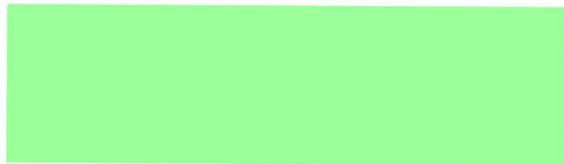




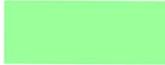
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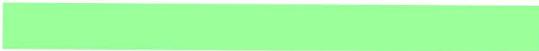
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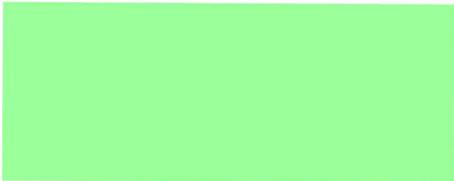
Office: LIMA, PERU

File: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Peru who 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. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen parents and two U.S. citizen children.

The applicant also indicated on his Form I-601 that he is inadmissible under 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 and seeking readmission within 10 years of his last departure from the United States, and section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), for seeking admission within 10 years of the date of his removal.

The field office director concluded that the applicant was statutorily ineligible for a waiver of inadmissibility because he had been convicted of an aggravated felony. Accordingly, the field office director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Acting Field Office Director*, dated September 28, 2012.

On appeal, counsel for the applicant contends that the field office director erred in finding that the applicant had been convicted of an aggravated felony because the applicant was sentenced to probation rather than imprisonment. The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering this decision.

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

The record reflects that the applicant adjusted his status to that of a lawful permanent resident on March 19, 1994. His conviction history is as follows:

On August 26, 1988, he was arrested for damaging property in violation of N.J. Stat. § 2C:17-3. The disposition of that arrest is not clear from the record. On August 30, 1990, the applicant was convicted of shoplifting in violation of N.J. Stat. § 2C:20-11(b)(2) and ordered to pay a fine. On September 25, 1990, he was convicted of making a false report in violation of N.J. Stat. § 2C:28-

4 and ordered to pay a fine. On October 17, 1991, he was convicted of simple assault in violation of N.J. Stat. § 2C:12-1(a)(1). His sentence was “downgraded to municipal level” and the applicant was sentenced to 180 days in jail. *See Disposition of Charges, City of Orange Township*, dated June 12, 2012. On September 25, 1995, the applicant was placed in conditional discharge status for possession of marijuana in violation of N.J. Stat. § 2C:35-10(a)(4) and possession of drug paraphernalia in violation of N.J. Stat. § 2C:36-2, with the requirement that he attend a six-month drug diversion program. On April 18, 1996, the charges were dismissed. On April 29, 1997, he was convicted in the New Jersey Superior Court for Hudson County of aggravated assault in the third degree in violation of N.J. Stat. § 2C:12-1b(2). He was sentenced to three years of probation, ordered to pay restitution and a fine, and given credit for two days spent in custody.

On April 11, 2001, an immigration judge ordered the applicant removed from the United States. He was removed at government expense on April 1, 2003.

We note that the applicant’s dismissed charges for possession of marijuana and drug paraphernalia do not constitute convictions for immigration purposes. Section 101(a)(48)(A) of the Act provides:

The term “conviction” means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

In this case, the applicant entered a plea of not guilty and there is no indication that a judge or jury found him guilty. He was placed on conditional discharge and the charges against him were eventually dismissed. Therefore, he has not been convicted of a controlled substance offense.

We also note that the applicant is no longer inadmissible under 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 and seeking readmission within 10 years of his last departure from the United States. The applicant accrued unlawful presence between the date he was ordered removed on April 11, 2001 and the date of his removal on April 1, 2003. However, 10 years have now passed since the applicant’s removal so he is not subject to section 212(a)(9)(B)(i)(II) of the Act and does not require a waiver under section 212(a)(9)(B)(v) of the Act.

Similarly, the applicant is no longer inadmissible under section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II), for being removed from the United States and then seeking admission within 10 years of the date of his departure or removal. As noted above, the applicant was removed on April 1, 2003, over ten years ago. Therefore, he does not require permission to reapply for admission pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). Accordingly, the AAO will only consider the applicant's eligibility for a waiver under section 212(h) of the Act.

The AAO concurs that the applicant's conviction for aggravated assault under N.J. Stat. § 2C:12-1b(2) is a crime involving moral turpitude. At the time of the applicant's conviction, N.J. Stat. § 2C:12-1b(2) stated, "A person is guilty of aggravated assault if he: . . . (2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon . . . ." N.J. Stat. § 2C:43-6 provides that an individual convicted of a crime in the third degree may be sentenced to imprisonment for three to five years.

In *Matter of O-*, 3 I&N Dec. 193 (BIA 1948) and *Matter of Montenegro*, 20 I&N Dec. 603 (BIA 1992), the Board held that assault with a weapon is a crime involving moral turpitude. As a general rule, simple assault or battery is not deemed to involve moral turpitude for purposes of the immigration laws. *Matter of Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996). However, this general rule does not apply where an assault or battery necessarily involved some aggravating dimension, such as the use of a deadly weapon. See, e.g., *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988). On appeal, counsel for the applicant concedes that the applicant's conviction is for a crime involving moral turpitude.

Having found the applicant's conviction for aggravated assault to be a crime involving moral turpitude rendering the applicant inadmissible, we need not separately address the applicant's other convictions. We will next consider whether he has met his burden of demonstrating eligibility for a waiver of inadmissibility under section 212(h) of the Act.

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

The Attorney General 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 . . . and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than seven years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

On appeal, counsel contends that the applicant has not been convicted of an aggravated felony. Section 101(a)(43)(F) of the Act provides that an aggravated felony includes "a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment [is] at least 1 year." Counsel correctly notes that to qualify as an aggravated felony, the actual sentence imposed must be at least one year. *See Alberto-Gonzalez v. INS*, 215 F.3d 906, 909 (9th Cir. 2000); *see also United States v. Graham*, 169 F.3d 787, 789-90 (3d Cir. 1999), *cert. denied*, 528 U.S. 845, 120 S.Ct. 116, 145 L.Ed.2d 99 (1999). The applicant was sentenced to three years of probation, so his aggravated assault conviction is not an aggravated felony.

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the applicant is inadmissible occurred more than 15 years before the date of the applicant's application for a visa, admission, or adjustment of status. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992). The applicant's conviction occurred in 1997, over 15 years ago, so he meets the requirements of section 212(h)(1)(A)(i) of the Act.

Section 212(h)(1)(A)(ii) and (iii) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States; and that the applicant establish his rehabilitation. The record contains a Peruvian Certificate of Criminal Records which indicates that the applicant does not have a criminal record in that country.

However, the record also indicates that the applicant was arrested in the United States on March 9, 2003 after being deemed a fugitive from justice under N.J. Stat. § 2A:160-21. The applicant has not submitted any other evidence that he has been rehabilitated. Therefore, the applicant has failed to demonstrate that his admission to the United States will not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated. Consequently, we find that the applicant has not established the requirements at section 212(h)(1)(A)(ii) and (iii) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives in this case are the applicant's parents and children.

Once eligibility for a waiver is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). A favorable exercise of discretion is limited in the case of an applicant who has been convicted of a violent or dangerous crime. Specifically, 8 C.F.R. § 212.7(d) states:

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 (Dec. 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 under N.J. Stat. § 2C:12-1b(2) is a violent crime because it involves purposely or knowingly attempting to cause or causing bodily injury to another with a deadly weapon. We therefore conclude that the applicant is subject to the heightened discretionary standard under 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.*

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 has 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.*

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 63-64.

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 determined that the evidence of 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 qualifying relatives in this case are the applicant’s U.S. citizen parents and his two U.S. citizen sons. The applicant’s mother states that she would suffer extreme hardship if the applicant were not permitted to return to the United States. She asserts that separation from the applicant has caused her to become depressed. She also notes that she cannot visit the applicant in Peru for long periods of time because her husband, the applicant’s father, suffers from serious medical problems, including coronary heart disease, diabetes, high blood pressure, and possible prostate cancer. She also contends that she is struggling to care for her husband and would like the applicant to be here to help care for him. The applicant’s mother also notes that the applicant has two U.S. citizen children who miss the applicant very much. She states that the applicant “is a changed person.” See *Affidavit of Eloisa Gomez*, dated May 16, 2012. The applicant’s mother also indicated in an undated letter that her husband’s only monthly income is a \$305 Social Security check. She also noted that the applicant’s sons have suffered in his absence because they have been abused by their stepfather. She alleged that one of the applicant’s sons, ( ), began to use marijuana due to the absence of a positive father figure and that he is now in a rehabilitation facility. She also stated that ( ) “is very lonely and sad and suffers from [insomnia] and [has been] taking medication [for] a very long time.”

The applicant’s father states that he loves the applicant and that he has visited him in Peru as much as possible. However, he notes that he may not be able to continue traveling to Peru due to

his worsening medical condition. He states that he has coronary heart disease, for which he had stents inserted in 2010. He also has diabetes and high blood pressure. Additionally, he contends that he was recently told that he has elevated levels of PSA and is therefore being monitored for prostate cancer. The applicant's father asserts that he takes eight different medications. He also notes that his wife, the applicant's mother, is elderly and that caring for him is difficult for her. He states that they would benefit from the applicant's help. Additionally, the applicant's father states that the applicant's two children miss the applicant very much and that the applicant's son, [REDACTED] has seen a psychiatrist for ADHD. *See Affidavit of [REDACTED]* dated May 16.<sup>1</sup>

The record contains a letter from the applicant's father's doctor indicating that he has been diagnosed with diabetes, coronary artery disease, and hypertension, and that he may have prostate cancer. Additionally, the doctor states that the applicant's father has been hospitalized five times, is unable to work due to his health conditions, and receives regular medical care. Finally, the doctor notes that the applicant's father "needs family members for closely [sic] supervision and support." *See Letter from [REDACTED]* dated March 23, 2012. Medical records also indicate that the applicant's father has undergone a prostate biopsy as well as several other medical tests. The record also contains a copy of the applicant's father's Social Security Benefits statement, which indicates that he receives \$305.90 per month.

The record also contains a psychological evaluation of the applicant's son, [REDACTED]. The evaluation notes that "there have been significant behavioral concerns in school," including "11 incidents requiring disciplinary action" in 12 months. *See Child Study Team Evaluation, [REDACTED]*, dated April 14, 2011. [REDACTED] states that [REDACTED] was placed on probation for a theft committed at school and that he admitted engaging in prior shoplifting. Additionally, Dr. [REDACTED] indicates that [REDACTED] "is noted to be disrespectful toward staff and parents," that he has engaged in "disruptive behavior, disrespect to teachers, not wearing ID, [being] unprepared to work, theft, sexual harassment, an internet incident [involving] placing inappropriate material on the internet, and being unmanageable in class." *Id.* Additionally, [REDACTED] was failing most of his classes. He had also been described as "angry with a short attention span and fidgety. . . . He is noted often to be restless, distracted, having trouble concentrating in class, and will deliberately do things to annoy others." *Id.*

[REDACTED] notes that [REDACTED] mother remarried after the applicant was removed to Peru and that [REDACTED] "does experience conflict with his step-father." *Id.* Additionally, [REDACTED] states that [REDACTED] misses the applicant. [REDACTED] also expressed that he had difficulty sleeping. [REDACTED] also states that [REDACTED] did well in elementary school and did not begin to exhibit problems with his grades or behavior until middle school. [REDACTED] diagnoses [REDACTED] with "oppositional-defiant disorder; delayed sleep phase (tendency to fall asleep late and arise late the next day)" and

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<sup>1</sup> The applicant's father's affidavit is dated only with the month and day, not the year. However, the month and day – May 16 – are the same as those listed on the applicant's mother's affidavit, which was executed in 2012.

possible ADHD. *Id.* He recommends “appropriate structure, support, and supervision” at school, “community-based psychological support,” possible medication if he is diagnosed with ADHD, and modification of his sleep schedule. *Id.*

The record also indicates that [REDACTED] was charged with possession of marijuana, distribution of a controlled substance, distribution of a controlled substance on school premises, possession of a controlled substance within 500 feet of a public school, and possession of drug paraphernalia. On July 24, 2012, [REDACTED] was placed on “enhanced probation” and was ordered to live with his grandfather (the applicant’s father). *See Juvenile Order of Disposition, Superior Court of New Jersey.* On August 22, 2012, [REDACTED] was admitted to a long term residential drug treatment program. *See Letters from [REDACTED],* dated August 8, 2012.

Additionally, the record contains a letter from [REDACTED] to the judge who placed him on probation. In the letter, [REDACTED] requests that the judge take him off probation. He explains that the judge extended his probation because he “declared [him]self guilty” but that he had only done so on his lawyer’s advice. He admits that he was smoking marijuana but alleges that he never sold drugs. [REDACTED] also states, “My stepfather used to verbally [and] physically abuse[] me since I was 9 years old. He used to beat me all the time. . . . I think he takes advantage because my father is not here. My father was deported since I was 9 years old. . . . Sometimes I wonder why my father left me and my brother alone. My father doesn’t know how much I have needed him. I know if my father is here he will never allow my stepfather to abuse me like that.” *See Letter from [REDACTED]* dated August 21, 2012.

The evidence is insufficient to show that denial of the waiver application would cause exceptional and extremely unusual hardship to the applicant’s mother. While the record shows that the applicant’s father earns only \$305.90 per month, there is no indication of whether the applicant’s mother works or earns income from any other source. The record also lacks any documentation of the applicant’s mother’s expenses. Additionally, while the applicant’s mother states that she struggles to care for her husband, it is unclear how in particular she is struggling or what type of assistance the applicant would provide for her. Finally, although the applicant’s mother claims to be depressed, there is no evidence to support her claim in the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Even when considered in the aggregate, the applicant’s mother’s concerns do not amount to exceptional and extremely unusual hardship.

However, the AAO finds that the applicant’s father would suffer exceptional and extremely unusual hardship if the waiver application were denied. The record indicates that the applicant’s father’s only income is a Social Security benefits check for \$305.90 per month, or \$3,670.80 per year. The applicant’s father has also been made responsible for caring for the applicant’s son, [REDACTED] who is struggling with drug abuse and serious behavioral problems. Additionally, the record shows that the applicant’s father, who is nearly 69 years old, has been diagnosed with

several serious medical conditions for which he has been hospitalized several times and for which he requires regular medical care and family support. The applicant's father has an established team of doctors in the United States who are familiar with his conditions and who are monitoring him for additional problems. If he were to relocate, the interruption in his care might have serious negative impacts on his health. In the aggregate, the AAO finds that the applicant's father's low income, advanced age, serious health conditions, and responsibility for the applicant's son would create exceptional and extremely unusual hardship for him if the waiver application were denied.

The AAO also finds that the applicant's son, [REDACTED] would experience exceptional and extremely unusual hardship if the waiver application were denied. The record indicates that [REDACTED] has exhibited serious behavioral problems in the applicant's absence. He has been disciplined in school numerous times, has failed his classes, and has been placed on probation for several drug-related charges. [REDACTED] was also placed in a long-term residential drug treatment facility at the age of 16. Furthermore, both [REDACTED] and the applicant's mother have indicated that [REDACTED] has been physically abused by his step-father, whom [REDACTED] mother married after the applicant was removed. [REDACTED] has expressed that he misses his father, that he feels abandoned by him, and that he believes his father would protect him from his step-father's abuse. [REDACTED] confirms that [REDACTED] has experienced conflict with his step-father. The applicant's mother also states that [REDACTED] has been very sad and lonely in the applicant's absence. Finally, [REDACTED] would be unable to relocate to Peru at this time due to his probation in the United States. Furthermore, relocation and separation from his mother, siblings, and grandparents would likely cause further emotional trauma for [REDACTED]. Considering these factors in the aggregate, the AAO finds that the applicant's inadmissibility would result in exceptional and extremely unusual hardship for [REDACTED]

Because the applicant has demonstrated exceptional and extremely unusual hardship to his father and his son, he has also demonstrated extreme hardship to those qualifying relatives. Therefore, he has shown that he is eligible for a waiver under section 212(h) of the Act.

The AAO does not condone the criminal acts committed by the applicant, which are significant negative factors against a favorable exercise of discretion. However, taking into account the exceptional and extremely unusual hardship to the applicant's father and son, the passage of time since he committed his crimes, and evidence of the lack of further criminal offenses, we find that the positive factors outweigh the negative factors in this case.

The applicant established his eligibility for a waiver under section 212(h) of the Act, and he has demonstrated that he merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d). The appeal will be sustained.

The AAO notes that the acting field office director also denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212). The Form I-212 was denied solely based on the denial of the Form I-

(b)(6)

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601. As discussed above, more than ten years have passed since the applicant was removed so he is no longer inadmissible under section 212(a)(9)(A)(ii)(II) of the Act and he does not need permission to reapply for admission pursuant to section 212(a)(9)(A) of the Act.

**ORDER:** The appeal is sustained.