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

U.S. Citizenship and Immigration Services

[redacted]

H2

DATE: FEB 24 2012 Office: KINGSTON FILE: [redacted]

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

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

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

Thank you,

Michael Rhumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Kingston, Jamaica. 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 Jamaica. He was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his removal from the country. In addition, the applicant was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes 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 sections 212(a)(9)(B)(v) and 212(h) of the Act, 8 U.S.C. §§1182(a)(9)(B)(v) and 1182(h), respectively, so that he may live in the United States with his spouse and family. [1]

In a decision dated January 13, 2011, the director concluded the applicant had established his U.S. citizen spouse and children would experience extreme hardship if the applicant were denied admission into the United States. The director found, however, that the applicant had failed to establish that he merited an exercise of discretion. The waiver application was denied accordingly. [2]

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[1] It is noted that the applicant previously filed a Form I-601 waiver application when he was in removal proceedings. The immigration judge did not consider the Form I-601 because the applicant had no visa or adjustment of status application pending at the time.

[2] It is noted that on January 13, 2011, the director denied two applications filed by the applicant – his Form I-601, waiver application, and his Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The applicant was provided separate denial decision letters for each application, explaining the process and fee for appealing each respective denial. The applicant indicates on his Form I-290, Notice of Appeal that he is appealing both his Form I-601 and his Form I-212 denial decisions. However the applicant filed, and paid a fee for, only one Form I-290B, Notice of Appeal. Based on Service policy, the AAO will treat the applicant's Form I-290B as an appeal of his Form I-601 denial decision.

In processing a Form I-212 application for consent to reapply filed by an alien, the Service first determines whether a Form I-212 approval would enable to alien to be admitted to the U.S. If, even after approval of consent to reapply, the alien would not be admissible, the Form I-212 application should be denied as its approval would serve no purpose. If the alien has filed both Forms I-212 and I-601, the Service adjudicates the Form I-601 waiver application first. If the Form I-601 is denied, the Form I-212 will be denied as a matter of discretion since its approval would serve no purpose.

Because the applicant did not file a separate Form I-290B for the denial of his Form I-212 application, the AAO will not address the Form I-212.

On appeal, the applicant does not contest his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. He asserts, however, that he committed only one Driving While under the Influence (DWI) offense between 1985 and 1987, and that the director erroneously determined that he committed three separate DWI offenses during that time period. The applicant notes that his DWI offense is not a crime involving moral turpitude. He asserts further that his remaining convictions are misdemeanor offenses, that he has not been convicted of a felony offense, and that he served no time in jail for his April 1999, Tampering with Government Record offense. The applicant explains the bases of his convictions, and he indicates that the circumstances surrounding each offense demonstrates either that he did not commit the crime or that the crime was less serious than the scope stated in the director's decision.

The applicant additionally contests the director's finding that he was unlawfully in the U.S. for 28 years, and that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. He states that he had no knowledge that his lawful permanent resident status was accorded to him in error, and he states that he lived as a lawful, tax-paying resident in Texas for over fifteen years. The applicant asserts further that the director erroneously found that the hardship factors in his case do not out outweigh the negative factors. He asserts that the director did not take into account the importance of his relationship with his eldest son, or the loss of his family's home and tire shop business. He states that the director also failed to take into account that his wife owes over $245,000 in back taxes for their business, his present inability to help his family financially, and the possibility that his wife may be laid off from her job at the U.S. Postal Service. The applicant asserts that he has not been involved in any criminal activity since moving to Jamaica, that he is rehabilitated, and that after five years of separation, his family deserves to be reunited in the U.S. In support of his assertions the applicant submits affidavits from himself and his wife, medical records for his children, federal income tax documentation and letters from members of his church attesting to his good character.

The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . .
>
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

It is noted that Section 212(a)(9)(B)(i)(II) was added to the Act by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Div. C of PL 104-208, September 30, 1996) (IIRIRA). IIRIRA became effective on April 1, 1997, and only periods of unlawful presence spent in the U.S. after its April 1, 1997 effective date count towards unlawful presence for section 212(a)(9)(B)(i)(II) of the Act purposes.

It is further noted that an alien does not accrue unlawful presence if he or she is present in the U.S. under a period of stay authorized by the Secretary of Homeland Security. *See* USCIS Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate; Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate; Pearl Chang, Acting Chief, Office of Policy and Strategy, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act,* dated May 6, 2009. The memorandum provides further that, "[a]n alien paroled for the purpose of removal proceedings will begin to accrue unlawful presence the day after the date the removal order becomes administratively final." The fact that the alien files an appeal to the BIA or seeks judicial review of a removal order does not affect the alien's position in relation to the accrual of unlawful presence. "If the Board [of Immigration Appeals] affirms the removal order, the alien will be deemed to have accrued unlawful presence from the date of the immigration judge's order". *Id.*

In the present matter, the record reflects that the applicant entered the U.S. without inspection in October 1981. The applicant adjusted his status to that of a lawful permanent resident in August 1991. Upon return from a visit to Jamaica in August, 2003, the applicant was found to be inadmissible based on convictions for crimes involving moral turpitude. The applicant was subsequently paroled into the U.S. and placed into removal proceedings.[3] He was ordered removed to Jamaica on May 7, 2004. The applicant remained in the U.S. until he was removed on September 21, 2006. Accordingly, the applicant was unlawfully present in the U.S. for over a year between May 8, 2004 and September 20, 2006. The applicant is seeking admission into the U.S. within ten years of his removal. He is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides:

> Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully

[3] A lawful permanent resident is regarded as seeking a new admission if he or she has committed a criminal offence under section 212(a)(2) of the Act, unless it is demonstrated that he or she obtained an approved waiver of the ground of inadmissibility prior to adjustment of his or her status to that of a lawful permanent resident. *See* Section 101(a)(13)(C)(v) of the Act. *See also, Matter of Collado,* 21 I&N Dec. 1061 (BIA 1997).

> resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant is married to a U.S. citizen, and his spouse is a qualifying relative for section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility purposes.[4]

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 –
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> > (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 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.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007). A realistic probability exists where, at the time of the proceeding, an "actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

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[4] It is noted that children are not qualifying relatives for section 212(a)(9)(B)(v) of the Act purposes.

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, "the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude." 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the "record of conviction" to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this "does not mean that the parties would be free to present any and all evidence bearing on an alien's conduct leading to the conviction. (Citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself." *Id.* at 703.

With regard to inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, the record contains conviction documentation reflecting the applicant was convicted in the State of Texas of the following misdemeanor offenses:

July 24, 1989 – Theft ($20-$200). Sentenced to four days in jail.

January 30, 1990 – Attempted Burglary of Vehicle. Sentenced to three days in jail.

June 17, 1994 – Theft ($200-$750). Sentenced to four days in jail.

May 8, 1995 – Theft ($200-$750). Sentenced to sixty days in jail.

October 10, 2000 – Tampering with Government Record. Sentenced to 365 days in jail (suspended) and eighteen months probation.

September 12, 2005 – Tampering with Government Record. Sentenced to three days in jail.[5]

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[5] The applicant was also convicted of the following offenses that were not found to be crimes involving moral turpitude:

October 1, 1985 – Driving While Intoxicated. Sentenced to probation. Probation was revoked on August 24, 1987, and sentenced to 10 days in jail.

April 12, 1990 – Criminal Mischief ($200-$750). Sentenced to ten days in jail.

May 29, 1991 – Driving While License Suspended. Sentenced to four days in jail.

Under section 31.03 of the Texas Penal Code:

> (a) A person commits [a Theft] offense if he unlawfully appropriates property with intent to deprive the owner of property.
>
> (b) Appropriation of property is unlawful if:
> (1) it is without the owner's effective consent;
> (2) the property is stolen and the actor appropriates the property knowing it was stolen by another; or
> (3) property in the custody of any law enforcement agency was explicitly represented by any law enforcement agent to the actor as being stolen and the actor appropriates the property believing it was stolen by another.

The BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). *See also, In re Jurado-Delgado*, 24 I&N Dec. 29, 33 (BIA 2006) (In determining whether theft is a crime of moral turpitude, the BIA considers "whether there was an intention to permanently deprive the owner of his property.")

In the present case, each of the statutory requirements for the offense of Theft in Texas contains the element of unlawful appropriation of property with intent to deprive the owner of property, and the Texas courts have found that this requires a permanent deprivation. *See, e.g., Ellis v. State*, 714 S.W.2d 465, 475 (Tex. App. 1st 1986). The offense is thus categorically a crime involving moral turpitude.

Section 30.04 of the Texas Penal Code defines the offense of Burglary of Vehicles and provides that:

> (a) A person commits an offense if, without the effective consent of the owner, he breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft.

Burglary is considered to be a crime involving moral turpitude only when it is established that the offense was committed with the intent to commit a crime involving moral turpitude. *Matter of M-*, 2 I&N Dec. 721, 723 (BIA 1946).

In the present matter, the statutory definition for Burglary of Vehicles under section 30.04 of the Texas Penal Code contains some elements that do not involve moral turpitude (with intent to commit *a felony or theft*). Because the statute is divisible in this manner, the offense is not categorically a crime involving moral turpitude. A modified categorical approach is thus

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April 19, 1994 – Driving While License Suspended. Sentenced to four days in jail.

necessary to determine whether the respondent's attempted burglary of vehicle conviction qualifies as a crime involving moral turpitude. Here, the court sentencing document contained in the record clearly reflects that the applicant was convicted of attempted burglary of a motor vehicle *with intent to commit theft.* Burglary with intent to commit theft has been found to be a crime involving moral turpitude. *See Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982). As theft under Texas law requires a permanent deprivation, the burglary with intent to commit theft under Texas law is also a crime involving moral turpitude. Furthermore, where the underlying, substantive offense is a crime involving moral turpitude, an attempt or conspiracy to commit such an offense is also a crime involving moral turpitude. *Matter of Khanh Hoang Vo,* 25 I&N Dec. 426 (BIA 2011) ("It is well established that for immigration purposes, with respect to moral turpitude there is no distinction between the commission of the substantive crime and the attempt to commit it." Therefore, the applicant's conviction for attempted burglary is therefore a crime involving moral turpitude.

As the applicant's convictions for theft and attempted burglary render him inadmissible, we need not address whether the applicant's conviction under Section 31.11(a) of the Texas Penal Code for Tampering with Identification Numbers is also a crime involving moral turpitude.

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

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

The record reflects that the applicant is married to a U.S. citizen, and that he has three U.S. citizen children. The applicant's spouse and children are qualifying relatives for section 212(h) of the Act, waiver of inadmissibility purposes.

Section 212(a)(9)(B)(v) and 212(h) of the Act provide 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 the present matter, the director determined the applicant established that his U.S. citizen spouse would experience extreme hardship if the applicant were denied admission into the United States.

We see no reason to disturb that finding. However, in order to obtain section waiver of inadmissibility relief under the Act, the applicant must also show that a waiver should be granted as a matter of discretion. In the present matter, the director found that the positive factors in the applicant's case were outweighed by the negative factors. We review whether the applicant has established that the director erred in finding that he does not merit a favorable exercise of discretion.

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). In evaluating whether section 212(h) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if she or he is excluded and/or deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996). The Service must:

> [B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (Citations omitted).

The BIA further states that the equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Matter of Mendez-Moralez,* 21 I&N Dec. at 301.

With regard to his criminal record, the applicant asserts on appeal that the director erroneously determined he committed three separate DWI offenses between 1985 and 1987, rather than the one offense he committed, and he asserts that the DWI offense was not a crime involving moral turpitude. He asserts that all of his convictions were misdemeanors, and he indicates that the circumstances surrounding each of his criminal offenses demonstrate either that he did not commit the crime (in the case of the Tampering with Government Record offenses) or that the crimes were less serious than the scope stated in the director's decision (in the case of the Theft, Burglary, and Criminal Mischief offenses).

The AAO notes first a collateral attack on a judgment of conviction cannot be entertained "unless the judgment is void on its face." "It is improper to go behind the judicial record to determine the guilt or innocence of an alien." *In Re Max Alejandro Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996). The present record contains no evidence to establish that any of the applicant's convictions have been vacated. The applicant's assertions that the circumstances surrounding each of his offenses reflect either that he did not commit the crime, or that the crimes were less serious than they appear, shall therefore not be addressed.

We note further that the applicant's entire criminal record – whether or not the offenses constitute crimes involving moral turpitude or are felonies - is properly examined in determining whether the applicant merits a favorable exercise of favorable discretion.

The adverse factors in the applicant's case are his convictions for the following offenses:

> October 1, 1985 – Driving While Intoxicated. Sentenced to probation. Probation was revoked on August 24, 1987, and sentenced to 10 days in jail.
>
> July 24, 1989 – Theft ($20-$200). Sentenced to four days in jail.
>
> January 30, 1990 – Attempted Burglary of Vehicle. Sentenced to three days in jail.
>
> April 12, 1990 – Criminal Mischief ($200-$750). Sentenced to ten days in jail.
>
> May 29, 1991 – Driving While License Suspended. Sentenced to four days in jail.
>
> April 19, 1994 – Driving While License Suspended. Sentenced to four days in jail.
>
> June 17, 1994 – Theft ($200-$750). Sentenced to four days in jail.
>
> May 8, 1995 – Theft ($200-$750). Sentenced to sixty days in jail.
>
> October 10, 2000 – Tampering with Government Record. Sentenced to 365 days in jail (suspended) and eighteen months probation.
>
> September 12, 2005 – Tampering with Government Record. Sentenced to three days in jail.

A review of the record and the director's decision reflect that the director properly listed and considered the adverse factors in the applicant's case.[6]

The applicant asserts further that the director's unfavorable discretion determination did not take into account the importance of his relationship with his eldest son, or the loss of his family's home and tire shop business. He states that the director failed to take into account that his wife owes over $245,000 in back taxes for their business, his present inability to help his family financially, and the possibility that his wife may be laid off from her job at the U.S. Postal Service. The applicant asserts that he has not been involved in any criminal activity since moving to Jamaica, that he is rehabilitated, and that after five years of separation his family deserves to be reunited in the U.S. In support of his assertions the applicant submits affidavits from himself and his wife, medical records for his children, federal income tax documentation and letters from members of his church attesting to his good character.

A review of the record and the director's decision reflect that the director took into account the emotional and financial hardship assertions made by the applicant. It is noted that the applicant submitted no evidence on appeal to demonstrate that his wife is losing her job at the U.S. Postal Service. It is further noted that the documentary evidence submitted on appeal simply corroborates the financial hardship claims that were accepted by the director. The AAO finds further that the applicant's statement and the letters from friends and family on appeal, are insufficient to demonstrate rehabilitation of character. Indeed, the applicant's statements on appeal attempt to minimize the scope and seriousness of his criminal history, and they do not reflect that he has taken full responsibility for his actions. The applicant also fails to acknowledge or accept responsibility for remaining unlawfully in the U.S. for over two years after he was ordered removed from the country.

The AAO finds that the numerous crimes and immigration violation committed by the applicant are serious in nature and cannot be condoned, and evidence of rehabilitation is lacking in the present case. Taken together, the AAO finds that the applicant has failed to establish that the director erred in finding that the adverse factors in the present case outweigh the favorable factors, or that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has failed to meet his burden of proving eligibility for section 212(a)(9)(B)(v) and 212(h) of the Act purposes. Accordingly, the Form I-601 appeal will be dismissed.

ORDER: The appeal is dismissed.

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[6] The AAO notes that the director did not list three DWI convictions for the applicant between 1985 and 1987. Rather, the director noted the conviction and subsequent probation-related disposition dates related to the offense.