



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

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

MATTER OF R-D-R-

DATE: JULY 14, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of El Salvador, seeks a waiver of inadmissibility for unlawful presence and for a crime involving moral turpitude. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) and section 212(h) of the Act, 8 U.S.C. § 1182(h). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director, Nebraska Service Center, denied the application. The Director concluded that the Applicant had established that extreme hardship would be imposed on his qualifying relatives. The Director found that the Applicant had been convicted of a violent or dangerous crime and needed to establish extraordinary circumstances, such as exceptional and extremely unusual hardship, for a favorable exercise of discretion and concluded that a favorable exercise of discretion was not warranted.

The matter is now before us on appeal. In the appeal, the Applicant submits copies of previously-submitted materials, claims that his convictions were not crimes involving moral turpitude or violent and dangerous crimes, and maintains that he has otherwise shown that his parents will suffer exceptional and extremely unusual hardship.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for unlawful presence. Specifically, the Applicant entered the United States in 1990 without inspection and remained until he was removed on September 7, 2007. The Applicant thus accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until his removal in 2007.

Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent part:

(i) In General

Any alien (other than an alien lawfully admitted for permanent residence) who—

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

(ii) Construction of Unlawful Presence

For purposes of this paragraph an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion for

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 . . . 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 Applicant has been found inadmissible for a crime involving moral turpitude. Specifically, on January 15, 2003, the Applicant was convicted of Lewd Act Upon a Child and of Unlawful Sexual Intercourse with a Minor.

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides, in pertinent parts:

(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 . . . is inadmissible.

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

[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.)

Individuals found inadmissible under section 212(a)(2)(A) of the Act may seek a waiver of inadmissibility under section 212(h). Section 212(h) of the Act provides, in pertinent parts:

The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

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

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury." *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*,

(b)(6)

Matter of R-D-R-

12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was “no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects”). The common consequences of removal or refusal of admission, which include “economic detriment . . . [,] loss of current employment, the inability to maintain one’s standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment,” are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which the qualifying relatives would relocate). Nevertheless, all “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

II. ANALYSIS

The issues presented in the appeal are whether the Applicant’s convictions are for crimes involving moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act; whether his convictions are for a violent or dangerous crime and therefore require the heightened standard of “extraordinary circumstances” to warrant the approval of the waiver; and whether he has established that the denial of his waiver would result in exceptional and extremely unusual hardship to himself or a qualifying relative. The Applicant claims that his convictions are not for crimes involving moral turpitude, that they are not violent or dangerous crimes, and that he has otherwise shown that his parents will suffer exceptional and extremely unusual hardship. We find that the Applicant has been convicted of a violent or dangerous crime and that he has established exceptional and extremely unusual hardship to his parents as a result of his inadmissibility, but, upon balancing the positive and negative factors in his case, he does not merit a waiver as a matter of discretion.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude. Specifically, the record reflects that on [REDACTED], 2003, in the Superior Court of California, [REDACTED], the Applicant was convicted of Lewd Act Upon a Child in violation of section 288(c)(1) of the California Penal Code, and of Unlawful Sexual Intercourse with a Minor, in violation of Section 261.5(d) of the Penal Code. The Applicant was sentenced to a 30-day work program, fined, and placed on three years of probation.

At the time of the Applicant’s conviction, the California Penal Code stated in pertinent part:

§ 288. Lewd or lascivious acts; penalties; psychological harm to victim

(a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with

the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c)(1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.

In assessing whether a conviction is a crime involving moral turpitude, we must first “determine what law, or portion of law, was violated.” *Matter of Esfandiary*, 16 I&N Dec. 659, 660 (BIA 1979). We engage in a categorical inquiry, considering the “inherent nature of the crime as defined by statute and interpreted by the courts,” not the underlying facts of the criminal offense. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *see also Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009) (citing *Taylor v. United States*, 495 U.S. 575, 599-600 (1990)). This categorical inquiry focuses on whether moral turpitude necessarily inheres in the minimal conduct for which there is a realistic probability of prosecution under the statute. *See Short, supra; Louissaint, supra; Moncrieffe v. Holder*, 133 S.Ct. 1678, 1684-1685 (2013); *Gonzales v. Duenas-Alvarez*, 127 S.Ct. 815, 822 (2007).

For cases arising in the Ninth Circuit, the determination of whether a crime is a crime involving moral turpitude first requires the categorical inquiry set forth in *Taylor v. United States*, 110 S.Ct. 2143 (1990). *See Nicanor-Romero v. Mukasey*, 523 F.3d 999, 1004 (9th Cir. 2008), *overruled on other grounds by Marmolejo-Campos v. Holder*, 58 F.3d 903, 911 (9th Cir. 2009). The purpose of the categorical approach is to determine whether the full range of conduct encompassed by the statute constitutes a crime of moral turpitude. *Cuevas-Gaspar v. Gonzalez*, 430 F.3d 1013, 1017 (9th Cir. 2005). There must be “a realistic probability, not a theoretical possibility, that the statute would be applied to reach conduct that did not involve moral turpitude.” *Nicanor-Romero*, 523 F.3d at 1004 (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). To demonstrate a “realistic probability,” a foreign national must point to his or her own case or other cases in which the state courts in fact did apply the statute to conduct not involving moral turpitude. 523 F.3d at 1004-05. A realistic probability also exists where the statute expressly punishes conduct not involving moral turpitude. *See U.S. v. Vidal*, 504 F.3d 1072, 1082 (9th Cir. 2007).

If the statute is overbroad (i.e. criminalizes both conduct that involves moral turpitude and conduct that does not) and divisible, we apply the modified categorical inquiry. *Lopez-Valencia v. Lynch*, 798 F.3d 863, 867-68 (9th Cir. 2015); *see also Marmolejo-Campos*, 558 F.3d at 912 (citing *Fernando-Ruiz v. Gonzalez*, 466 F.3d 1121, 1163 (9th Cir. 2006)). The modified categorical inquiry looks to the limited, specified set of documents that comprise what is known as the record of

conviction – the charging document, a signed plea agreement, jury instructions, guilty pleas, transcripts of a plea proceeding and the judgment – for the purpose of determining which alternative element formed the basis of the conviction (thus effectuating the categorical analysis for divisible statutes). See *Aguilar-Turcios v. Holder*, 740 F.3d 1294, 1300-02 (9th Cir. 2014).

On appeal the Applicant contends that his conviction is not for a crime involving moral turpitude because the law assigns no actual intent to commit an act with a particular purpose, that no amount of intent or depravity must be present for a conviction, and that he did not commit aggravating acts. Counsel references *Matter of Mueller* in support.

In *Matter of Mueller*, the Board found that a conviction for “lewd and lascivious conduct” in violation of Wis. Stat. § 944.20(2) that did not require “any intent whatsoever” was not a crime involving moral turpitude. 11 I&N Dec. 268, 270 (BIA 1965). The Board reasoned that “[m]oral turpitude is dependent upon the depraved or vicious motive of the alien. It is in the intent that moral turpitude inheres.” *Id.* at 269. By contrast, the Board has held that offenses where lewdness is an element of the crime do involve moral turpitude. In *Matter of Cortes-Medina*, the Board held that a conviction for indecent exposure under Cal. Penal Code § 314(1) was a crime involving moral turpitude because a finding of lewdness was necessary for a conviction. 26 I&N Dec. 79, 84 (BIA 2013). See also *Matter of Lambert*, 11 I&N Dec. 340, 342 (BIA 1965) (holding that a conviction for “renting rooms with knowledge that the rooms were to be used for the purpose of lewdness, assignation or prostitution” is a crime involving moral turpitude); *Matter of W-*, 4 I&N Dec. 401 (BIA 1951) (noting that moral turpitude inheres in a conviction “. . . to commit or offer or agree to commit any act of prostitution, assignation, or any other lewd or indecent act.”) In making its finding in *Cortes-Medina*, the Board stated, “The key difference between cases like . . . *Matter of Mueller* on the one hand and *Matter of Lambert* on the other is lewdness. In our view, lewd intent brings the offense of indecent exposure within the definition of a crime involving moral turpitude. . . .” 26 I&N Dec. at 83 (citations omitted). As the Applicant’s conviction for lewd or lascivious acts involved willfully committing the act with lewd intent, we find that it is a crime involving moral turpitude and he is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude.¹

B. Waiver

As we have found that the Applicant has been convicted of a crime involving moral turpitude, he is inadmissible and requires a waiver under section 212(h) of the Act. The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relatives are his parents.²

¹ As we have determined that the Applicant’s conviction under Cal. Penal Code § 288, for Lewd Act Upon a Child, is a crime involving moral turpitude, it is not necessary to address whether the Applicant’s conviction under Cal. Penal Code § 261.5(d) is also for a crime involving moral turpitude.

² The record includes reference to the Applicant’s son born in 2001, but otherwise contains no information. On the Form I-601 the Applicant did not list any children as qualifying relatives or present other evidence concerning his son.

As noted above, the Director determined that the Applicant had established extreme hardship to a qualifying relative. The Applicant contends that his parents will experience medical and financial hardship were they to reside in the United States while he remains abroad as a result of his inadmissibility, or if they were to relocate abroad to reside with him. In support of this assertion the Applicant submitted affidavits from his father, psychological evaluations, medical records, financial documentation, and county information for El Salvador. We concur with the Director's finding that the Applicant established extreme hardship to his parents.

C. Discretion

Once eligibility for a waiver is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the Applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion.

A favorable exercise of discretion is limited for applicants who have been convicted of a violent or dangerous crime. Specifically, 8 C.F.R. § 212.7(d), which codified for purposes of section 212(h)(2) of the Act the discretionary standard first applied to section 209(c) waivers by the Attorney General in *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002), limits the favorable exercise of discretion with respect to those inadmissible under section 212(a)(2) of the Act on account of a violent or dangerous crime, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which denial of the application would result in exceptional and extremely unusual hardship. The regulation provides further that depending on the gravity of the 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 or case law. A "crime of violence" is an aggravated felony pursuant to section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F), and as defined at 18 U.S.C. § 16. However, the Attorney General declined to reference either section of law or the definition of "crime of violence" in 8 C.F.R. § 212.7(d). In the interim rule, the Department of Justice noted the while individuals convicted of aggravated felonies generally would not warrant a favorable exercise of discretion, the rule would not contain an explicit connection to avoid "unduly constraining the . . . discretion to render waiver decisions on a case-by-case basis." 67 Fed. Reg. 78675, 78677-78 (Dec. 26, 2002). Pursuant to this discretionary authority, we understand "violent or dangerous crimes" according to plain and common meanings of the terms "violent" and "dangerous." Black's Law Dictionary (9th ed. 2009), for example, defines *violent* as 1) "[o]f, relating to, or characterized by strong physical force," 2) "[r]esulting from extreme or intense force," or 3) "[v]ehemently or passionately threatening." It defines *dangerous* as "perilous, hazardous, [or] unsafe," or "likely to cause serious bodily harm." In determining whether a crime is a violent or dangerous crime for purposes of discretion, we are not limited to a categorical inquiry but may consider both the statutory

(b)(6)

Matter of R-D-R-

elements and the nature of the actual offense. *See Torres-Valdivias v. Lynch*, 786 F.3d 1147, 1152 (9th Cir. 2015); *see also Waldron v. Holder*, 688 F.3d 354, 359 (8th Cir. 2012).

The Director found that the Applicant's conviction was for a violent or dangerous crime. On appeal the Applicant cites circuit court decisions to maintain that his conviction is not for a violent or dangerous crime as it was a consensual act with no force or substantial risk of force. He contends that the U.S. Court of Appeals for the Ninth Circuit has found a conviction under California Penal Code section 261.5 not to be a crime of violence because it was consensual, and that the finding could pertain also to section 288(c)(1).

The record shows that the Applicant was born in 1974, and the acts for which he was convicted occurred in [REDACTED] 2002, making him 28 years of age at the time of the offense. The Applicant had sexual intercourse on more than one occasion, beginning on [REDACTED] 2002, with a minor who at the time was only days past her 15th birthday. The investigative report of the incidents indicates that on some of those occasions the Applicant provided alcohol to the victim and that after they had intercourse on the first occasion, he threatened her if she informed anyone. Given the nature of the offense, the difference in their ages at the time, and the fact that the Applicant provided alcohol to the victim and threatened her, we find that the Applicant's crime involved force and was likely to cause harm to the minor victim and was therefore a violent or dangerous crime. The Applicant is therefore subject to 8 C.F.R. § 212.7(d) and must show that "extraordinary circumstances" warrant approval of the waiver.

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.”).

On appeal, the Applicant asserts that USCIS erred in not considering hardship to him, and cites the Attorney General opinion in *Matter of Jean*, 23 I&N Dec 373 (A.G. 2002). The Applicant contends that his parents will experience medical and financial hardship were they to reside in the United States while he remains abroad as a result of his inadmissibility. He explains that his mother has

health problems and suffers anxiety because of being separated from him. In an affidavit dated February 14, 2014, the Applicant's father asserts that separation from the Applicant causes health and financial hardship. The father maintains that he has health problems and that separation from the Applicant makes him sad and causes anxiety and also causes his spouse's mental and physical health to deteriorate. The father further contends that he struggles to maintain two households as he supports the Applicant in El Salvador and that when the Applicant was in the United States he helped financially.

Psychological evaluations of the Applicant's father from 2014 diagnosed him with adjustment disorder with mixed anxiety and depressed mood and averred that the father's condition was worsening and that he constantly worried for the Applicant's safety. The evaluations noted the father's diabetes medications and indicated that he also had the burden of his spouse having diabetes and fearing a possible relapse of her breast cancer. The second evaluation stated that the Applicant had helped with bills and chores, but that since he left the father needed a second job and thus had increased stress. The evaluation opined that the Applicant's father could experience a decompensation in his ability to function and may be considered for inpatient psychiatric hospitalization if he became unable to care for himself. The evaluation recommended continued psychiatric treatment and monitoring from a primary care physician.

Medical records from 2011 to 2013 indicate that the Applicant's mother had been diagnosed with breast cancer, but the reports provide no clear explanation from a physician of her current condition or a prognosis. A report dated August 20, 2013, indicated no evidence of malignancy. Medical documentation for the father included reports with handwritten notes that are not easily read and no clear explanation from a physician to establish the severity of his condition.

Financial documentation submitted to the record includes receipts for money sent to El Salvador, bills, and the father's pay, and a deed of release indicating that the parents' home is paid in full.

Regarding relocation to El Salvador, the Applicant's father asserts that they would live in his wife's family home that is small with no hot water or refrigeration. He claims that he would be unable to afford medical care or qualify for government assistance there and that the Applicant lives in a small town six hours from the nearest medical facility. The father contends that being separated from family in the United States would cause his mental health condition to deteriorate and that his spouse may need psychological care that he would be unable to afford. The father further maintains that if he relocates he would need to sell all his assets in the United States and could be unemployed or receive only minimum wage with which he could not support the family.

Regarding hardship to himself, the Applicant submitted reports about the crime, political, and economic situation in El Salvador and contends that conditions there place his life at risk. He submitted a 2013 U.S. Department of State travel warning for El Salvador and reports on crime in El Salvador. The Applicant's father also cites crime in El Salvador to stress the danger there to the Applicant. The father contends that the Applicant needs the emotional and physical support of his parents. The record contains a psychological evaluation of the Applicant, conducted in El Salvador

in November 2014, but the report provides no detail or observation other than that the Applicant is of good reasoning and normal conduct. Financial documentation submitted to the record shows that the Applicant receives regular money transfers from his parents, but a background check of the Applicant, completed in El Salvador and dated November 13, 2014, indicates that he was employed.

A statement from the Applicant's father mentions hardship to his grandchildren who are in school in the United States and states that two of them have learning disabilities. The father asserts that his grandchildren need him so they can continue therapy and education and maintains that in El Salvador they would have difficulty finding a school in a small town, that the children would have a transportation problem to get to a city public school, and that they would be at risk of crime. From the record it is unclear if the grandchildren are the Applicant's children or with whom they live. Nor is there supporting documentation or other evidence to show that their hardship would create hardship for the Applicant's parents due to the Applicant's inadmissibility.

The record, reviewed in its entirety, supports a finding that if the Applicant's parents relocated to reside with him in El Salvador, they will face hardships that rise to the level of exceptional and extremely unusual hardship as required in 8 C.F.R. § 212.7(d). The record indicates that the Applicant's parents own their home and have significant extended family nearby, that the Applicant's father has resided in the United States for nearly 30 years and became a U.S. citizen in 2004, and that his mother became a U.S. citizen in 2011. By relocating, they would be leaving family, community, and the father's employment and health benefits and possibly lose their home. While in El Salvador they would be concerned for the personal safety, given the levels of violence, and for their health, considering the Applicant's mother was diagnosed with cancer and, though the medical records indicate no current sign of malignancy, would require ongoing follow up treatments. The Department of State warns U.S. citizens that crime and violence levels in El Salvador remain critically high, that U.S. citizens traveling to El Salvador should remain alert to their surroundings, and that crime and violence are serious problems throughout the country. *See Travel Warning-U.S. Department of State*, dated January 15, 2016. The Department of State also indicates that there are few private and no public hospitals that meet U.S. standards, pharmacies are plentiful but not all medicines found in the United States are available, and medicines often are more expensive than in the United States. *U.S. Department of State, Bureau of Consular Affairs*, dated March 20, 2015.

Having found extraordinary circumstances, we must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident, taking into account the gravity of the violent or dangerous crime, with all factors presented, including the extraordinary circumstances, to determine whether the grant of relief in the exercise of discretion is in the best interests of the United States. *See generally Matter of Mendez-Morales*, 21 I&N Dec. 296, 300 (BIA 1996).

The positive factors in this case the hardship to the Applicant's parents. However, despite the finding that the Applicant's parents will suffer exceptional and extremely unusual hardship, we find it insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act in light of the nature and gravity of the Applicant's criminal convictions, *see* 8 C.F.R. § 212.7(d), as well as the Applicant's numerous immigration violations, including entry to the United States without being

(b)(6)

Matter of R-D-R-

admitted, periods of unlawful presence and unauthorized employment in the United States, and his removal. As we noted, the record shows that the Applicant was about 28 years of age at the time of his offense where he had sexual intercourse on multiple occasions with a victim only days past her 15th birthday. On some of those occasions the Applicant provided alcohol to the victim and threatened her not to inform anyone of his actions. The record contains no statement from the Applicant expressing remorse for his actions. The record further reflects that on [REDACTED] 2005, the Applicant was convicted of prostitution in Texas. We therefore find that the Applicant has not established that the favorable factors in his application outweigh the unfavorable factors. In discretionary matters, the Applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976).

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. The Applicant has not established that he warrants a favorable exercise of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of R-D-R-*, ID# 16492 (AAO July 14, 2016)