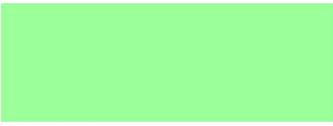


(b)(6)

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

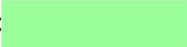


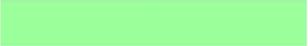
U.S. Citizenship
and Immigration
Services



DATE: **NOV 06 2013**

OFFICE: SAN JOSE

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)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Jose, California denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jordan who was found to be inadmissible to the United States pursuant to 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 crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse and child, born in 2012.

The field office director concluded that the applicant had failed to establish that exceptional and extremely unusual hardship would be imposed on a qualifying relative. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly. *See Decision of the Field Office Director*, dated February 28, 2013.

On appeal the applicant contends that a waiver should be granted because various hardships to the applicant's qualifying relatives have been clearly demonstrated and supported by documentary evidence. *See Form I-290B, Notice of Appeal or Motion*, received March 22, 2013. In support, the applicant submits the following: a brief, medical and mental health documentation pertaining to the applicant's spouse, a copy of the applicant's child's U.S. birth certificate, religious documentation pertaining to the applicant, and criminal documentation. The entire record was reviewed and considered in rendering this decision on the appeal.

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

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

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

...

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

...

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

- (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or
- (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

- (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; or
- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .; 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.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes as:

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.

The record establishes that in 2002, the applicant was convicted of Inflicting Corporal Injury on a Cohabitant in violation of California Penal Code § 273.5(a). In 2003, the applicant was convicted of Corporal Injury on Cohabitant with Prior Convictions and Vandalism. In 2004, the applicant was convicted of two separate incidents of petty theft. In November 2004, the applicant was convicted of Grand Theft and Forgery. The AAO also notes that in September 2004, the applicant pled guilty and received deferred entry of judgment to Possession of a Controlled Substance (Methamphetamine). The applicant was ordered to report to the probation department, participate in a diversion program and pay fines. See *Proceedings Sentence, Probation Order, Superior Court of California*, [redacted] dated September 22, 2004. The applicant successfully completed the Deferred Entry of Judgment/Diversion Program including drug or family service counseling. See *Termination of Deferred Entry of Judgment/Drug Diversion*, dated March 12, 2007.¹

The field office director found the applicant inadmissible under section 212(a)(A)(i)(I) of the Act, for having been convicted of multiple crimes of moral turpitude. On appeal, the applicant does

¹ In *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000), the Ninth Circuit Court of Appeals held that the statutory definition of "conviction" in section 101(a)(48) of the Act did not repeal or abrogate the Federal First Offender Act (FFOA), under which rehabilitative expungement of first-time simple possession drug offenses does not result in removal. The Court also stated that "if [a] person's crime was a first-time drug offense, involved only simple possession or its equivalent, and the offense has been expunged under a state statute, the expunged offense may not be used as a basis for deportation." *Id.* at 738. The applicant's situation is similar to that of the respondent in *Lujan-Armendariz*. In 2011, the Ninth Circuit, in *Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir. 2011), overturned *Lujan-Armendariz* but noted that the new rule of law regarding convictions would be applied prospectively. As stated by the court, "For those aliens convicted before the publication date of this decision, *Lujan-Armendariz* applies. For those aliens convicted after the publication date of this decision, *Lujan-Armendariz* is overruled...." *Nunez-Reyes v. Holder* at 690-693 The applicant is thus not inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act, for a controlled substance violation, for which there is no waiver available.

not contest this finding of inadmissibility. The AAO will not disturb that determination on appeal. The applicant requires a waiver under section 212(h) of the Act. However, as noted by the field office director, a waiver under section 212(h) is discretionary and the crime involving moral turpitude for which the applicant was convicted on two separate occasions, Inflicting Corporal Injury on a Cohabitant², is additionally a violent or dangerous crime as contemplated by 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, 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 did not 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).

² As noted in the Complaint for Arrest Warrant, the crime of Battery on Spouse, Cohabitant, Parent of Child, Former Spouse, Fiance, Fiancee or Dating Relationship was committed by the applicant who did "willfully and unlawfully use force and violence against a person with whom the defendant has, or previously had a dating or engagement relationship...." *See Compliant for Arrest Warrant*, dated January 3, 2003.

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.

Using the above definitional framework, the AAO finds the offense punished under Cal. Penal Code § 273.5 to be a violent crime for the purposes of 8 C.F.R. § 212.7(d). We also note that the Ninth Circuit in *U.S. v. Laurico-Yeno*, has found that as a person cannot be convicted without the intentional use of force under Cal. Penal Code § 273.5, a conviction for inflicting corporal injury on a spouse or cohabitant categorically falls within the scope of a crime of violence. 590 F.3d 818, 821 (9th Cir. 2010).

The applicant must prove “exceptional and extremely unusual hardship” to a qualifying relative. 8 C.F.R. § 212.7(d). In order to show “exceptional and extremely unusual hardship,” the applicant must show more than “extreme hardship.” See *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001) (holding in cancellation of removal case that the “standard requires a showing of hardship beyond that which has historically been required in suspension of deportation cases involving the ‘extreme hardship’ standard”). The hardship “must be substantially beyond the ordinary hardship that would be expected when a close family member leaves this country,” and is “limited to truly exceptional situations.” *Id.* (internal quotation marks omitted). However, the applicant need not show that hardship would be unconscionable. *Id.* at 60.

Under 8 C.F.R. 1212.7(d), the Attorney General will not favorably exercise discretion 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 the alien clearly demonstrates that a denial of the waiver 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 INA 212(h)(2). 8 C.F.R. 1212.7(d). *Matter of Jean*, 23 I&N Dec. 373, 383 (BIA 2002).

The applicant’s U.S. citizen spouse declares that she will experience hardship were she to remain in the United States while her husband relocates abroad as result of his inadmissibility. In a declaration, the applicant’s spouse explains that she is dependent on her spouse to care for her due to a physical disability and depression. She notes that although she is gainfully employed, she relies on the applicant to drive her to and from work due to her disability. *Letter from* [REDACTED] dated March 23, 2013.

With respect to the applicant’s physical disability, a letter has been provided noting that the applicant’s spouse’s medical condition limits her ability to walk, carry anything over 20 pounds

and drive. The AAO notes that the applicant's spouse is currently receiving therapy two times per week and has been able to make alternate arrangements to ensure she is able to work and financially provide for the family. Further, with respect to the applicant's spouse's depression, although documentation has been provided establishing that the applicant's spouse is being treated for a recurrent depressive disorder since December 2009, the record establishes that she has been prescribed medications for her condition and is seeing a therapist. The AAO acknowledges the applicant's spouse's contention that she will experience emotional hardship were she to remain in the United States while her husband relocates abroad, but the record does not establish the severity of this hardship or the effects on her daily life. When all of the alleged hardship factors are considered in the aggregate, the AAO finds that the hardship endured by the applicant's wife and child as a result of separation from the applicant does not meet the "exceptional and extremely unusual hardship" standard set forth in 8 C.F.R. § 212.7(d).

In regard to relocating abroad to reside with the applicant as a result of his inadmissibility, the applicant and her spouse contend that the applicant's spouse will experience religious intolerance in Jordan as she is Muslim and is married to a Christian man. She further asserts that she is dependent on her health care providers and were she to relocate abroad, she would not have medical insurance and would not have access to medical and mental health treatment. Moreover, the applicant's spouse details that she is unfamiliar with the country, culture, customs and language spoken. Finally, the applicant's spouse maintains that she has extensive financial obligations and were she to relocate abroad, she would not be able to keep up with the payments. *Supra* at 3-4. No supporting documentation has been provided establishing the hardships the applicant's spouse would experience were she to relocate abroad. 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)). The applicant has not demonstrated that the evidence in the record in the aggregate shows that the hardships of relocation produce a "truly exceptional situation" that would meet the exceptional and extremely unusual hardship standard. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 at 62. Accordingly, the hardships to the applicant's wife and child that arise from relocation do not meet the heightened hardship standard set forth in 8 C.F.R. § 212.7(d).

The applicant has failed to demonstrate that the challenges his spouse and child face rise to the level of exceptional and extremely unusual hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate exceptional and extremely unusual hardship to a qualifying relative. Accordingly, the applicant does not warrant a favorable exercise of discretion and the appeal will be dismissed.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.