



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

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

MATTER OF F-H-C-

DATE: MAY 3, 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 South Africa, seeks a waiver of inadmissibility for a crime involving moral turpitude. *See* Immigration and Nationality Act (the Act) section 212(h), 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 was inadmissible to the United States for committing a crime involving moral turpitude. The Director then determined that the Applicant's crime was a violent or dangerous crime under 8 C.F.R. § 212.7(d) and that he did not merit a favorable exercise of discretion.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred by not examining all the hardship factors and in finding that his conviction was for a violent or dangerous crime.

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

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and has been found inadmissible for a crime involving moral turpitude. 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, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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) 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 of Homeland Security] 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 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;

(C) the alien is a VAWA self-petitioner; and

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

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No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation or proceedings to remove the alien from the United States. . . .

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*, 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

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 under section 110-160.10 of the New York Penal Code for a [REDACTED] 2002 conviction for second-degree attempted robbery. The court sentenced the Applicant to one year in prison.¹ The Applicant does not contest that his conviction is for a crime involving moral turpitude.

¹ The record reflects that in [REDACTED] 2003, the Applicant was placed into removal proceedings and deported from the

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The issues presented on appeal are whether the Applicant established extreme hardship to a qualifying relative, and if he committed a violent or dangerous crime, whether the Secretary would favorably exercise discretion. Regarding hardship to a qualifying relative, the claimed hardships to the Applicant's mother from continued separation are the psychological and emotional hardships of separation. The claimed hardships to her from relocation are separation from family in the United States, the inability to obtain employment, a lower living standard, physical hardship from inadequate medical care, and emotional hardship from returning to a country where she experienced significant hardships.

The evidence in the record, considered and cumulatively, establishes that the Applicant's mother would suffer extreme hardship if she remains in the United States or upon relocation to South Africa. It further establishes that the Applicant committed a violent or dangerous crime and that his mother would experience exceptional and extremely unusual hardship if he were refused admission to the United States. However, the evidence in the record does not establish that a favorable exercise of discretion is warranted.

A. Waiver

The Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant's mother. In support of his claim of hardship to his mother, the Applicant submitted the following evidence. With the Form I-601, he submitted affidavits from himself and his mother, siblings, and relatives; financial records; medical records; records from a homeless shelter; a letter of support from his church; reports on South Africa; a psychological evaluation of the Applicant's mother. On appeal, the Applicant submits a brief.

As to emotional hardship, the Applicant's mother asserted that she has a close relationship with the Applicant and since his deportation has had depression, insomnia, anxiety, and panic attacks. She stated that she left South Africa because she was physically, sexually, and emotionally abused by her father's child. She stated that she lived in homeless shelters for several years with her three children, born in [REDACTED], [REDACTED], and [REDACTED]. She maintained that the Applicant protected the family and worked to provide for them since he was young. The Applicant submitted documentation of their residence in New York homeless shelters. The Applicant further submitted an evaluation of his mother by a licensed psychologist which stated that his mother feels she will have to relocate to South Africa with her younger children if the Applicant cannot return to the United States. The licensed psychologist also stated that the Applicant's mother has depression, anxiety, and Posttraumatic Stress Disorder and that the Applicant's immigration problems have compounded her conditions. The Applicant submitted evidence that his mother visited a hospital for anxiety and muscle cramps and was prescribed anti-anxiety medication and a muscle relaxer before she visited him in 2014. The Applicant's mother declared that she constantly worries about the Applicant's physical safety in South Africa and was concerned about her physical safety during her trip to South Africa. The

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licensed psychologist stated that the Applicant's mother's psychological conditions substantially worsened since the visit to South Africa. The Applicant's mother maintains that she suffers from a congenital heart defect that causes intermittent episodes of loss of consciousness, heart palpitations, shortness of breath, and hypertension. The Applicant provided a letter from his mother's physician stating that she suffers from a congenital heart defect, and her health has recently deteriorated from physical and emotional stress. The physician referred her for psychiatric treatment and a cardiology evaluation and prescribed antidepressants. The Applicant submitted psychosocial assessments from a licensed master social worker which states that the Applicant's mother was hospitalized for a heart problem in 2005 and takes medication for her condition. The psychosocial assessment stated that the Applicant's mother endured physical and sexual abuse in South Africa and that she constantly worries about her son's safety in South Africa. The licensed master social worker stated that the Applicant's mother suffers from Post-Traumatic Stress Disorder, depression, anxiety, and insomnia and prescribed anti-anxiety medication.

The record demonstrates that the Applicant has a close relationship with his mother, and she is enduring significant challenges from long-term separation from him. As discussed above, the Applicant's mother has emotional stress from his immigration difficulties, which has aggravated her psychological and medical conditions. The evidence in the record, considered cumulatively, establishes that the Applicant's mother would suffer extreme hardship upon further separation.

As to hardship upon relocation, the Applicant's mother asserted that she is [REDACTED] years old and has lived in the United States for almost 25 years and relocation to South Africa would be devastating. She maintained that she still fears her child's father and is terrified of violent crime in South Africa. She stated that when she was young her cousin sexually assaulted her in South Africa and she could do nothing about it. The Applicant's mother further asserted that she worries about uprooting her two younger children, who were born and raised in the United States, to live in South Africa because they do not speak the local languages, and would be set back academically and socially and would live in poverty. The Applicant asserted that his mother has been assisting him financially since his deportation. The record contains evidence establishing that he received financial assistance from his mother. The Applicant's mother maintained that she fears being unable to obtain a job or adequate medical care in South Africa. The Applicant asserted that his mother will be unemployable in South Africa due to her age and will not have access to healthcare. The Applicant submitted documentation on conditions in South Africa.

The record demonstrates that the Applicant's mother has lived in the United States for 25 years, that she is in her 50s and is gainfully employed, and has employer-provided healthcare benefits. It contains evidence that she receives subsidized housing benefits in the United States. The record further shows that she has health conditions and has been under the care of the same physician since 2003 and that relocation would disrupt the continuity of her treatment. The record also shows that were she and her youngest children to reside in South Africa, where she experienced significant hardships and abuse, relocation would likely aggravate her medical and psychological conditions.²

² Her youngest child was born in [REDACTED].

Accordingly, the evidence in the record, considered cumulatively, establishes that the Applicant's mother would suffer extreme hardship upon relocation.

C. Discretion

The Director concluded that Applicant's conviction for second-degree attempted robbery, a Class D felony, is a conviction for a violent and dangerous crime under 8 C.F.R. § 212.7(d). On appeal, the Applicant asserts that the Director erred by determining that his conviction was for a violent or dangerous crime without conducting an analysis into the nature of the crime.

A favorable exercise of discretion is limited for applicants who have been convicted of a violent or dangerous crime. Specifically, the regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], 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 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 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 Applicant was convicted under New York Penal Law (N.Y. Penal Law) § 110-160.10 of second-degree robbery, which states:

A person is guilty of robbery in the second degree when he forcibly steals property and when:

1. He is aided by another person actually present; or
2. In the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime:
 - (a) Causes physical injury to any person who is not a participant in the crime:
or
 - (b) Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
3. The property consists of a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law.

Robbery in the second degree is a class C felony.

In the present case, the Applicant's conviction specifically required force as an element of the crime. Furthermore, second-degree robbery would likely cause serious harm as the crime's additional elements are physical injury to an individual or the display of a firearm. We therefore find that the Applicant's conviction was for a violent or dangerous crime.

The Applicant has been convicted of a violent or dangerous crime and therefore must show that "extraordinary circumstances" warrant approval of the waiver. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant's admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities 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 of Immigration Appeals (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.”).

As stated above, since 2004 the Applicant's mother has endured significant challenges from long-term separation from the Applicant. The record reflects that her physical health and psychological and emotional health may continue to deteriorate from further prolonged separation from the Applicant or from relocation to the country where she experienced many years of abuse and where her former abuser still resides. Considering all previously stated elements of hardship in the aggregate, the record supports that the Applicant's mother will suffer emotional, psychological, and medical hardships upon continued separation from the Applicant or from relocation to South Africa that rises to an exceptional and extremely unusual level. However, a finding of extraordinary circumstances is not necessarily sufficient to warrant a favorable exercise of discretion. While 8 C.F.R. § 212.7(d) may allow for denial of the waiver as a discretionary matter based solely on the gravity of the applicant's offense, we also engage in a conventional discretionary analysis and "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on [the alien's] behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country." *Matter of Mendez-Morales*, 21 I&N Dec. 296, 300 (BIA 1996).

The favorable factors include the exceptional and extremely unusual hardship to the Applicant's U.S. citizen mother, his father and four siblings in the United States, the young age of the Applicant at the time of the crime, the Applicant's past residence in the United States for a decade, the support letters on the Applicant's behalf, the Applicant's statements expressing remorse and regret for his criminal actions, and the passage of nearly 15 years since his crime. The adverse factors in this case are the nature and severity of the Applicant's crime, his removal from the United States, his periods of unlawful status and employment in the United States, and his mother's statement that he has a drug addiction.³ Section 212(a)(1)(A)(iv) of the Act states that an individual is inadmissible to the United States if he is determined to be a drug abuser or addict. Section 212(g) does not provide a waiver for this ground of inadmissibility. The record does not contain information to resolve whether the Applicant is a drug abuser or addict and inadmissible under section 212(a)(1)(A)(iv) for a health-related ground. Thus, when the adverse factors are considered together, they outweigh the favorable factors such that a favorable exercise of discretion is not warranted.

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. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of F-H-C-*, ID# 16052 (AAO May 3, 2016)

³ The Applicant's mother's medical record and psychosocial evaluation state that the Applicant's mother stated that he has a drug addiction.