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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

H6

FILE: [REDACTED] Office: MEXICO CITY (CIUDAD JUAREZ) Date: **JAN 10 2011**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City (Ciudad Juarez). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant is married to a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated November 6, 2009, the field office director found the applicant inadmissible for having been unlawfully present in the United States and for having committed a crime involving moral turpitude. The AAO notes that in his decision the field office director does not state that the applicant was convicted of a crime, but instead lists the applicant's arrest record. The field office director found further that the applicant did not establish that his qualifying relative would suffer extreme hardship as a result of his inadmissibility and that the applicant did not warrant the favorable exercise of discretion. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated December 3, 2009, counsel states that the applicant's waiver application was accompanied by voluminous evidence that the applicant's spouse is suffering extreme hardship as a result of the applicant's inadmissibility. Counsel states that the applicant's spouse is undergoing psychological care and medication and previously suffered manic depression. He states that the applicant's spouse has submitted documentation of hardship that would result from relocating to Mexico and of the applicant's rehabilitation.

The record indicates that the applicant entered the United States in September 1999 without inspection. The applicant did not depart the United States until August 2008. Thus, the applicant accrued unlawful presence from September 1999 until August 2008. In applying for an immigrant visa, the applicant is seeking admission within ten years of his August 2008 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(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.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of 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 to the satisfaction of the Attorney General [Secretary] 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.

Although the record does not contain any court dispositions regarding criminal convictions for the applicant, the record does contain police reports and a record of five arrests, all domestic abuse related. A police report dated May 8, 2005, states that the applicant was arrested in Wisconsin and charged with domestic battery under section 940.19(1) of the Wisconsin Statutes. In addition, counsel states that the applicant has numerous criminal convictions and does not dispute the finding of inadmissibility under section 212(a)(2)(A) of the Act. Furthermore, numerous statements in the record reference the domestic incidents between the applicant and his spouse. Thus, the AAO finds that the record establishes that the applicant committed domestic battery. In addition, as counsel states that the applicant has numerous criminal convictions, the AAO will not deem him eligible for the petty offense exception.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

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

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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

[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.)

The AAO notes that as a general rule, simple assault or battery is not deemed to involve moral turpitude for purposes of the immigration laws, even if the intentional infliction of physical injury is an element of the crime. *Matter of Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996). This general rule does not apply, however, where an assault or battery necessarily involved some aggravating dimension, such as the use of a deadly weapon or the infliction of serious injury on persons whom society views as deserving of special protection, such as children, domestic partners or peace officers. See, e.g., *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988). Thus, the AAO finds that in committing domestic battery, the applicant committed a crime involving moral turpitude.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . 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 Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse, and/or parent of the applicant. A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse, parent and/or child of the applicant. Hardship the applicant experiences due to his or her inadmissibility is not considered in section 212(a)(9)(B)(v) and section 212(h) waiver proceedings unless it causes hardship to the applicant's spouse. The AAO notes that the applicant has two U.S. citizen children, but as children are not qualifying relatives under section 212(a)(9)(B)(v) of the Act, the only qualifying relative that will be considered is the applicant's spouse.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). In most discretionary matters, the alien bears the burden of proving eligibility simply by showing equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). However, the AAO cannot find, based on the facts of this particular case, that the applicant merits a favorable exercise of discretion solely on the balancing of favorable and adverse factors. The applicant's crime indicates that he may be subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

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 AAO notes that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and the AAO is aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). It provides that a "crime of violence," as defined under 18 U.S.C. § 16, for which the term of imprisonment is at least one year, is an aggravated felony. As such, "crime of violence" is limited to those crimes specifically listed in 18 U.S.C. § 16. It is not a generic term with application to any

crime involving violence, as that term may be commonly defined. That the DOJ chose not to use the language of section 101(a)(43)(F) of the Act or 18 U.S.C. § 16 in promulgating 8 C.F.R. § 212.7(d) indicates that “violent or dangerous crimes” and “crime of violence” are not synonymous. The Department of Justice clarified the relationship between these distinct terms in the interim final rule codifying 8 C.F.R. § 212.7(d):

[I]n general, individuals convicted of aggravated felonies would not warrant the Attorney General's use of this discretion. In fact, the proposed regulations stated that even if the applicant can meet the "exceptional and extremely unusual hardship" standard for the exercise of discretion, depending upon the severity of the offense, this might "still be insufficient" to obtain the waiver. See 67 FR at 45407. That language would substantially limit the circumstances under which an individual convicted of an aggravated felony would be granted a waiver as a matter of discretion. Therefore, the Department believes that this language achieves the goal of the commenter while not unduly constraining the Attorney General's discretion to render waiver decisions on a case-by-case basis.

67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Therefore, the fact that a conviction constitutes an aggravated felony under the Act may be indicative that an alien has also been convicted of a violent or dangerous crime, but it is not dispositive. Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual “case-by-case basis.” The AAO interprets the phrase “violent or dangerous crimes” in accordance with the plain or common meaning of its terms, consistent with any published precedent decisions addressing discretionary denials under 8 C.F.R. § 212.7(d) or the standard originally set forth in *Matter of Jean*.

In cases where domestic battery involves serious bodily harm the AAO will find that the crime is a violent or dangerous crime. The AAO notes that police reports in the record indicate that the applicant punched his spouse numerous times in the head and neck area, kicked her in the back and side, and wiped her in the legs with a belt., The AAO finds that the applicant’s crime was a violent and dangerous crime. The AAO therefore concludes that the applicant is subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

Accordingly, the applicant 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, the AAO 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.*

The exceptional and extremely unusual hardship standard is more restrictive than the extreme hardship standard. *Cortes-Castillo v. INS*, 997 F.2d 1199, 1204 (7th Cir. 1993). Since the applicant

is subject to 8 C.F.R. § 212.7(d), merely showing extreme hardship to his qualifying relatives under section 212(h) of the Act is not sufficient. He must meet the higher standard of exceptional and extremely unusual hardship. Therefore, the AAO will at the outset determine whether the applicant meets this standard.

In *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001), the BIA determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that “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 61. The AAO notes that the exceptional and extremely unusual hardship standard in cancellation of removal cases is identical to the standard put forth by the Attorney General in *Matter of Jean, supra*, and codified at 8 C.F.R. § 212.7(d).

The BIA stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative’s family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative’s ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *Id.*

In *Monreal*, the BIA provided additional examples of the hardship factors it deemed relevant for establishing 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 63-4.

In the precedent decision issued the following year, *Matter of Andazola-Rivas*, the BIA 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.” 23

I&N Dec. 319, 323 (BIA 2002). The issue presented in *Andazola-Rivas* was whether the Immigration Judge correctly applied the exceptional and extremely unusual hardship standard in a cancellation of removal case when he concluded that such hardship to the respondent's minor children was demonstrated by evidence that they "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 (internal quotations omitted). The BIA viewed the evidence of hardship in the respondent's case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The BIA noted:

While almost every case will present some particular hardship, the fact pattern presented here is, in fact, a common one, and the hardships the respondent has outlined are simply not substantially different from those that would normally be expected upon removal to a less developed country. Although the hardships presented here might have been adequate to meet the former "extreme hardship" standard for suspension of deportation, we find that they are not the types of hardship envisioned by Congress when it enacted the significantly higher "exceptional and extremely unusual hardship" standard.

23 I&N Dec. at 324.

However, the BIA in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as *Andazola-Rivas*, 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 BIA found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The BIA noted that these factors included her heavy financial and familial burden, lack of support from her children's father, her U.S. citizen children's unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The BIA stated, "We consider this case to be 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. 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."). The AAO notes that exceptional and extremely unusual hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The AAO notes that the record submitted by the applicant thoroughly documents the applicant's spouse's history of mental health problems. The record indicates that the applicant's spouse has been undergoing psychotherapy on and off since 2004. The record indicates that from May 7, 2004 to

March 8, 2005 the applicant's spouse was attending individual and couples therapy with the applicant. In a letter dated March 8, 2005, [REDACTED] states that the applicant's spouse addressed issues of anger management, trust, communication, and grief and anger related to her father's disappearance in 1998. The AAO notes that police investigation records indicate that the applicant's spouse's father went missing in 1998 and his body was never found. Psychological records indicate that the applicant's spouse continues to suffer emotional distress as a result of what happened with her father and still hopes for his return home. The record indicates that in 2007 the applicant's spouse returned to see a psychologist for post-traumatic stress disorder and fear of driving after being in a severe car accident and in 2009 began receiving psychiatric care for depression and anxiety.

In a letter dated December 7, 2009 the applicant's spouse's psychiatrist, [REDACTED], states that the applicant's spouse has been receiving psychiatric care from him since January 2009. He states that his primary focus has been on medication management for depression and anxiety and that the applicant's spouse has also been seeing another psychiatrist at their hospital for psychotherapy. [REDACTED] states that the applicant's spouse was prompted to seek treatment after her husband was deported to Mexico. He states that the applicant's spouse's separation from the applicant has greatly increased her depression and anxiety. He states that this separation is also affecting her children and that the applicant's spouse has sought mental health treatment for them as well. The record includes documentation of a hospital visit by the applicant's spouse on December 3, 2009 for medication management of her depression and anxiety. The documentation states that the applicant's spouse states that she is not doing well because her husband was denied entry into the United States, that she cannot sleep, that she is tearful all of the time, and that she is very worried about the well-being of her children. The documentation indicates that the applicant's spouse and children are in psychotherapy and that the applicant's spouse has no other means of support in the United States except her mother. The doctor's diagnosis for the applicant's spouse is major depressive disorder.

The AAO notes that the record also includes two letters from teachers of the applicant's children. The children's kindergarten teacher, in a letter dated December 8, 2009, states that she feels that separation from the applicant is affecting his children socially and emotionally. She states that the applicant's daughter has been referred to a special education speech and language program because of her lack of speaking and vocabulary.

The record also includes numerous statements from the applicant's spouse. In her most recent statement, dated December 17, 2009, she states that she and the applicant have been together since 2002 and that it was very hard for her to be close to the applicant because she suffered from abandonment issues after her father went missing when she was 13 years old. She also states that she believes she was suffering from bipolar disorder when she met the applicant and would panic every time he left her. She states that she eventually sought treatment for her issues and was diagnosed with bipolar disorder. She states that she was prescribed Lithium which made her feel "crazy" and she would "need to break and smash things to make [her]self feel better." She states that many times the applicant would try to stop her from being destructive and she would call the police. She states that she eventually stopped taking Lithium and she and the applicant began to go to counseling together. The AAO notes that the record contains a prescription record with Lithium listed as a medication

prescribed to the applicant's spouse. The applicant's spouse states further that when the applicant started the immigration process she felt like she was being abandoned all over again and that she returned to biweekly counseling as well as psychiatrist visits. She states that everyday she suffers mentally and emotionally. She states that she is now suffering financially without the help of the applicant and must rely on her mother for food and clothing. She states that she supports the applicant in Mexico, that he lives in a very small town, and that he was recently injured causing her to have to pay health care costs upfront. She states that she would like to visit the applicant in Mexico, but cannot afford to. Finally, she states that the applicant was always the one to hold her together at her weakest moments and that she does not feel whole without him.

The AAO finds that the applicant has established that his U.S. citizen spouse is suffering exceptional and extremely unusual hardship as a result of being separated from the applicant. The determining and unusual factors that set this case apart and raise the hardship to the level of exceptional and extremely unusual hardship are: the applicant's spouse's six year history of mental health problems; her treatment and care for depression; the existence of two minor children for whom the applicant's spouse cares and who are also undergoing counseling; and the fact that the only other family member the applicant's spouse can rely on in the applicant's absence is her mother. Thus, the record supports a finding that the applicant's spouse is suffering exceptional and extremely unusual emotional hardship as a result of separation.

However, the AAO cannot find that the applicant's spouse will suffer exceptional and extremely unusual hardship as a result of relocation. The AAO notes that the applicant has not submitted any documentation regarding the hardship his spouse would suffer if she relocated to Mexico. With the exception of the applicant's spouse's brief statements about country conditions in Mexico, the record is silent as to what hardship the applicant's spouse would face upon relocation.

The AAO acknowledges that the U.S. Department of State has issued a travel warning for Mexico, dated September 10, 2010 which states that since 2006, the Mexican government has engaged in an extensive effort to combat drug-trafficking organizations (DTOs). The warning states that Mexican DTOs have been engaged in a vicious struggle with each other for control of trafficking routes and that in order to prevent and combat violence, the government of Mexico has deployed military troops and federal police throughout the country. The warning states that DTOs have erected unauthorized checkpoints, and killed motorists who have not stopped at them and that DTOs have employed automatic weapons and grenades, sometimes impersonating police. The warning quotes published reports, which states that 22,700 people have been killed in narcotics-related violence in Mexico since 2006 including innocent bystanders. The warning goes on to state that although narcotics-related crime is a particular concern along Mexico's northern border, violence has occurred throughout the country, including in areas frequented by American tourists. The warning states that U.S. citizens traveling in Mexico should exercise caution in unfamiliar areas and be aware of their surroundings at all times and that bystanders have been injured or killed in violent attacks in cities across the country, demonstrating the heightened risk of violence in public places. The warning states further that in recent years, dozens of U.S. citizens living in Mexico have been kidnapped and most of their cases remain unsolved. The AAO notes that although the travel warning is troubling, the violence in Mexico is occurring predominately in specific localities and the current record does

not link the applicant to any of these locations. Thus, the AAO cannot find that relocation would be exceptional and extremely unusual hardship, or even extreme hardship, for the applicant's spouse.

As stated above, the applicant must show that his spouse would suffer exceptional and extremely unusual hardship, and we apply the same rules to this standard as we do to the extreme hardship standard: the applicant must show that his spouse would suffer exceptional and extremely unusual hardship as a result of separation and as a result of relocation. Because the applicant has only shown exceptional and extremely unusual hardship to his spouse in the event of separation, the AAO will not find that he has met the heightened hardship standard set forth in 8 C.F.R. § 212.7(d). As stated above, we also would not find on the present record that the applicant has demonstrated extreme hardship to his spouse should she relocate to Mexico, and thus a discretionary analysis is actually unnecessary. Nevertheless, we also note that even an applicant who has demonstrated exceptional and extremely unusual hardship does not necessarily warrant a favorable exercise of discretion under 8 C.F.R. § 212.7(d).

Accordingly, as the applicant failed to demonstrate that he is statutorily eligible for a waiver, or that he merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d), the appeal will be dismissed.

ORDER: The appeal is dismissed.