



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-W-A-

DATE: NOV. 18, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of South Korea, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(h), 8 U.S.C. § 1182(h). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Field Office Director concluded the Applicant did not establish extreme hardship to a qualifying relative. The Field Office Director also determined that as the Applicant had been convicted of a violent or dangerous crime, he had not established exceptional and extremely unusual hardship to merit favorable discretion. The Director denied the Applicant's Form I-601 accordingly.

In support of the instant appeal, the Applicant submits a brief, a letter in support, conviction records, academic documentation, and an affidavit from the Applicant's spouse. The entire record was reviewed and considered, other than the untranslated documents, in rendering a decision on the appeal.¹

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.

The Board of Immigration Appeals (the Board) stated in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992):

¹ Untranslated documents cannot be considered per the regulation at 8 C.F.R. § 103.2(b)(3).

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[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.

The record reflects that the Applicant was convicted on or around [REDACTED] 1987, of the following crimes in the Seoul District Court Criminal Division:

1. Violation of Law on Assembly and Demonstration.
2. Violation of Law on Punishment of Violent Acts, etc.

The record reflects that the Applicant was convicted on or around [REDACTED] 1989, of the following crimes in the Northern Branch of Seoul District Court:

1. Violation of Law on Assembly and Demonstration.
2. Violation of Law on Punishment of Violent Acts, etc.
3. Violation of Law on Punishment of Molotov Cocktail Use, etc.

Article 3(1) of the Punishment of Use, etc. of Molotov Cocktails Act stated at the time of the Applicant's conviction:

Any person who endangers the life, body or property of any person by using a Molotov cocktail shall be punished by imprisonment for not more than five years, or by a fine not exceeding five million won.

The Applicant states that during the 1980s thousands of South Korean students participated in protest demonstrations against the military government led by Chun Doo-hwan; the Chun regime used torture to suppress dissidents, intellectuals and student demonstrators; the Special Forces of Korea were involved with the 1980 Gwangju Massacre of civilian demonstrators; police investigators killed a student president involved with protesting mass killings in 1987; a student was injured in 1987 by a tear gas grenade fired by riot police and later died; the Applicant participated in a protest rally in this political climate in [REDACTED] 1987; the Applicant passed out handbills at a protest rally while others threw firebombs and he was convicted of two crimes; and the Applicant attended another rally in 1989 to welcome a female student who just returned from North Korea and was convicted of three crimes as a result of his participation in the rally.

The Applicant asserts that his violation of the Law of Assembly and Demonstration is not a crime involving moral turpitude; this law prohibits the gathering of two or more persons for the purpose of holding a demonstration; a demonstration involves influencing or suppressing the opinion of others; he violated the law as a matter of law; his participation was a lawful exercise of expression guaranteed under the Constitution of South Korea, which includes freedom of speech and assembly without prior permission; and his participation in the student rallies does not rise to the level of the crime

The Applicant states that the court records are silent about his “violent acts” during the 1987 and 1989 rallies; the criminal records for the 1987 offense listed other individuals as the ones involved with firebombs; the criminal records for the 1989 offenses list another individual as the one involved with firebombs; and the Applicant did not repudiate the charges of violent actions in order to protect his colleagues from harsh punishment. A friend of the Applicant states that Applicant distributed handbills during the student rally in 1987 while others threw firebombs; and he has never seen the Applicant touch a Molotov cocktail at any student rally or demonstration.

The Applicant claims that he did not engage in the behavior required for a conviction under Article 3(1) of the Punishment of Use, etc. of Molotov Cocktails Act. However, we note that collateral attacks upon an applicant’s conviction “do not operate to negate the finality of [the] conviction unless and until the conviction is overturned.” *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996). We “cannot go behind the judicial record to determine the guilt or innocence of the alien.” *Id.* (citing *Matter of Fortis*, 14 I&N Dec. 576, 577 (BIA 1974); see also *Matter of Khalik*, 17 I&N Dec. 518, 519 (BIA 1980). Furthermore, we note that the Applicant previously stated that, “I was involved with the work of distributing the prepared ‘Molotov Cocktail’, iron pipes...to the attended students. I with my allies...made the students threw [sic] ‘Molotov Cocktail’, iron pipes...” The court decision also states that “the accused and others...make the students throw Molotov Cocktails, iron pipes, and stones.” As such, we find that that he was convicted of Violation of Law on Punishment of Molotov Cocktail Use, etc., Article 3(1). As the Applicant does not contest that a conviction under Article 3(1) of the Punishment of Use, etc. of Molotov Cocktails Act specifically is a crime involving moral turpitude, and the record does not show the determination that this is a crime involving moral turpitude to be in error, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) of the Act. As we have found this to be a crime involving moral turpitude, we will not address whether his other convictions are crimes involving moral turpitude.

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 –

(b)(6)

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- (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.

Section 212(h)(1)(A) of the Act provides that the Secretary may, in his discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which an individual is inadmissible occurred more than 15 years before the date of the application for a visa, admission, or adjustment of status. In examining whether the Applicant is eligible for a waiver, we will assess whether he meets the requirements of section 212(h)(1)(A) of the Act.

Since the activities for which the Applicant is inadmissible occurred more than 15 years ago, he has met the requirement under section 212(h)(1)(A)(i) of the Act. Section 212(h)(1)(A)(ii) of the Act requires that the Applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States. The record does not reflect that admitting the Applicant would be contrary to the national welfare, safety, or security of the United States per section 212(h)(1)(A)(ii) of the Act. In addition, his crimes are over 25 years old, they were specific to issues in Korea, and he has not had any legal issues since then. There is no indication that the Applicant poses any security issues to the United States. As such, he has met the requirements of section 212(h)(1)(A)(ii) of the Act.

Section 212(h)(1)(A)(iii) of the Act requires that the Applicant has been rehabilitated. The Applicant's friend states that the Applicant received a bachelor's degree in 1991; he worked at an international trading firm and started his own construction company; he teaches math to young students; he and the Applicant deliver food to the homeless; the Applicant visits orphanages to teach math; and the Applicant is married with two daughters. The record includes a certificate of graduation for the Applicant from [REDACTED] University. The record reflects that the Applicant has

shown that he meets the requirement of section 212(h)(1)(A)(iii) of the Act. Based on the foregoing, the Applicant has shown that he has satisfied the requirements under section 212(h)(1)(A) of the Act.

We will now address whether the Applicant is eligible for a favorable exercise of discretion under section 212(h)(2) of the Act. A favorable exercise of discretion is limited in the case of an Applicant who has been convicted of a violent or dangerous crime. Specifically, 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 words “violent” and “dangerous” and the phrase “violent or dangerous crimes” are not further defined in the regulation, and we are 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 Secretary 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.

We find that violation of Article 3(1) of the Punishment of Use, etc. of Molotov Cocktails Act, which involves endangering “the life, body or property of any person by using a Molotov cocktail” is a violent and dangerous crime within the meaning of 8 C.F.R. § 212.7(d), and the heightened discretionary standard of that regulation applies in this case. The Applicant asserts that the underlying facts do not establish that he engaged in violent acts. We are reviewing the nature of the crime as described in the relevant statute to make our determination of whether the Applicant committed a violent or dangerous crime. However, even if we looked at the facts of the case, as described previously, the court records and the Applicant’s prior statement reflect that he engaged in violent and dangerous behavior. 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. The Applicant must thus establish 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 in this case, we will consider whether the applicant has “clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship.” *Id.*

In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board 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.” However, the applicant need not show that hardship would be unconscionable. *Id.* at 60-61. The Board stated that in assessing exceptional and extremely unusual hardship, it would be useful to consider the factors considered in determining extreme hardship. *Id.* at 63. Those factors include, but are not limited to, a qualifying relative’s family ties in the United States and in the country to which he or she would relocate; the conditions in the country in the country of relocation; the financial consequences of departing the United States; and significant medical conditions, especially where appropriate health care services would be unavailable in the country of relocation. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999); *see also Matter of Anderson*, 16 I&N Dec. 596, 597-98 (BIA 1978).

In *Monreal-Aguinaga*, the Board provided additional examples of the hardship factors it deemed relevant for meeting the higher standard of 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. The Board has also 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.” *Matter of Andazola-Rivas*, 23 I&N Dec. 319, 323 (BIA 2002). Even where an Immigration Judge has found that a respondent’s children “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, the Board has held that such hardships “are simply not substantially different from those that would normally be expected upon removal to a less developed country.” *Id.* at 324.

However, in *Matter of Gonzalez Recinas*, the Board clarified that “the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief.” 23 I&N Dec. 467, 470 (BIA 2002). The Board found that the hardship factors presented by the respondent—including her “heavy financial and familial burden . . . the lack of support from her children’s father, [her U.S.] citizen children’s unfamiliarity with the Spanish language, the lawful residence in this country of all of [her] immediate family, and the concomitant lack of family in Mexico”—cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. *Id.* at 472. The Board emphasized that the case was “on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met.” *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate in this case. *See Gonzalez Recinas*, 23 I&N Dec. at 469 (“While any hardship case ultimately succeeds or fails on its own merits and on the particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship.”).

First, we will address hardship to the Applicant’s qualifying relatives upon relocation to South Korea. The Applicant’s spouse states that she was born in Korea; she would lose her lawful permanent residence if she leaves the United States; her hopes and dreams would be destroyed which would cause extreme psychological hardship; all of her family members reside in the United States, including her parents, siblings, and siblings’ children; the Applicant’s mother opposed their marriage; and she has no contact with the Applicant’s siblings in Korea.

The Applicant’s spouse states that her daughters live a typical American life; they speak a little bit of Korean with a heavy English accent; they do not speak the national language and would have a hard time catching up with their Korean classmates; they would be teased and isolated by their classmates; Korea has an issue with serious bullying called “Wangdda”; her younger daughter is very close with her mother, who raised her after her birth; and her mother is too old to visit them in Korea.

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The Applicant's spouse states that she would suffer severe financial difficulties in Korea; she does not have a means to support herself there; her close relatives in Korea are on welfare themselves; she could not seek medical help as the cost would be too great; she has permanently settled in the United States; and she does not have enough savings to buy a house in Korea.

The record reflects that the Applicant's spouse and children may experience hardship in South Korea due to their family ties in the United States and educational issues. However, we find that the record lacks sufficient documentary evidence of emotional, financial, medical, or other types of hardship that, in their totality, establish that a qualifying relative would experience exceptional and extremely unusual hardship upon relocation to South Korea. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Next, we will address hardship to the Applicant's qualifying relatives upon remaining in the United States. The Applicant's spouse states that her daughters have been experiencing extreme psychological and physical pain; they have not been able to focus on studying and have shown unusual behavior since the Applicant's case was denied; her older daughter skips meals and her younger daughter yells at her for no reason; and they need the Applicant's physical existence and care. The Applicant's older daughter states that it is difficult to live without the Applicant; the Applicant always provided food and clothing; he helped her with her with studying and taught her math; she cannot afford private tutoring; she may not be able to afford college; she has to care for her sister when her mother is sick; she feels stress when she thinks about these situations; it is painful to see her mother being depressed and tired; and it is difficult to handle things without the Applicant. The Applicant's younger daughter states that the Applicant used to buy delicious food and clothes; he adored her; she cries when she thinks of the Applicant; and she misses him a lot as she has many good memories of him. The record includes educational records for the Applicant's daughters. The record reflects that the Applicant's younger daughter was diagnosed with intermittent exotropia.

The Applicant's spouse states that she earns \$1,500 per month working at a Korean restaurant; she could no longer afford her rent so she started living with her sister; she will not be able to afford her daughters' tuition payments without the Applicant providing income in the United States; the Applicant plans to start a private math academy for Korean students who are temporarily in the United States; she cannot afford her younger daughter's eye exam; she is worried that her younger daughter's eye condition will get worse; and the Applicant has to split his income between Korea and the United States. The record includes a list of the Applicant's spouse's expenses and various bills.

The Applicant's spouse states that she has been suffering from stress headaches, body aches, insomnia, depression, Melancholia symptoms, dizziness, and body trembling; it is hard for her to care for her children; the Applicant could care for her; she feels worse when she sees the Applicant suffering; and she tried an anti-depressant for healing. A physician who examined her states that she exhibited anxiety and signs of depression due to living apart from the Applicant; and she has insomnia, migraine type headaches, dizziness, body tremors, and extremity numbness. The record

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includes prescription notes for Nexium and antiyert. The Applicant's spouse's mother details the emotional and physical issues that the Applicant's spouse is experiencing without the Applicant, such as chronic headaches, anxiety, insomnia, gastritis, mood swings, and heartburn. Counsel asserts that the Applicant's spouse is about to commit self-destructive behavior and she routinely loses self-control. Without documentary evidence to support the claim, the assertions of counsel will not satisfy Applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record reflects that the Applicant's spouse and children would experience emotional and financial hardship without him. However, when all of the alleged hardship factors are considered in the aggregate, we find that the hardship endured by the Applicant's spouse as a result of separation from the applicant does not meet the "exceptional and extremely unusual hardship" standard set forth in 8 C.F.R. § 212.7(d).

The documentation in the record does not establish the existence of exceptional and extremely unusual hardship to a qualifying relative. As such, the Applicant is not eligible for a favorable exercise of discretion 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.

Cite as *Matter of S-W-A-*, ID# 14224 (AAO Nov. 18, 2015)