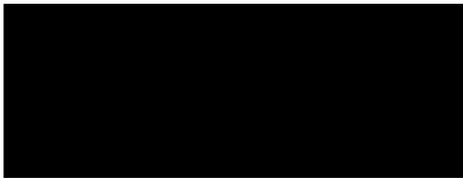


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Administrative Appeals Office*  
20 Massachusetts Avenue, N.W. MS 2090  
Washington, DC 20529-2090  
U.S. Citizenship  
and Immigration  
Services



H2

FEB 27 2012

DATE:

OFFICE: MIAMI

FILE:



IN RE:



APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the Field Office Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Chile. He was found to be inadmissible to the United States 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 been convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of his inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. §1182(h), so that he may live in the United States with his spouse.

In a decision dated July 28, 2009, the director determined the applicant had failed to establish that his spouse would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

On appeal the applicant asserts that his wife and family will experience extreme emotional and financial hardship if he is denied admission into the United States. In support of his assertions the applicant submits affidavits, letters from employers and federal income tax evidence. The applicant does not contest his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

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

- (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...or an attempt or conspiracy to commit such a crime...is inadmissible.

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 Eleventh Circuit Court of Appeals, in whose jurisdiction the present case arises, stated in *Fajardo v. U.S. Attorney General*, 659 F.3d 1303, 1305-06 (11<sup>th</sup> Cir. 2011):

To determine whether a conviction for a particular crime constitutes a conviction of a crime involving moral turpitude, both this Court and the BIA have historically looked to “the inherent nature of the offense, as defined in the relevant statute, rather than the circumstances surrounding a defendant’s particular conduct. (citations and quotations omitted).

The court indicated that where a statutory definition encompasses some criminal conduct that categorically would involve moral turpitude as well as other conduct that would not involve moral turpitude, “[T]he record of conviction—i.e., the charging document, plea, verdict, and sentence—may also be considered. This has been called the modified categorical approach.” *Fajardo v. U.S. Attorney General*, 659 F.3d at 1305-06 (citations omitted). The court stated further that:

Counts charging separate offenses, even if simultaneously charged, may not be combined and considered collectively to determine whether one or the other constitutes a conviction of a crime involving moral turpitude.

*Id.* (citations omitted). The BIA held in *Matter of Short*, 20 I. & N. Dec. 136, 139 (BIA 1989) that two crimes that were not themselves crimes involving moral turpitude could not become a crime involving moral turpitude when committed together (“Moral turpitude cannot be viewed to arise from some undefined synergism by which two offenses are combined to create a crime involving moral turpitude, where each crime individually does not involve moral turpitude.”)<sup>1</sup>

In the present matter, the record contains criminal history evidence reflecting the applicant was convicted on November 20, 1996, in the Circuit Court of the 11<sup>th</sup> Judicial Circuit, Dade County Florida, of the following offenses:

Battery, in violation of Florida Statutes 784.03 – 1<sup>st</sup> degree Misdemeanor. The applicant was sentenced to one year probation;

False Imprisonment, in violation of Florida Statutes 787.02(2) – 3<sup>rd</sup> degree Felony; and

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<sup>1</sup> It is noted that the director improperly looked to the applicant’s police arrest record in determining whether the applicant’s conduct involved moral turpitude. While this is allowed in some jurisdictions, as stated above, the Eleventh Circuit Court of Appeals has held that only the record of conviction may be considered. The director additionally analyzed the applicant’s crimes collectively in determining that the applicant’s convictions involved moral turpitude, which is not permitted under Eleventh Circuit or Board of Immigration Appeals case law.

Tamper/Witness/Threat in violation of Florida Statutes 914.22(a) – 3<sup>rd</sup> degree Felony. The applicant was sentenced to eighteen months probation for this, and the False Imprisonment offense.<sup>2</sup>

Section 784.03 of the Florida Statutes provides:

(1)(a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or
2. Intentionally causes bodily harm to another person.

As a general rule, simple assault or battery is not deemed to involve moral turpitude for purposes of immigration law, 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). The BIA stated in *Matter of Solon*, 24 I&N Dec. 239, 241 (BIA 2007):

Assault may or may not involve moral turpitude. Offenses characterized as “simple assaults” are generally not considered to be crimes involving moral turpitude. This is so because they require general intent only and may be committed without the evil intent, depraved or vicious motive, or corrupt mind associated with moral turpitude. (citations omitted).

The BIA stated further:

[W]e have recognized that not all crimes involving the injurious touching of another person reflect moral depravity on the part of the offender. Many simple assault statutes prohibit a wide range of conduct or harm, including *de minimis* conduct or harm, such as offensive or provocative physical contact or insults, which is not ordinarily considered to be inherently vile, depraved, or morally reprehensible.

*Id.* Where an assault or battery statute necessarily involves 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, however, the offense may involve moral turpitude. *See, e.g., Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988).

Under Eleventh Circuit case law, the AAO may not to go beyond the conviction record to determine the circumstances under which the applicant was convicted. The present sentencing

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<sup>2</sup> The record contains a May 19, 1998 letter from the Florida Department of Corrections reflecting that the applicant successfully completed the terms of his probation.

order does not specify under which provision of section 784.03 the applicant was convicted. The Information/charging document contained in the record reflects, however, that the applicant, “[d]id unlawfully commit battery upon (name omitted) by actually and intentionally touching or striking said person against said person’s will, in violation of s. 784.03, Fla. Stat., . . .” This language clearly establishes that the applicant was convicted under Florida Statutes section 784.03(1)(a)(1).

The statutory language contained in section 784.03(1)(a)(1) reflects that a conviction under its provisions requires an intentional touching of another against their will. The language is general and does not contain an aggravating element. Accordingly, the AAO finds that the applicant’s conviction for Battery is not a crime involving moral turpitude, and does not render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 787.02 of the Florida Statutes provides:

(1) (a) The term “false imprisonment” means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will.

(b) Confinement of a child under the age of 13 is against her or his will within the meaning of this section if such confinement is without the consent of her or his parent or legal guardian.

The statutory language contained in section 787.02 of the Florida Statutes reflects that a person can be convicted of False Imprisonment either by using forcible threats *or* through secretly confining or restraining another. Whereas forcible threats that restrain the liberty of another person without lawful authority can be seen as conduct involving moral turpitude, secretly confining or restraining another may not involve an aggravating factor or constitute a crime involving moral turpitude.<sup>3</sup>

Under Eleventh Circuit case law, the AAO is not allowed to go beyond the conviction record in order to determine the circumstances under which the applicant was convicted. Here, the charging document, plea, verdict, and sentence for the applicant’s conviction for False Imprisonment under section 787.02(2), contain no additional information to clarify the specific

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<sup>3</sup> The AAO is unaware of a published federal case addressing whether the crime of False Confinement under Florida law has been held to be a crime of moral turpitude. It is noted, however, that in *People v. Cornelio*, 207 Cal.App.3d 1580, 255 Cal.Rptr. 775 (1989), the California court found the crime of false imprisonment to be a crime involving moral turpitude, stating that the statutory elements of violence or menace necessarily involved moral turpitude because either element indicated a general readiness to do evil, i.e., commit an act of baseness or depravity. The court observed that the distinction between simple false imprisonment and felony false imprisonment was the difference in the mental state required to commit the offense, noting that crimes committed intentionally or knowingly are more often found to involve moral turpitude.

provision under which the applicant was convicted.<sup>4</sup> Because it is not clear from the record of conviction whether the applicant's false imprisonment conviction resulted from the use of forcible threats or merely from nonviolent confinement or restraint, the AAO is unable to conclusively determine whether the applicant's conviction for False Imprisonment constitutes a crime involving moral turpitude, as set forth in section 212(a)(2)(A)(i)(I) of the Act.

The AAO notes that, in any event, the applicant is inadmissible under section 212(a)(2)(A)(i) of the Act, for being convicted of a crime involving moral turpitude based on his conviction for Tampering with Witness, Victim, or Informant, in violation of section 914.22(1) of the Florida Statutes, as discussed below.

Section 914.22 of the Florida Statutes provides:

Tampering with or harassing a witness, victim, or informant; penalties.—

(1) A person who knowingly uses intimidation or physical force, or threatens another person, or attempts to do so, or engages in misleading conduct toward another person, or offers pecuniary benefit or gain to another person, with intent to cause or induce any person to:

- (a) Withhold testimony, or withhold a record, document, or other object, from an official investigation or official proceeding;
- (b) Alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official investigation or official proceeding;
- (c) Evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official investigation or an official proceeding;
- (d) Be absent from an official proceeding to which such person has been summoned by legal process;
- (e) Hinder, delay, or prevent the communication to a law enforcement officer or judge of information relating to the commission or possible commission of an offense or a violation of a condition of probation, parole, or release pending a judicial proceeding; or

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<sup>4</sup> The Court Information for the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, contained in the record simply repeats the language of the statute by stating that:

[O]n or about August 16, 1996, in the County and State aforesaid, without lawful authority did then and there forcibly by threat, or secretly confine, abduct, imprison or restrain another person . . . against that person's will, in violation of s. 787.02(2), Fla. Stat.,

(f) Testify untruthfully in an official investigation or an official proceeding,  
commits the crime of tampering with a witness, victim, or informant.

(2) Tampering with a witness, victim, or informant is a:

(a) Felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, where the official investigation or official proceeding affected involves the investigation or prosecution of a misdemeanor.

The Court Information with regard to the applicant's conviction for Tampering with Witness, Victim, or Informant, in violation of Florida Statutes section 914.22(1) reflects that the applicant:

[O]n or about August 16, 1996, in the County and State aforesaid, did knowingly intimidate, use physical force, threaten or attempt to threaten (name omitted) with intent to cause or induce (name omitted) to hinder, delay, or prevent the communication to a law enforcement officer or judge of information relating to the commission of an offense, in violation of s. 914.22(1), Fla. Stat.

The AAO finds that the applicant's conviction for Tampering with Witness, Victim, or Informant clearly relates to Florida Statutes section 914.22(1) subsection (e). The AAO finds further that a conviction under this section of law involves moral turpitude, in that it convicts for the aggravated factors of knowingly intimidating, using physical force, threatening or attempting to threaten a person, with intent to cause or induce the person to hinder, delay, or prevent the communication to a law enforcement officer information relating to the commission of an offense.

The BIA has held that the intentional transmission of threats is evidence of a vicious motive or a corrupt mind, and a crime encompassing such conduct may involve moral turpitude. *See Matter of Ajami*, 22 I&N Dec. 949, 952 (BIA 1999) (addressing whether a stalking offense that involves the making of credible threats against another for the purpose of concealing criminal activities constitutes a crime involving moral turpitude.) Furthermore, the Eleventh Circuit Court of Appeals has found that concealing criminal behavior involves moral turpitude, further supporting the conclusion that preventing another from revealing criminal behavior is morally turpitudinous. *See Itani v. Ashcroft*, 298 F.3d 1213 (11<sup>th</sup> Cir. 2002) (finding moral turpitude in crime of felony misprision as it involves an affirmative act of concealment or participation in a felony). We note that similar obstruction of justice crimes have also been held to be a crime involving moral turpitude. *See Fuentes-Cruz v. Gonzales*, 489 F. 3d 724, 728 5<sup>th</sup> Cir. 2007) (the offense of "unlawful transport" is a crime involving moral turpitude because the alien "knowingly, or intentionally, designed the manner he transported the individuals to conceal them from law enforcement authorities, thereby intending to deceive such authorities."); *see also, Garcia-Maldonado v. Gonzales*, 491 F.3d 284, 290 (5<sup>th</sup> Cir. 2007) (the offense of failing to stop and

render aid involved moral turpitude because the offense reflected an intentional attempt to evade responsibility)

In light of the statutory language contained in section 914.22(a)(e) of the Florida Statutes, and in light of the above holdings, the AAO finds that the applicant's conviction under section 914.22(1)(e) of the Florida Statutes constitutes a conviction for a crime involving moral turpitude. Accordingly, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. This section provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated.

....

(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 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 . . .

In the present matter, the conviction rendering the applicant inadmissible occurred in November 1996, over fifteen years ago. The record reflects that the applicant filed his Form I-485, adjustment of status application less than fifteen years later, on July 25, 2006. However, an application for admission is a "continuing" application, and admissibility is adjudicated on the basis of the law and facts in effect on the date of the decision. *See Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992). More than fifteen years have now passed from the date of the events that made the applicant inadmissible. The applicant is therefore eligible for consideration of a waiver under section 212(h)(1)(A) of the Act.

In addition, the applicant's U.S. citizen spouse is a qualifying relative for section 212(h)(1)(B) of the Act waiver of inadmissibility purposes. It is noted that the applicant also indicates that he has two U.S. citizen stepdaughters. The record lacks birth certificate, citizenship or immigration status, or other documentary evidence to corroborate the assertion that the applicant has two U.S. citizen stepdaughters. The applicant therefore failed to establish that they are qualifying relatives for section 212(h)(1)(B) of the Act purposes.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 will merit a favorable exercise of discretion solely on the balancing of favorable and adverse factors. The applicant's conviction 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). 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 (18 U.S.C. § 16(a)), 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 (18 U.S.C. § 16(b)). 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 statutory language contained in section 787.02 of the Florida Statutes reflects that a person can be convicted of False Imprisonment for “forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will.” The statutory provisions contained in section 787.02 of the Florida Statutes do not categorically qualify the offense as a crime of violence under 18 U.S.C. § 16(a), because the offense does not necessarily involve the use, threatened use, or attempted use of physical force, and the charging document, plea, verdict, and sentence for the applicant’s felony conviction contain no additional information to clarify whether the applicant’s false imprisonment conviction resulted from the use of forcible threats or from nonviolent secret confinement or restraint.

The AAO is unaware of a published federal case addressing whether the crime of False Confinement under Florida law has been held to be a crime of violence, or a violent or dangerous crime under 8 C.F.R. § 212.7(d). The U.S. Supreme Court instructs in *Leocal v. Ashcroft*, 543 U.S. 1 (2004), however, that the analysis of whether an offense is a crime of violence under 18 U.S.C. § 16(b) focuses on whether the crime, by its nature, raises a substantial risk of the use of force, and not on the crime’s *mens rea*. In *Matter of U. Singh*, 25 I. & N. Dec. 670 (BIA 2012), the BIA discusses the *Leocal* decision stating:

In regard to the question of *mens rea*, the [Supreme] Court stated that § 16(b) covers offenses that naturally involve a person acting in disregard of the risk that physical force might be used against another in committing an offense. The reckless disregard in § 16(b) relates *not* to the general conduct or to the possibility that harm will result from a person’s conduct, but to the risk that the

use of physical force against another might be required in committing a crime . . . . Thus, the critical inquiry is not the *mens rea* required for conviction of a crime, but rather whether the offense, by its nature, involves a substantial risk that the perpetrator will use force in completing its commission.

*Id.* at 675-76. (citations omitted.)

The Fifth Circuit Court of Appeals determined that false imprisonment constituted a crime of violence for sentence enhancement purposes, noting that even if the restraint is accomplished by deception, it still involves a “serious potential risk of physical injury.” See *United States v. Riva*, 440 F.3d 722, 724-25 (5th Cir. 2006) (addressing a conviction under Texas law for unlawful restraint of a person less than 17 years of age). The Second Circuit Court of Appeals also held in *Dickson v. Ashcroft* that the unlawful imprisonment of a competent adult by means of force, intimidation, or deception in violation of New York law qualified as a crime of violence under 18 U.S.C. § 16. 346 F.3d 44, 49-51 (2d Cir. 2003). Moreover, the Tenth Circuit Court of Appeals held in a criminal sentencing case involving the offense of false imprisonment under New Mexico law that the offense was a crime of violence in that “there is a substantial risk of physical force being used when a crime involves the non-consensual act of false imprisonment”. *United States v. Zamora*, 222 F.3d 756, 764 (10th Cir.2000) (*cert. denied*, 531 U.S. 1043 (2000)).

Based on the above, the AAO finds that the offense of False Imprisonment under section 787.02 of the Florida Statutes involves a substantial risk that the perpetrator will use force in completing its commission. The AAO therefore concludes that the applicant’s conviction for false imprisonment is a violent or dangerous crime, and the heightened discretionary standard of 8 C.F.R. § 212.7(d) is applicable in this case.<sup>5</sup>

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

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<sup>5</sup> The AAO is unaware of a published federal case addressing whether the crime of Tampering with Witness, Victim, or Informant under Florida law has been held to be a crime of violence. However, having found that the applicant committed a violent or dangerous crime based on his False Imprisonment conviction, the AAO finds that it is unnecessary to make a determination with regard to whether the offense of Tampering with Witness, Victim, or Informant is also a violent or dangerous crime for discretionary purposes.

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 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.

In the present matter, the applicant asserts on appeal that his wife will experience emotional and financial hardship if he is denied admission into the United States. In support of his assertions,

the applicant submits affidavits written by himself, his wife and claimed family members. He also submits letters from employers and federal tax information.

The affidavits written by the applicant and his wife reflect that the couple married in the U.S. in 2001. The applicant's wife is employed as a baker for a school district and works only nine months out of the year. The applicant indicates that he is the primary earner in the family and that his wife would be unable to pay her living expenses and rent if she lost his source of income. The affidavits indicate further that the applicant's wife has two adult-aged daughters to whom the applicant is a father-figure, and that the entire family would experience emotional hardship due to separation if the applicant moved to Chile. The applicant's wife states she would be unable to afford to visit her husband in Chile. The applicant indicates further that it would be difficult to find work in Chile. The applicant stresses that it has been over 13 (now 15) years since he was convicted of a crime. He states that he regrets his past actions and that he has been a law-abiding citizen since that time. Letters from the applicant and his wife's employers, and 2008 federal income tax information corroborate employment status claims.

Upon review, the AAO finds the evidence in the record fails to show that the hardships faced by the applicant's wife, considered in the aggregate, rise substantially beyond the ordinary hardship that would be expected upon removal or inadmissibility.

The record lacks documentary evidence to corroborate the assertion that the applicant's wife would experience emotional hardship beyond that normally associated with removal or inadmissibility if she remained in the U.S., or if she moved with the applicant to Chile. The record also lacks evidence to demonstrate the applicant's wife's financial expenses and status, or to establish that she would be unable to find summer work, or would lose her home if the applicant were denied admission into the United States. The record contains no documentary evidence to corroborate the assertion that the applicant's wife has adult children or other family in the U.S. It is additionally noted that the applicant's wife is originally from Venezuela. She is thus familiar generally with the Spanish language spoken in Chile, and the record lacks corroborative evidence to establish the assertion that the applicant and his wife would be unable to find work in Chile.

Although the applicant and his wife's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Upon review of the totality of the evidence, the AAO finds that the applicant failed to demonstrate that the hardships his wife would face if she remains in the U.S., or if she relocates to Chile, rise substantially beyond the common results of removal or inadmissibility to the level of exceptional and extremely unusual hardship. Accordingly, the applicant did not demonstrate

Page 15

that he merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d), and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.