely unusual hardship to his qualifying relatives, his lawful permanent resident parents.

In response to the NOID, the applicant, through counsel, contends that we erred by concluding he is a violent or dangerous person because in our analysis, we adopt a categorical approach and rely only on his conviction under a statute that the Circuit Court for the Eleventh Circuit has found is a crime of violence, rather than analyze the specific facts and circumstances of his conviction. The applicant also asserts that we should consider circumstances surrounding the incident and his efforts toward rehabilitation.

The record includes, but is not limited to: briefs and motions; correspondence; the applicant's conviction records; affidavits by the applicant and his parents; documents establishing identity and relationships; financial, medical, and psychological documents; and documents addressing conditions in Pakistan. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2) of the Act provides, in relevant part:

(B) Multiple criminal convictions.-

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

As mentioned in the NOID, the record shows the applicant's criminal record includes the following:

1. In the State Court of [REDACTED] Georgia, one count of possession of marijuana (less than one ounce), pursuant to Ga. Code Ann. § 16-3-2(B), for his conduct on [REDACTED] 2008 – sentenced to confinement for 11 months and 29 days.
2. In the State Court of [REDACTED] Georgia, one count of battery and one count of simple assault, pursuant to Ga. Code Ann. §§ 16-5-23.1 and 16-5-20, for his conduct on [REDACTED] 2009 – sentenced to 24 months, consisting of 10 days in confinement, credit for two days already served, and the remainder on probation.
3. In the Superior Court of [REDACTED], Georgia, two counts of terroristic threats and acts as well as one count of stalking, pursuant to Ga. Code Ann. §§ 16-11-37 and 16-5-90(B), for his conduct on [REDACTED], 2009 – sentenced to confinement for five years, to probation for five years (concurrent), and to probation for 12 months (concurrent).
4. In the Superior Court of [REDACTED], Georgia, two counts of aggravated stalking, pursuant to Ga. Code Ann. § 16-5-91, for his conduct between [REDACTED] 2009 and [REDACTED] 2010 – sentenced to confinement for five years and to probation for five years (concurrent).

Based on the foregoing, the record establishes the applicant is inadmissible under section 212(a)(2)(B) of the Act. Moreover, the applicant's aforementioned conviction for battery in violation of Ga. Code Ann. § 16-5-23.1² is a crime involving moral turpitude, as defined by the Eleventh Circuit. The applicant therefore also is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).³ The applicant does not contest these findings of inadmissibility and requests a waiver pursuant to section 212(h) of the Act.

² At the time of the applicant's conviction, Ga. Code Ann. § 16-5-23.1 provided, in relevant part:

(a) A person commits the offense of battery when he or she intentionally causes substantial physical harm or visible bodily harm to another.

(b) As used in this Code section, the term 'visible bodily harm' means bodily harm capable of being perceived by a person other than the victim and may include, but is not limited to, substantially blackened eyes, substantially swollen lips or other facial or body parts, or substantial bruises to body parts.

³ Section 212(a)(2)(A) of the Act provides, in relevant part:

(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.

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

The Attorney General [now the Secretary of Homeland Security (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 if –

(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.

Because the applicant is the son of lawful permanent residents, he is eligible to seek a waiver of his inadmissibilities under section 212(h)(1)(B) of the Act. However, even if the applicant establishes he meets the requirements of section 212(h)(1)(B), the Secretary may not favorably exercise discretion in his case except in extraordinary circumstances, because the record reflects that he has been convicted of a violent or dangerous crime. *See* 8 C.F.R. § 212.7(d).

As noted in the NOID, the discretionary standard for violent or dangerous crimes was first articulated by the Attorney General in *Matter of Jean*, 23 I&N Dec. 373. The respondent in *Matter of Jean* was convicted of second-degree manslaughter in connection with the death of a nineteen-month-old child. The Attorney General noted:

It would not be a prudent exercise of the discretion afforded to me by this provision to grant favorable adjustments of status to violent or dangerous individuals 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 status adjustment would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, such a showing might still be insufficient. From its inception, the United States has always been a nation of immigrants; it is one of our greatest strengths. But aliens arriving at our shores must understand that residency in the United States is a *privilege*, not a *right*. For those aliens, like the respondent, who engage in violent criminal acts during their stay here, this country will not offer its embrace.

23 I&N Dec. at 383-84.

Also noted in the NOID, the Department of Justice, through its rule making authority, codified the discretionary standard for violent or dangerous crimes set forth in *Matter of Jean*. 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.

Based on the foregoing, we determined the applicant's conviction for battery under Ga. Code Ann. § 16-5-23.1 involves a conviction for a "violent or dangerous crime" under 8 C.F.R. § 212.7(d), and, because battery in Georgia requires actual physical contact with the intent to inflict substantial physical harm or visible bodily harm to another, the applicant's conviction is a violent crime. Therefore the heightened discretionary standard of 8 C.F.R. § 212.7(d) applies to this case. See *Hernandez v. U.S. Atty. Gen.*, 513 F.3d 1336, 1340, 1342 n.4 (11th Cir. 2008) (conviction for simple battery as formerly defined in Ga. Code Ann. § 16-5-23(a)(2) is a crime of violence under 18 U.S.C. § 16, noting that causing physical harm to a victim "is even more clearly a 'crime of violence' than a simple physical touching of an insulting or provoking nature.").

In response to the NOID, the applicant asserts our conclusion that he is subject to the higher discretionary standard articulated in *Matter of Jean* is "void of any examination of the facts and circumstances of the criminal conviction at issue"; we do not address whether he is a "violent or dangerous person"; and we conflate "crime of violence" with "violent or dangerous person," concepts that are "not synonymous." The applicant also asserts an analysis under *Matter of Jean* "must always

circle back to the individual,” including “the circumstances at large”; he does not have a criminal record since 2010, and he has devotedly supported his parents during their financial and personal hardships. In support of his assertions, the applicant states the Eleventh Circuit “gives wide latitude when determining whether to look at the elements of the offense on its face or go into the underlying facts of the crime” in determining whether a particular crime renders him a violent or dangerous individual under the standard set forth in *Matter of Jean*, which he also asserts does not require a “categorical” or a “fact-based” approach. *Makir-Marwil v. U.S. Att’y Gen.*, 681 F.3d 1227, 1235 (11th Cir. 2012).

The applicant correctly observes the Eleventh Circuit’s conclusion that *Matter of Jean* does not require a categorical or a fact-based approach to determine whether a particular crime renders him a violent or dangerous individual. The court in *Makir-Marwil*, however, also noted, “all *Jean* requires is an adequate consideration of the nature of the [applicant’s] crime.” *Id.* Moreover, in their decision the Eleventh Circuit states that, some crimes are “so serious and depraved” that an appropriate analysis to determine whether an individual is violent or dangerous only requires consideration of the elements of the underlying offense, whereas in other instances, the analysis may warrant considering the particular facts and circumstances. *Id.*

As mentioned previously, the record reflects the applicant was convicted of battery in violation of Ga. Code Ann. § 16-5-23.1. A plain reading of this statute requires the intentional infliction of substantial physical harm or visible bodily harm to another individual and injuries resulting from the use of purposeful and aggressive force. Given the seriousness of this crime, we conclude the record in the instant case requires us to only consider the elements of the applicant’s underlying offense of battery, as defined by the Georgia statute, in determining whether he is a violent or dangerous individual subject to the heightened discretionary standard of 8 C.F.R. § 212.7(d).

Assuming arguendo that to properly analyze whether the applicant was convicted of a violent or dangerous crime, we must consider the particular facts and circumstances in the instant matter, we note the applicant’s record of conviction, like the appellant’s record in *Makir-Marwil*, includes multiple, serious criminal convictions that show an exploitative and violent nature toward the victim. The record reflects the applicant was indicted and charged with: battery upon bruising his victim; simple assault upon threatening to kill her; committing terroristic threats and acts upon threatening to commit a violent crime, malice murder, when he transmitted text messages threatening to kill his victim; and committing aggravated stalking by creating a social media profile without his victim’s consent upon using the victim’s name and other identifying information, and including with the profile a nude photograph that did not belong to the victim and then disseminating the profile to the victim’s friends. Based on these particular facts and circumstances, we conclude the record sufficiently demonstrates the applicant is a violent or dangerous individual subject to the heightened discretionary standard of 8 C.F.R. § 212.7(d).

As indicated in the NOID, 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. 8 C.F.R. § 212.7(d). We determined the record does not include evidence of foreign policy, national security, or other extraordinary equities; and thereby,

we considered 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.*

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-Aguinaga*, 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.

Id. 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. *Id.* 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.”). Exceptional and extremely unusual hardship must be established in the event that the applicant’s family members accompany him or in the event that they remain 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.

To demonstrate exceptional and extremely unusual hardship, the applicant submitted an affidavit as well as affidavits from his parents; a letter from his father’s licensed social worker; a letter from his mother’s treating physician; medical prescriptions; and Chapter 7 bankruptcy documents. In the NOID, we concluded the record is unclear concerning the effect that the applicant’s father’s depression has on his ability to work as well as the effectiveness that electroconvulsive therapy has on his mental health. However, the record sufficiently establishes the applicant’s mother has been treated for ongoing health conditions. In addition, although the applicant asserts he is experiencing psychological hardship, he does not provide corroborating evidence of his mental-health conditions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting

the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, although the record shows the applicant's parents filed for bankruptcy and that a meeting of creditors was scheduled to occur on June 28, 2012, the record lacks evidence of the outcome. The record does not contain evidence of the applicant's parents' current financial obligations, the applicant's income and any financial support he provides to his parents, or of his sibling's income and inability to support their parents in the applicant's absence. *Matter of Soffici*, 22 I&N Dec. at 165. In the NOID we determined that without additional information, we are not in a position to reach a different conclusion concerning the severity of any hardships that may be related to the applicant's parents' financial circumstances.

In response to the NOID, the applicant does not supplement the record with additional documentary evidence or address our concerns related to evidence of exceptional and extremely unusual hardship his parents would experience if they were to remain in the United States without him. Accordingly, we conclude that although the record is sufficient to establish the applicant's parents may experience hardship in the applicant's absence, the evidence, considered in the aggregate, does not establish they would suffer exceptional and extremely unusual hardship as a result of separation from the applicant.

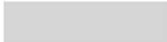
In the NOID we determined that, were the applicant's parents to relocate to Pakistan to be with the applicant due to his inadmissibility, they would suffer hardship given their length of residence in and extensive family ties to the United States, conditions in Pakistan,⁴ and the normal hardships associated with relocation. The record continues to reflect the cumulative effect of the hardship the applicant's parents would experience upon relocation as a result of the applicant's inadmissibility rises to the level of exceptional and extremely unusual.

As previously noted, exceptional and extremely unusual hardship must be established in the event the applicant's family members accompany him or in the event they remain 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. As the applicant has not demonstrated hardship from separation, we cannot find that refusal of admission would result in exceptional and extremely unusual hardship to the applicant's lawful permanent resident parents in this case. We therefore find the applicant has failed to establish he warrants a favorable exercise of discretion.

Furthermore, even if the applicant had demonstrated his parents would experience exceptional and extremely unusual hardship in both scenarios, he has not shown that he merits a favorable exercise of discretion. Although hardship to his parents is a favorable factor in his case, the unfavorable factors include his significant criminal history between July 23, 2008 and February 14, 2010, for convictions concerning crimes committed about five years ago, and the specific circumstances involving his amended pleas to guilty resulting in his aforementioned convictions for aggravated stalking and terroristic threats and acts. Contrary to the applicant's assertion in response to the NOID that we

⁴ Since our prior decision dated January 30, 2015, the U.S. Department of State has issued an updated travel warning, effective February 24, 2015.

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NON-PRECEDENT DECISION

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have not properly considered his rehabilitation, as we previously noted, the record does not reflect his rehabilitation and it shows his disregard for his victim's personal safety and privacy. Accordingly, the record demonstrates that a favorable exercise of discretion is not warranted. In support of his response to the NOID, the applicant does not provide sufficient evidence to establish a favorable exercise of discretion. Accordingly, we find that even if the applicant established his parents would experience exceptional and extremely unusual hardship in the scenario of separation and relocation, he has not shown that he merits a favorable exercise of discretion as required under section 212(h)(2) of the Act.

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 not been met.

ORDER: The appeal is dismissed.