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



H6

Date: **FEB 29 2012** Office: SANTO DOMINGO FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry 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, Santo Domingo, Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Trinidad and Tobago. He was found to be inadmissible to the United States pursuant to 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; and section 212(a)(9)(B)(i)(II) of 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. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), so as to immigrate to the United States. The director concluded that the applicant had failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel maintains that the applicant's wife's affidavit coupled with other evidence demonstrates extreme hardship to the applicant's U.S. citizen wife and their two U.S. citizen children and his child from a prior relationship, and that their hardships were not fully considered. Counsel indicates that the applicant's 42-year-old wife is a certified nurse aide and will not be able to obtain certification in Trinidad or earn a sufficient income in which to earn a decent living and support herself, her husband, and her children. Counsel states that the applicant's son is 18 years old and has enlisted in the U.S. Navy. Counsel asserts that the applicant's wife has lived in the United State since she was 17 years old; and she is not willing to leave the United States and separate from her friends, job, and the emotional support system provided by her mother, father, and sisters. Counsel states that there is no suitable place in Trinidad for the applicant's wife and 11-year-old daughter. Counsel states that the applicant earns the equivalent of USD \$1,500 a month, and consequently they cannot afford more than a two-bedroom apartment. Additionally, counsel indicates that the applicant's mother's accommodations are uninhabitable for the applicant's daughter and wife. Counsel conveys that the applicant's wife takes medication for high blood pressure and depression and cannot afford counseling. Counsel indicates that the applicant's wife's income is not enough income to support herself and her two children, and that the applicant was the family's primary source of income.

We will first address the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

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.

The record reflects that on April 8, 2002, the applicant was arrested and charged with second-degree aggravated assault (deadly weapon) in Houston, Texas. On April 11, 2002, the applicant pled guilty

to the charge and the judge deferred adjudication of guilty and placed the applicant on community supervision for three years and ordered that the applicant pay a fine and court costs.

The director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

The applicant was also found inadmissible under section 212(a)(9)(B) of the Act for unlawful presence. That section provides, in part:

(B) Aliens Unlawfully Present

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

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

U.S. Citizenship and Immigration Services (USCIS) records reflect that on April 14, 2004, an immigration judge ordered the applicant's removal from the United States. On June 14, 2005, the Board of Immigration Appeal (Board) affirmed the immigration judge's decision. On June 16, 2006, the applicant filed a motion to reopen proceedings to apply for voluntary departure. On October 17, 2006, the Board denied the motion. On January 18, 2007, the applicant left to Trinidad. Thus, the applicant began to accrue unlawful presence from June 14, 2005 to January 18, 2007, and when the applicant left the country he triggered the ten-year bar, rendering him inadmissible under section 212(a)(9)(B)(i)(II) of the Act. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

The applicant was convicted of aggravated assault with a deadly weapon. 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). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in 8 C.F.R. § 212.7(d). Thus, we find that the statutory terms "violent or dangerous crimes" and "crime of violence" are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependent on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms "violent" and "dangerous". The term "dangerous" is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms "violent" and "dangerous" in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). 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." 67 Fed. Reg. at 78677-78.

The AAO finds that aggravated assault with a deadly weapon is a violent crime. In the instant case, as we find that there are no national security or foreign policy considerations that would warrant a favorable exercise of discretion, we will consider whether denial of admission would result in exceptional and extremely unusual hardship.

In *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001), the Board 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 Board 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 Board 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 Board 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.*

We note that in *Monreal*, the Board 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 Board 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 Board 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 Board 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 Board 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 Board found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The Board 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 Board 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 evidence in this case includes birth certificates, tax records, marriage certificates, medical records, a psychological assessment, financial records, school records, affidavits, a divorce decree, invoices, information about Trinidad and Tobago, and other documentation.

The applicant's wife asserted in her affidavits dated May 11, 2009 and October 27, 2009, that she has financial and emotional hardship and her son and daughter have emotional and behavioral problems consequent to separation from the applicant. The applicant's wife conveys that her stepdaughter was diagnosed with attention deficit disorder and has behavioral problems. The psychological evaluation dated March 13, 2008 reflects that the applicant's wife and youngest daughter were diagnosed with having anxiety and depressed mood as a consequence of separation from the applicant. The record contains evidence of judgments recovering back rent, invoices of monthly expenses, rental agreement, and wage statement for 2009 of the applicant's wife. The applicant conveys in his affidavit dated May 5, 2009 that he cannot financially assist his wife and their minor daughter (who was born on September 10, 1997).

The asserted hardships in the instant case are emotional and financial in nature. In regard to emotional hardship, the psychologist did not indicate in the evaluation that she was aware of the applicant's having perpetrated a crime against his wife (aggravated assault with a deadly weapon) on April 8, 2002, divorcing his wife on July 7, 2005, and remarrying her on February 28, 2006. The psychologist has not considered, in the context of domestic violence, the effect of separation from

the applicant on the applicant's wife. Additionally, the letter in the record by the applicant's youngest daughter's school teacher dated April 2, 2009 indicates that the applicant's daughter is bothered by the absence of the applicant, but is doing well in school. Furthermore, the applicant's oldest daughter, who is now 19 years old, was raised by her biological mother in Massachusetts and only spent holidays and summers with the applicant. In view of the age and maturity of the applicant's son and oldest daughter, the record does not show the extent to which they may still be emotionally and financially dependent on their father. Additionally, the applicant has not demonstrated that his son and daughters are not able to visit him in Trinidad. The submitted evidence of financial records is consistent with the applicant's wife's assertions of financial hardship. But evidence in the record relating to the applicant suggests that he has the means to financially assist his wife. The rental agreement dated March 2009 indicates that the applicant pays monthly rent the equivalent of USD \$500, and the letter by his employer dated March 9, 2009 states that the applicant earns a gross monthly salary of TT \$10,000 (USD \$1,500) and is paid an additional offshore allowance of \$40.00 per hour (USD \$6). The applicant's wife claims that the applicant's employer took away her husband's expatriate status in January 2009, so he is no longer paid in U.S. currency. Even so, the applicant has not fully demonstrated that his income is not enough to provide some support to his wife and child. Thus, when the hardship factors are considered together, they do not demonstrate that the applicant's wife and children would experience exceptional and extremely unusual hardship if they remain in the United States without him.

In regard to joining the applicant to live in Trinidad, the applicant's wife asserts that the health care and educational system is not as advanced as in the United States, they will not have the means to support themselves and afford health care, she be forced to separate from family members in the United States, she will lose her job and not find work in Trinidad due to age discrimination, and her daughter will live in reduced circumstances in a country that is foreign to her.

The claimed hardship factors are financial and emotional in nature. The submitted evidence from the U.S. Department of State about Trinidad and Tobago is consistent with the applicant's wife's assertion of limited medical care and access to supplies and medication, and public health facilities being below U.S. standards for treating serious injuries and illness. However, private facilities are stated to provide better care than most public health facilities. U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information – 2008: Trinidad and Tobago*, 2-3 (March 4, 2009). While the record shows that the applicant's wife has had surgery in 2008 and an abdominal hysterectomy in 2007, and takes medication for elevated blood pressure, the applicant has not fully demonstrated that his income as an electrical supervisor is not enough to buy private health insurance and provide a decent standard of living for his family. The applicant has not demonstrated that medication to treat high blood pressure is not available in Trinidad. The applicant submitted a medical record dated January 2007 indicating that he has back pain, but the record before the AAO does not contain further documentation about this and its impact on the applicant's ability to provide for his family. Though counsel indicates that the applicant lives with his two daughters from a prior relationship so the applicant's wife and daughter cannot live with him, the record reflects that the applicant's daughters are adults (they are 21 and 22 years old), so they should be able to support themselves and live elsewhere. The applicant has not demonstrated that he does not have sufficient resources for his daughter, who is now 14 years old, to have an education in Trinidad comparable to the education she now receives in the United States and to ease the transition of her studies. Finally, we acknowledge that the applicant's wife will experience hardship in separating from her parents

and siblings in the United States and leaving her life in the United States, particularly after living in the United States since she was 17 years old. However, when the hardship factors are considered together, they do not demonstrate the applicant's wife and children will experience exceptional and extremely unusual emotional hardship if they joined the applicant to live in Trinidad.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

ORDER: The appeal is dismissed.