



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

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

MATTER OF R-V-

DATE: MAY 10, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Cuba, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 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, for criminal activity that occurred more than 15 years ago, that the applicant's admission would not be contrary to the national welfare, safety, or security of the United States, and the applicant has been rehabilitated.

The Field Office Director, Miami, Florida, denied the application. The Director determined that the Applicant did not establish extreme hardship to a qualifying relative or that he had been rehabilitated. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly.

We dismissed a subsequent appeal. On appeal, we determined that the Applicant is inadmissible under 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. We also found that the Applicant had been convicted for a violent and dangerous crime and is therefore subject to 8 C.F.R. Section 212.7(d). As such, the Applicant had to show "extraordinary circumstances" to warrant the approval of his waiver, which we found that he failed to demonstrate.

The matter is now before us on a motion to reopen and a motion to reconsider. In the motion, the Applicant submits additional evidence, and he asserts that his conviction is not categorically a crime involving moral turpitude because manslaughter by act in Florida does not require that the defendant have intent to kill the victim. He also states that the statute for which he was convicted appears to not be divisible, and therefore we cannot conduct a modified categorical inquiry into his record of conviction. Nonetheless, even if we find the statute is divisible, the Applicant contends that the conduct in the record of conviction does not constitute morally turpitudinous behavior. In addition, the Applicant claims that we incorrectly applied the heightened standard of exceptional and extremely unusual hardship in the Applicant's case, subjecting him to 8 C.F.R. Section 212.7(d). The Applicant also states that Congress intended to provide a more relaxed waiver to aliens whose

criminal activity occurred more than 15 years ago. Alternatively, the Applicant states that a denial of his waiver application would result in exceptional and extremely unusual hardship to the Applicant and his qualifying relatives.

Upon review, we will grant the motion to reopen.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident and was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude, specifically having been convicted of manslaughter in violation of Florida Statutes 782.07. 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.

Individuals found inadmissible under section 212(a)(2)(A) of the Act may seek a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h). Section 212(h) of the Act provides for a discretionary waiver where the activities occurred more than 15 years before the date of the application if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the foreign national has been rehabilitated (Section 212(h)(1)(A)).

II. ANALYSIS

The issues presented on motion are whether the Applicant's conviction for manslaughter is a crime involving moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act; whether his conviction is for a violent or dangerous crime and therefore requires 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 asserts that his conviction is not a crime involving moral turpitude, and therefore he is not inadmissible. In this regard, the Applicant makes additional alternative arguments. First, he indicates that his conviction for manslaughter, involving the death of a victim by act, procurement or culpable negligence, is not categorically a crime involving moral turpitude because manslaughter by act does not require the intent to kill. The Applicant indicates that in our prior decision, we relied on case law supporting only that manslaughter by culpable negligence constituted a crime involving

moral turpitude. Next, the Applicant asserts that Florida Statute 782.07 is likely not divisible, and therefore we cannot apply the modified categorical inquiry into the record of proceeding to identify the statutory provision under which the Applicant was convicted.

Alternatively, the Applicant states that if his conviction is determined to be a crime involving moral turpitude, it is not a violent or dangerous crime and therefore does not require the heightened standard of “extraordinary circumstances” to warrant the approval of the waiver pursuant to 8 C.F.R. § 212.7(d). The Applicant also states that the heightened standard of “extraordinary circumstances” to warrant the approval of the waiver pursuant to 8 C.F.R. § 212.7(d) is not applicable to section 212(h)(1)(A). Nonetheless, the Applicant indicates that, even if we determine his conviction for manslaughter to be a violent or dangerous crime and we find that 8 C.F.R. § 212.7(d) applies, the denial of his waiver would result in exceptional and extremely unusual hardship.

We affirm our prior finding that the Applicant’s conviction constitutes a crime involving moral turpitude requiring the heightened standard of review for violent or dangerous crimes. However, after the submission of additional evidence and review on motion, we find that a denial of his waiver would result in exceptional and extremely unusual hardship as required under 8 C.F.R. § 212.7(d).

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 Applicant was convicted of manslaughter in violation of Florida Statute 782.07.

At the time of the Applicant’s conviction, the Florida Statutes stated:

782.07. Manslaughter;

(1) The killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification according to the provisions of chapter 776 and in cases in which such killing shall not be excusable homicide or murder, according to the provisions of this chapter, is manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. . .

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).

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For cases arising in the [REDACTED] the determination of whether a conviction is a crime involving moral turpitude begins with a categorical inquiry that “depends upon the inherent nature of the offense, as defined in the relevant statute, rather than the circumstances surrounding a defendant’s particular conduct.” *Itani v. Ashcroft*, 298 F.3d 1213, 1215-16 (11th Cir. 2002); *see also Vuksanovic v. U.S. Att’y Gen.*, 439 F.3d 1308, 1311 (11th Cir. 2006) (citing *Taylor v. United States*, 495 U.S. 575, 600 (1990)); *Sosa-Martinez v. U.S. Att’y Gen.*, 420 F.3d 1338, 1342 (11th Cir. 2004).

However, where the statute under which an alien was convicted is “‘divisible’—that is, it contains some offenses that are [crimes involving moral turpitude] and others that are not[,] . . . the fact of conviction and the statutory language alone are insufficient to establish . . . under which subpart [the alien] was convicted.” *Jaggernaut v. U.S. Att’y Gen.*, 432 F.3d 1346, 1354-55 (11th Cir. 2005). A statute is divisible only if it lists “potential offense elements in the alternative, render[ing] opaque which element played a part in the defendant’s conviction.” *Descamps v. United States*, 133 S. Ct. 2276, 2283 (2013); *see also Donawa v. U.S. Att’y Gen.*, 735 F. 3d 1275, 1281(11th Cir. 2013). “Barring guidance from the state courts interpreting a statute, [we] apply traditional tools of statutory interpretation to decide whether a statute sweeping broader than a generic offense is divisible and thus amenable to analysis under the modified categorical approach.” *United States v. Estrella*, 758 F.3d 1239, 1245-46 (11th Cir. 2014). Although divisibility may often be ascertained from the language of the statute itself, a statute is divisible, i.e. contains elements rather than means, where prosecutor would specifically charge one alternative as opposed to the other and the jury would agree unanimously to convict on the basis of that alternative. *Id.* at 1245-46 (citing *Descamps*, *supra*, at 2289-90); *see also U.S. v. Lockett*, --- F.3d ---, 2016 WL 240334 at *5-7 (January 21, 2016).

If the statute is divisible, we then conduct a modified categorical inquiry by reviewing the record of conviction to determine which statutory phrase was the basis for the conviction. *See Short*, *supra*, at 137-38. The record of conviction is a narrow, specific set of documents which includes the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Louissant*, *supra*, at 757; *see also Shepard v. U.S.*, 544 U.S. 13, 16 (2005) (finding that the record of conviction is limited to the “charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.”)

The record reflects that on [REDACTED] 2001, the Applicant was convicted in the Circuit Court of the [REDACTED] in and for [REDACTED] Florida, of Manslaughter, a second degree felony, in violation of Florida Statute 782.07, for which he was sentenced to 15 years imprisonment. The sentence was vacated on [REDACTED] 2001, and the Applicant was sentenced to two years imprisonment followed by a 10-year probation period, which the record shows was terminated on [REDACTED] 2011.

As we stated above, the Applicant on motion asserts that his conviction for manslaughter is not categorically a crime involving moral turpitude. We disagree. In the instant case, the Florida statute under which the Applicant was convicted involves the killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification. As stated above, the Applicant maintains that manslaughter by act does not require proof that the defendant intended to

kill the victim, and as such lacks the required mens rea for a finding of moral turpitude, and therefore is not categorically a crime of moral turpitude. More specifically, he relies on *State v. Montgomery*, 39 So.3d 252 (Fla. 2010), and the Florida Standard Jury Instructions 7.7 to support his assertions that manslaughter by act does not require proof that the defendant intended to kill the victim.

While our prior decision did not directly address whether manslaughter by act constitutes a crime involving moral turpitude, we indicated that, in *Matter of Solon*, 24 I&N Dec. 239 (BIA 2007), the Board on Immigration Appeals (Board) stated that crimes committed intentionally or knowingly have been found to involve moral turpitude. *Id.* In that decision, the Board stated that “intentional conduct resulting in a meaningful level of harm . . . may be considered morally turpitudinous.” We also directly cited that case as standing for the proposition that “as the level of conscious behavior decreases, i.e., from intentional to reckless conduct, more serious resulting harm is required in order to find that the crime involves moral turpitude.” *Id.* at 242. In the case of manslaughter by act, the conduct involved is intentional, not merely negligent, and is not justified or excusable, and results in a very meaningful level of harm, which is death. While we agree that the State does not have to prove that the defendant had the intent to cause death in order to convict for manslaughter by act, specific intent to kill is not required for the crime to constitute moral turpitude.

In *Sosa-Martinez v. U.S. Att’y Gen.*, 420 F.3d 1338 (11th Cir. 2005), the court found that aggravated battery in Florida involving intentional conduct to commit a simple battery that causes great bodily harm or permanent disability or permanent disfigurement constitutes a crime involving moral turpitude. Like In *Matter of Solon*, the court examined how intentional conduct, including simple assault or battery, causing significant harm, has been found by courts to be a crime involving moral turpitude even without the specific intent to cause serious bodily harm. Further, although the Applicant does not specifically address whether manslaughter by procurement is a crime involving moral turpitude, it similarly involves the intentional conduct of persuading, inducing, prevailing upon or causing a person to do something that causes the death of the victim. As such, we find that a conviction for manslaughter by act or procurement, which both require intentional conduct resulting in death, constitutes a crime involving moral turpitude.

On motion, the Applicant does not contest that manslaughter by culpable negligence is a crime involving moral turpitude, but he states that in our prior decision, we erroneously relied on case law that only supported that manslaughter by culpable negligence constituted a crime involving moral turpitude. In that decision, we found that the mens rea required for culpable negligence, which involves a conscious disregard of a substantial and unjustifiable risk to the life or safety of others, involves moral turpitude. See *Matter of Medina*, 15 I&N Dec. 611, 613-14 (BIA 1976). See also *Matter of Wojtkow*, 18 I&N Dec. 111, 112-13 (BIA 1981). We therefore conclude that as manslaughter by act, procurement, and culpable negligence all involve moral turpitude, the Applicant’s conviction for manslaughter in violation of Florida Statute 782.07 is categorically a crime involving moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.¹

¹ The Applicant asserts that the Florida Statutes 782.07 is likely not divisible, and therefore we may not apply the

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B. Waiver

Here, as we have found the Applicant has been convicted of a crime involving moral turpitude, he is therefore inadmissible and requires a waiver under section 212(h) of the Act. As we stated above, Section 212(h)(1)(A) of the Act provides that certain grounds of inadmissibility, including section 212(a)(2)(A)(i)(I) of the Act, may be waived in the case of a foreign national who demonstrates that the activity resulting in inadmissibility occurred more than 15 years before the date of the application for a visa, admission, or adjustment of status. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992). The record reflects that the activity for which the Applicant was convicted occurred on [REDACTED] 1999. Since the criminal activity for which the Applicant was found inadmissible occurred more than 15 years ago, he is now eligible to seek a waiver under section 212(h)(1)(A) of the Act.

Section 212(h)(1)(A) 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, and that he has been rehabilitated. In our prior decision, we reviewed the record and found that it does not reflect that admitting the Applicant would be contrary to the national welfare, safety, or security of the United States. We additionally found that the Applicant has shown by a preponderance of the evidence that he has been rehabilitated, given that since his conviction, he has married, had children and has been gainfully employed and has supported and has support from his family. He has additionally shown remorse for his actions and that he has matured. As such, we will affirm these findings on motion.

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), provides:

The [Secretary 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

modified categorical inquiry into the record of proceeding to identify the statutory provision under which the Applicant was convicted. However, even assuming arguendo that Florida Statutes 782.07 is not divisible, as we find that manslaughter under Florida Statutes 782.07 is categorically a crime involving moral turpitude, it would be unnecessary to look further into his record of conviction.

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).

In our prior decision, we found that the conduct necessary for the Applicant to have been convicted for manslaughter under Florida Statutes 782.07 represents a violent or dangerous crime, and we therefore find that the Applicant is subject to 8 C.F.R. § 212.7(d). We indicated that the behavior of Applicant that led to his conviction involved substantial risk of harm to others. We reviewed the court documents and the Applicant's affidavit, and noted that he was racing when he caused an automobile accident that caused the death of another person. We also indicated that in *McCreary v. State*, *supra*, the conduct necessary to prove manslaughter under section 782.07 includes a grossly careless disregard of the safety and welfare of the public, or of the safety of persons exposed to its dangerous effects, a conscious indifference to consequences, or reckless indifference to the rights of others. As such, we will affirm this prior finding on motion that his conviction is a violent or dangerous crime.

As we find that the Applicant's conviction for manslaughter under Florida Statutes 782.07 is a violent or dangerous crime and that the Applicant is subject to 8 C.F.R. § 212.7(d), the Applicant

accordingly, must show that “extraordinary circumstances” warrant approval of the waiver. Although the Applicant states that Congress intended to provide a more relaxed waiver under section 212(h)(1)(A) to applicants whose criminal activity occurred more than 15 years ago, and that 8 C.F.R. § 212.7(d) does not apply to him, he provided no legal authority for his assertions. The regulation at 8 C.F.R. § 212.7(d) provides that this heightened discretionary standard for applicants who have committed violent or dangerous crimes applies directly to waivers under section 212(h) of the Act, and it does not specify that it should apply only to waivers under section 212(h)(1)(B) and not under section 212(h)(1)(A).

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 motion, the Applicant provides additional evidence, including a letter from his spouse with a copy of her U.S. passport; financial documentation, and materials related to his step-son’s learning difficulties. We have reviewed and considered this evidence, together with all the other evidence previously submitted in connection with this application. The Applicant, on motion, restated the hardships that his qualifying relatives, including his wife and children, who are U.S. citizens, and his parents, who are lawful permanent residents, would face in the event his waiver was denied.

The Applicant claims that, if his spouse remains in the United States without him, she will suffer emotional and financial hardships. In the spouse’s most recent affidavit, she also states that she would face emotional and financial hardships upon separation. As to the emotional hardship, the spouse indicated in her psychological evaluation that her ex-husband and father to the Applicant’s step-son was verbally abusive to her, which is why she left him, and that the Applicant has been a great friend and good father who takes care of his family. She reported that the Applicant is the “love of her life,” and that she fears she will never recover from the loss of their home and lives together, and she will suffer massive depression. It states that the spouse does not want their children to be without a father because it would destroy their lives. The evaluation states that the Applicant’s spouse worries about the Applicant’s parents, who suffer depression and were

devastated when the Applicant went to jail. The Applicant similarly noted that the spouse is emotionally dependent on his love.

As to the financial hardship, the spouse states that the Applicant is a hard worker who supports the family, and letters of support for the Applicant indicate that he now provides the sole income for the household. The record contains tax returns for the Applicant and letters from his employer and coworkers. The psychologist indicates that the spouse reported that she stopped working three years prior to the 2013 evaluation to care for her children, and the spouse also states in her most recent letter that she is financially dependent on the Applicant. On motion, tax documents appear to demonstrate that she is not working as well.

The Applicant also asserts that his children would similarly face financial and emotional hardships. The Applicant's spouse, as stated above, indicates that her children would not recover from the loss of their father, and fears that she would lose her home and not be able to take care of the children if the Applicant departs. In an affidavit, the spouse states that the Applicant is the only father figure his step-son has known and that he is close to the Applicant and needs him for guidance. She stated also that, if the Applicant returns to Cuba, their children would lose a male role model that would compromise their future. More specifically, with respect to the step-son, as detailed in our prior decision, a letter from a clinical social worker indicated that he was diagnosed with a depressive disorder, but that he was not taking medication or seeing a psychiatrist. A psychological evaluation of the Applicant's family noted that the step-son reports seeing a school counselor for anger management and that the Applicant's spouse worries about her son if he is separated from the Applicant. In the spouse's affidavit, she states that her son is treated at school for depression and is a special education student. On motion, the Applicant provided his step-son's Individual Education Plan that more specifically details the learning issues that his step-son experiences in school.

The Applicant also expresses the emotional, psychological and medical hardships that his parent's will face upon separation. In the Applicant's spouse's affidavit, she states that the Applicant is close to his parents, who are emotionally dependent on him for their wellbeing, that they are fragile, and that without the Applicant they would suffer and have no reason to continue living. As we stated in our prior decision, the Applicant's affidavit also states that he is close to his parents. In addition, the Applicant states that his father suffers prostate cancer, diabetes, hypertension, and depression, and that his mother takes anti-anxiety medication and has been depressed since his conviction. The psychological evaluation similarly confirms the Applicant's father's battle with prostate cancer and indicates that his cancer had returned for the fourth time in eleven years. The Applicant's father asserted that his emotional situation effects his recuperation from cancer and is doing irreparable damage to his life and health as he also suffers hypertension and feels devastated. We noted in our prior decision that a letter from the Applicant's father's hematology and oncology specialist confirmed that he was diagnosed with prostate cancer, is under care, and needs the love and support of his family. We also reviewed the letter from two of his other doctors who also diagnosed the Applicant's father with hypertension, diabetes, major depression and anxiety.

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The evaluation states that the Applicant's father is depressed and in constant worry and that the Applicant's mother is depressed over the Applicant's actions, his possible removal from the United States, and his father's cancer. It states that the Applicant's mother takes medication for depression and has no energy for daily activities. The evaluation indicates that the parents suffer Adjustment Disorder with Depressed Mood as a direct consequence of the Applicant's immigration problems, that their depression began with the Applicant's arrest in 1999, and that their hardship will worsen if the Applicant is removed. The spouse also reports that the Applicant's mother is so depressed that she would not leave her children with her or could not rely on her for help.

We acknowledged in our prior decision that the Applicant's family members would experience hardship due to conditions in Cuba and that the country conditions reports that were submitted generally supported such assertions. However, their statements contained no detail, and no documentation or other evidence has been submitted to show specifically how any of the Applicant's qualifying relatives would suffer hardship that rises to the level of exceptional and extremely unusual hardship were they to relocate to Cuba.

On motion, the Applicant provides more detail and indicates that his parents fled Cuba to seek a better life in the United States, and the record reflects that they have been in the United States for nearly twenty years. His spouse has also lived in the United States for nearly twenty years, and all of their children were born in and have lived their entire lives in the United States. As indicated above, the Applicant's parents are experiencing severe emotional, physical and medical hardships, which have been exacerbated by the Applicant's criminal and immigration issues. The Applicant notes that his parents require quality health care, and while he has not specifically shown that they would be unable to receive such care in Cuba, it would result in considerable hardship for the Applicant's father especially, who has suffered for over a decade from cancer, to seek new doctors and specialists.

The record, reviewed in its entirety, supports a finding that if the Applicant is unable to reside in the United States his qualifying relatives will face hardships that rise to the level of exceptional and extremely unusual hardship as required in 8 C.F.R. § 212.7(d). We acknowledge that the Applicant's case includes a conviction for a violent crime, but this factor does not override the extraordinary circumstances in the Applicant's case. We must not only look at the hardship in the Applicant's case, but also engage in a traditional 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 the country." *Matter of Mendez-Morales*, 21 I&N Dec. 296, 300 (BIA 1996) (Citations omitted).

The adverse factors in the present case are the Applicant's criminal record, including a crime that resulted in the death of person. The favorable factors in the present case are the hardship the Applicant's spouse, three children and parents would suffer as a result of his inadmissibility; the financial and emotional support the Applicant provides to his spouse and children; and the absence of a criminal record for over fifteen years.

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We therefore find that the Applicant has 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 met that burden. Accordingly, we grant the motion to reopen.

ORDER: The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of R-V-*, ID# 16025 (AAO May 10, 2016)