



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

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

MATTER OF P-R-B-

DATE: SEPT. 19, 2016

APPEAL OF NEWARK, NEW JERSEY FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Peru, seeks a waiver of the ground of inadmissibility for crimes involving moral turpitude and for having multiple criminal convictions for which the aggregate sentences to confinement were 5 years or more. *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 that of a lawful permanent resident 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 Field Office Director, Newark, New Jersey, denied the application, concluding that the Applicant was inadmissible for crimes involving moral turpitude and for having multiple criminal convictions for which the aggregate sentences to confinement were 5 years or more. The Director further concluded that he had not established extreme hardship to a qualifying relative if the waiver were to be denied.

The matter is now before us on appeal. The Applicant argues that the Director erred in failing to consider his spouse's hardship in the aggregate as his spouse would suffer extreme hardship if he is refused admission to the United States.

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 crimes involving moral turpitude and for multiple criminal convictions for which the aggregate sentences to confinement were for 5 years or more. His convictions were for crimes committed in New York, including first-degree reckless endangerment in 1992, third-degree criminal possession of a forged instrument (an identification card) in 2008, and theft of services in 2013. Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides that any foreign national convicted of, or who admits having committed, or who admits committing acts which constitute the

essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible.

The Applicant was convicted of more than two offenses, and his sentence to confinement for first-degree reckless endangerment was for 2 to 6 years. Section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), provides that any foreign national convicted of two or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Furthermore, section 101(a)(48)(B) of the Act, 8 U.S.C. § 1101(a)(48)(B), states that any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

Individuals found inadmissible under sections 212(a)(2)(A) and (B) of the Act may seek a waiver of inadmissibility under section 212(h) of the Act. Section 212(h)(1)(B) of the Act provides for a discretionary waiver if denial of admission would result in extreme hardship to a United States citizen or lawful permanent resident spouse, parent, son, or daughter.

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

The Applicant does not contest his inadmissibility for crimes involving moral turpitude and for multiple criminal convictions for which the aggregate sentences to confinement were for 5 years or

more, and we find this determination to be supported by the record. The Applicant argues that the Director erred by failing to consider his spouse's hardship in the aggregate, as she would suffer extreme hardship whether she remains in the United States without him or accompanies him to Peru.

With the waiver application the Applicant submitted statements from himself and his spouse, his criminal documentation, a psychoemotional and marital dynamics assessment, letters from his spouse's doctors and her brother-in-law, medical records for the Applicant and his spouse, copies of medicine prescriptions, insurance documents, health care and utility invoices, residential mortgage statements, and birth certificates. On appeal, he submits retirement and bank statements, a list of household and medical expenses, insurance and credit card invoices, medicine prescriptions, a letter from his child's mother, country condition documentation, letters from his spouse's doctors, and medical records. The entire record was reviewed and considered in rendering a decision on the appeal.

#### A. Hardship

In this case, 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 spouse and sons and daughter.

The Applicant and his spouse assert that she would suffer extreme medical, financial, emotional, and physical hardship if she were to accompany him to Peru. Regarding medical hardship, his spouse asserts that she would worry about her health in Peru. She states that in the United States she has health insurance through her employer, but in Peru they would have to pay upfront in cash for services. She has anxiety about her cancer returning or needing a hip replacement or treatment for chronic obstructive pulmonary disease (COPD) and not being able to obtain or afford suitable health care in Peru.

In support of the medical hardship, the Applicant submitted an oncologist's letter stating that in July 2012 the Applicant's spouse had surgery to remove a malignant laryngeal tumor. The oncologist explains that two months later, she was diagnosed with follicular thyroid cancer, she had a thyroidectomy and 35 radiation-therapy treatments, and she will need thyroid replacement medication for the rest of her life. The Applicant submits an updated letter from the oncologist, which states that his spouse is examined every 3 to 4 months, her recent fiber optic laryngoscopy examination in November 2015 indicated a recurrence of cancer, and she was referred to a lung specialist. The letter from her endocrinologist states that she has hypothyroidism and takes thyroid replacement medication for her underlying thyroid condition. The Applicant also submits documentation establishing that his spouse has severe right hip arthritis and will need hip surgery, and she is being assessed for COPD and laryngeal cancer. In addition, he provides a U.S. Department of State document which states that medical care is generally good in Lima and usually adequate in other major cities but is less adequate elsewhere and that urban private health care facilities are better staffed and equipped than public or rural ones. The evidence demonstrates that the Applicant's spouse has ongoing serious health conditions and may have difficulty accessing adequate medical care in Peru.

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Regarding financial hardship, she declares that she would be unable to obtain a job for the reason that she is an older worker and close to retirement age (she is 62 years old) and that the Applicant is in his late 50s and would also have difficulty finding employment because he has lived in the United States for over three decades and has no connections in Peru to help them. The record shows that in the United States the Applicant worked as a house painter, and his spouse earned \$2,200 a month as a quality control technician. The Applicant submits a Central Intelligence Agency factsheet reflecting that [redacted] Peru, had widespread underemployment and unemployment of 6 percent, and 26 percent of its population lived below the poverty line. In view of the economic conditions in Peru and the health conditions and age of the Applicant and his spouse, it is likely they will have difficulty finding employment, which would adversely impact their ability to obtain suitable health care. Although the record shows that the Applicant's spouse has retirement savings, if they are unable to obtain employment she would need to deplete her savings to pay for their living expenses and private health care.

Regarding emotional hardship, the Applicant's spouse maintains that she was born and raised in the United States and would be unfamiliar and unable to adjust to the culture and way of life in Peru. The record further establishes that his spouse would suffer hardship from long-term separation from her family members in the United States, her community, her job, and the health care professionals who are knowledgeable about her treatment plan. When the evidence is considered together, the record establishes that the Applicant's spouse will suffer extreme hardship were she to relocate to Peru.<sup>1</sup>

B. 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

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<sup>1</sup> As we found extreme hardship to the Applicant's spouse, we need not determine whether there would be extreme hardship to his other qualifying relatives.

of violence” in 8 C.F.R. § 212.7(d). In the interim rule, the Department of Justice noted that 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); *Waldron v. Holder*, 688 F.3d 354, 359 (8th Cir. 2012).

The Applicant was convicted under New York Penal Law (N.Y. Penal Law) § 120.25 of first-degree reckless endangerment, a class D felony. At the time of his conviction, N.Y. Penal Law § 120.25 stated, “[a] person is guilty of reckless endangerment in the first degree when, under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person.” “Recklessly” is defined under N.Y. Penal Law § 15.05 as follows:

A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

The Applicant committed a dangerous crime. The statute’s requirements are that a person’s reckless conduct created a grave risk of death to another and that he knew of this risk but consciously disregarded it. A person’s conduct that creates circumstances that are so dangerous as to place another at a grave risk of death makes this a dangerous crime. We therefore find that the Applicant’s conviction was for a dangerous crime and subjected him to 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. 8 C.F.R. § 212.7(d). Finding no evidence of foreign policy, national security, or other extraordinary equities, 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” to a qualifying relative. *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.

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.

The Applicant has provided sufficient evidence to demonstrate that his spouse would experience exceptional or extremely unusual hardship if she accompanies him to Peru. The record establishes that she is in her 60s and was born and raised in the United States and has no social or family ties to

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Peru. It shows that she has serious health conditions that require ongoing medical treatment. In addition, the record establishes that they will likely be unable to obtain employment and will therefore rely on their savings, and when it is depleted, they will be unable to support themselves or obtain medical treatment. The evidence in the record thus demonstrates that the hardships, with respect to her relocation, would produce a “truly exceptional situation” that would meet the exceptional and extremely unusual hardship standard to warrant a favorable exercise of discretion. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 at 62. Accordingly, the hardships to the Applicant’s spouse that arise from relocation do meet the heightened “exceptional and extremely unusual hardship” standard set forth in 8 C.F.R. § 212.7(d) to warrant a favorable exercise of discretion.

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 favorable factors in this matter are the hardship the Applicant’s spouse would face if the waiver application were denied, the hardship to his U.S. citizen daughter if he is unable to provide child-support payments, and his weekly assistance to his disabled lawful permanent resident brother. The unfavorable factors are Applicant’s criminal convictions and the seriousness of his reckless endangerment crime, his entry into the United States without inspection, his placement in removal proceedings, and his periods of unauthorized status and employment in the United States. Moreover, although the Applicant states he feels remorse for his criminal conduct, in his statement he has also sought to minimize his criminal culpability. The Applicant blamed his car accident on an argument with his spouse, and he claimed not to have had any alcohol the day of the accident. However, the indictment stated that he was intoxicated and had bloodshot and watery eyes, slurred speech, and a strong odor of alcohol. It further stated that his victim had broken and lacerated legs and that the Applicant had fled the scene without stopping. We find that the Applicant’s statements about his actions are an attempt to minimize the severity of his crime and his culpability. When the unfavorable factors are considered together, they outweigh the favorable factors such that a favorable exercise of discretion is not warranted.<sup>2</sup>

#### IV. 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. He has demonstrated that his

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<sup>2</sup> Government records indicate that the Applicant was arrested on [REDACTED] 2016, and was charged with criminal sexual contact. This arrest occurred after the appeal was filed, and the Applicant has not submitted any documentation concerning this charge indicating whether it is still pending. If these charges result in a conviction, this would indicate that the Applicant has not been rehabilitated, an additional negative discretionary factor. We find, however, that regardless of this recent arrest, the negative factors outweigh the favorable factors in this case.

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spouse would experience extreme hardship if the waiver were to be denied but has not established that a favorable exercise of discretion is warranted.

**ORDER:** The appeal is dismissed.

Cite as *Matter of P-R-B-*, ID# 17695 (AAO Sept. 19, 2016)