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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: DEC 18 2014 OFFICE: NEBRASKA SERVICE CENTER File:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the United Kingdom who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through willful misrepresentation. The applicant also was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(h) and 1182(i), to reside with his U.S. citizen spouse in the United States.

The Director determined the applicant's inadmissibility would not result in exceptional and extremely unusual hardship. The Director also determined the applicant's favorable factors do not outweigh his negative factors and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Director*, dated February 7, 2014.

On appeal, the applicant contends that his spouse will suffer emotional and financial hardship because of his inadmissibility, as his spouse's emotional state has been deteriorating for the past 17 months, resulting in her seeking professional help and medication; her "debts are building higher"; she will lose the child support for her son, as he soon will become 18 years old, and she has taken advance payments for rent, food and bills; and if the applicant were in the United States, he and his spouse would have two incomes and he would help his spouse "get out of the financial hole" with monies provided by his father. *See Applicant's Statement in Support of the Appeal*, dated February 17, 2014.

The record includes, but is not limited to: statements by the applicant and his spouse; letters of support; documents concerning identity and relationships; a summary of the applicant's criminal convictions; employment, financial, medical, and psychological documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6) of the Act provides, in relevant part:

> (C) Misrepresentation.-
>
> > (i) In general.- Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
> >
> > . . .
> >
> > (iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The record reflects the applicant procured admission to the United States under the visa-waiver program on September 3, 2008, upon presenting his passport and Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form (Form I-94W) to a U.S. immigration official at Newark Liberty International Airport. The record also reflects that at the time of admission, the applicant failed to indicate on his Form I-94W that he was convicted of crimes involving moral turpitude. Based on the foregoing, the applicant was determined to be inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant contests this finding of inadmissibility.

In support of his waiver application, the applicant provided a statement in which he indicates: he did not intentionally lie to enter the United States; "moral turpitude" is not a "term that is really used in the [United Kingdom]"; he did not research travel requirements to the United States and did not realize he was ineligible for the visa waiver program due to his convictions for crimes involving moral turpitude; he had been drinking during his flight as he is a "very nervous flyer" and, as he was under the influence of alcohol, he was confused when completing the Form I-94W; a U.S. passenger on the flight told him to "tick NO [sic] in all the tick boxes on the form"; at the port of entry, the U.S. immigration official inquired about his length of stay in the United States but did not ask questions concerning his criminal record; two days after learning about visa waiver requirements, he returned to the United Kingdom to obtain a nonimmigrant visa to travel to the United States; and U.S. embassy officials in London subsequently have denied him a visa because of his crimes involving moral turpitude.

As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *See generally Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). To be willful, a misrepresentation must be made with knowledge of its falsity. 7 I&N Dec. at 164. To determine whether a misrepresentation was willful, we examine the circumstances as they existed at the time of the misrepresentation, and we "closely scrutinize the factual basis" of a finding of inadmissibility for fraud or misrepresentation because such a finding "perpetually bars an alien from admission." *Matter of Y-G-*, 20 I&N Dec. 794, 796-97 (BIA 1994) (citing *Matter of Shirdel*, 19 I&N Dec. 33, 34-35 (BIA 1984)); *see also Matter of Healy and Goodchild*, *supra*. The burden is on the applicant to establish admissibility "clearly and beyond doubt," and the applicant has the burden of showing that any misrepresentation was, in fact, not willful. *See* sections 235(b)(2)(A) and 291 of the Act, 8 U.S.C. §§ 1225 and 1361.

With relevance to the present matter, we acknowledge that the term "moral turpitude" is not in common usage, and it is unlikely that the average person is aware of its meaning and application in U.S. immigration law. Nevertheless, as the burden is on the applicant to establish that he or she is not inadmissible, the applicant has the burden of showing that any misrepresentation was, in fact, not willful. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case the record demonstrates the applicant was admitted to the United States under the visa waiver program on September 3, 2008 and departed

the United States on September 16, 2008, after he discovered his inadmissibility. He subsequently applied for a nonimmigrant visitor visa and was refused on January 9, 2009. The applicant indicates he has made "many foolish mistakes" resulting in a criminal record because of alcohol, which supports his assertion that he was inebriated when filling out his admission forms. The record sufficiently demonstrates that the applicant's misstatement on the Form I-94W concerning his convictions for crimes involving moral turpitude was not willful, as he departed the United States within days of having been admitted after learning about eligibility requirements. He subsequently attempted to obtain a nonimmigrant visitor visa to properly enter the United States. Accordingly, the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, and he does not require a waiver of inadmissibility under section 212(i) of the Act.

We will now determine the applicant's inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A) of the Act provides, in relevant 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.

In assessing whether a conviction is a crime involving moral turpitude, the adjudicator must first "determine what law, or portion of law, was violated." *Matter of Esfandiary*, 16 I&N Dec. 659, 660 (BIA 1979). The adjudicator engages in a categorical inquiry, considering the "inherent nature of the crime as defined by statute and interpreted by the courts," not the underlying facts of the criminal offense. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *see also Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009) (citing *Taylor v. United States*, 495 U.S. 575, 599-600 (1990)). If the statute "defines a crime in which turpitude necessarily inheres, then the conviction is for a crime involving moral turpitude." *Matter of Short*, 20 I&N Dec. at 137.

Where the statute includes some offenses involving moral turpitude and some which do not – where there is a *realistic probability* that the statute would be applied to conduct not involving moral turpitude – the adjudicator looks to the record of conviction to determine the offense for which the applicant was convicted. *See Matter of Guevara Alfaro*, 25 I&N Dec. 417, 421 (citing *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689-90, 696-99 (A.G. 2008)); *see also Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability, as opposed to a theoretical possibility, exists where there is an actual prior case, possibly the applicant's own case, in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. *Matter of Silva-Trevino*, 24 I&N Dec. at 708. The record of conviction is a narrow, specific set of documents which includes the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Matter of Louissaint*, 24 I&N Dec. at 757; *see also Shepard v. U.S.*, 544 U.S. 13, 16 (2005) (finding that the record of conviction is limited to the "charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.")

If review of the record of conviction is inconclusive, an adjudicator may consider "probative evidence beyond the record of conviction" to resolve whether the offense constitutes a crime involving moral turpitude. *Matter of Guevara Alfaro*, 25 I&N Dec. at 422 (citing *Matter of Silva-Trevino*, 24 I&N Dec. at 690, 699-704, 709). However, 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." *Matter of Silva-Trevino*, 24 I&N Dec. at 703; *see also Matter of Ahortalejo-Guzman*, 25 I&N Dec. 465, 468 (BIA 2011) (an adjudicator may not "undermine plea agreements by going behind a conviction to use sources outside the record of conviction to determine that an alien was convicted of a more serious turpitudinous offense.")

The record reflects the applicant has been involved in 37 violations of the law in the United Kingdom over an approximately 10-year period, resulting in some convictions for crimes involving moral turpitude and other violent or dangerous crimes, including a conviction on April 20, 2007, for "using threatening, abusive, insulting words or behaviour with intent to cause fear or provocation of violence."

The Public Order Act, 1986, c. 64 (Eng.) provides, in relevant part:

> 4. Fear or provocation of violence.
>
> (1) A person is guilty of an offence if he—
>
> (a) uses towards another person threatening, abusive, or insulting words or behaviour
>
> . . .
>
> with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

The applicant was sentenced on May 21, 2007 to two months' imprisonment. The applicant's conviction is a crime involving moral turpitude. In *Matter of Ajami*, the BIA addressed whether a stalking offense that involves the making of credible threats against another constitutes a crime involving moral turpitude. 22 I&N Dec. 949 (BIA 1999). The BIA concluded that "the intentional transmission of threats is evidence of a vicious motive or a corrupt mind," and a crime encompassing such conduct involves moral turpitude. 22 I&N Dec. 949, 952. Based on the foregoing, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and he needs a waiver under section 212(h) of the Act. The applicant does not contest this determination.

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

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

> (1)(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 [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 [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.

Because the Director found the applicant was convicted of a violent or dangerous crime, we cannot favorably exercise discretion in the applicant's case except in an extraordinary circumstance. *See* 8 C.F.R. § 212.7(d).

The regulation at 8 C.F.R. § 212.7(d) provides:

> The [Secretary], 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.

We note that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and we are not aware of a precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, *or* any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in 8 C.F.R. § 212.7(d). Thus, we find that the statutory terms "violent or dangerous crimes" and "crime of violence" are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependent on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms "violent" and "dangerous". The term "dangerous" is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms "violent" and "dangerous" in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). Black's Law Dictionary, Seventh Edition (1999), defines violent as "of, relating to, or characterized by strong physical force" and dangerous as "likely to cause serious bodily harm." 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 Director determined that the applicant's aforementioned criminal conviction is a violent or dangerous crime. As the record does not show this determination to be in error and as the applicant does not contest this finding on appeal, we will not disturb the finding.

Accordingly, the heightened discretionary standards found in that regulation are applicable in this case, and 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, we 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.*

Although 8 C.F.R. § 212.7(d) does not specifically state to whom the applicant must demonstrate exceptional and extremely unusual hardship, we interpret this phrase to be limited to qualifying relatives described under the corresponding waiver provision of section 212(h)(1)(B) of the Act. A waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant. The qualifying relative in this case includes the applicant's U.S. citizen wife. The record demonstrates the applicant's stepson also may be a qualifying relative; however, the record lacks evidence showing he is a U.S. citizen or lawful permanent resident so we will consider hardship only to the applicant's U.S. citizen spouse.

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 applicant is subject to 8 C.F.R. § 212.7(d), merely showing extreme hardship to his qualifying relative under section 212(h) of the Act is not sufficient. He must meet the higher standard of exceptional and extremely unusual hardship. Therefore, we 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.

Id. 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. *Id.* 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. *Id.* 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."). We note 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 her statement submitted in support of the applicant's appeal, the applicant's spouse indicates she would suffer medical, emotional, and financial hardship in the applicant's absence as: she has received medical treatment for depression and anxiety resulting from the 17-month separation she and the applicant have endured and from the stress of not "making ends meet"; she is at risk of losing the license to operate her home daycare business because of her depression, and she has lost clients because it is hard for her to function with a "normal" routine; she is unable to get another job because of her deteriorating health; her income has decreased to $10,836; her financial credit is "ruined" and she is "in the hole every month" because her living expenses and bills are greater than her monthly income; she previously filed for bankruptcy, her tax return payments are being garnished, and she has exhausted her state entitlement benefits; the child support she receives each month amounting to $375 will cease upon her son becoming 18 years old; she used those payments to supplement her rent payment; the applicant is unable to assist with the payment of her bills as he only makes enough to pay for his living expenses; and she is unable to move to a cheaper home because of the costs associated with relocation, including reapplying for a license to operate a daycare business.

In support of his spouse's medical and emotional hardship, the applicant submits a statement on a medical prescription pad dated February 14, 2014, indicating the applicant's spouse sought medical attention for depression. The applicant also submits a pharmacy label indicating his spouse was prescribed Trazadone. To demonstrate his spouse's financial hardship, the applicant further submits copies of her credit reports and billing statements, which include default notices, garnishment letters,

and payments in arrears. The record also includes an accounting for state entitlement programs; a tax form for 2013, showing the applicant's spouse's annual earnings totaled $10,839.96; a year-long lease agreement indicating a monthly rent of $1,175 commencing on July 1, 2013; bank account statements; and check register receipts.

Although the record includes evidence that the applicant's spouse has been prescribed medication for her mental wellbeing, the medical statement does not provide details concerning the severity of her condition. Without more information we are not in a position to reach a conclusion concerning the severity of a medical or mental-health condition and hardships that may be related to these conditions. And, although the record includes evidence of the applicant's financial struggles, the applicant submitted a letter from his father, dated February 3, 2013, to show his father intends to give the applicant 42 thousand pounds and other amounts to assist him and his spouse in the United States. Moreover, the record does not include evidence of the applicant's earnings and expenses in the United Kingdom.

Though the record is sufficient to establish the applicant's spouse may experience a degree of hardship in the applicant's absence because of her mental health and that she has struggled financially, the evidence, considered in the aggregate, does not establish the applicant's spouse is experiencing exceptional and extremely unusual hardship as a result of separation from the applicant.

The applicant's spouse indicates she would endure hardship upon relocation to the United Kingdom to be with the applicant as: she would not receive the same level of care for her depression; finding work is difficult for immigrants; the cost of living is much higher than in the United States; her mother, who suffers from mental illness and lives in an adult foster care home, depends on her for support; her father also relies on her support because he is suffering from heart conditions and "is in and out of the hospital all the time"; her daughter lives with her and depends financially on her as she is unable to work and must care for her autistic child; and her son suffers from disabilities, and it is unclear whether he will be able to live on his own. To corroborate his spouse's statements, the applicant submits: an annual report by his mother-in-law's guardian dated February 1, 2014, indicating that the mother-in-law's guardianship should continue because of her mental illness, and that she has participated in social activities with his spouse; a copy of his father-in-law's medical discharge instructions dated June 21, 2013, indicating a diagnosis of acute kidney injury and a list of medications; a neuropsychological evaluation dated October 23, 2013, diagnosing his spouse's grandson with autistic disorder; and copies of his stepson's recommendation and progress report dated March 22, 2012, indicating his continued eligibility for special education programs and services due to cognitive impairment.

The record reflects the applicant's spouse has resided continuously in the United States, where she maintains close family and community ties. The record also indicates she has assisted her parents with their health conditions in the past. However, the record does not include evidence addressing the availability of mental-health treatment, employment or labor conditions, special-education programs, and social conditions in the United Kingdom. Moreover, the record indicates the applicant's spouse has travelled to the United Kingdom at least four times to visit the applicant, but it lacks information about the care of her family members during her travels. Though the record is sufficient to establish the applicant's spouse may experience considerable emotional hardship upon relocation, the evidence,

considered in the aggregate, does not establish the applicant's spouse would suffer exceptional and extremely unusual hardship as a result of relocation to be with the applicant.

Furthermore, even if the applicant had demonstrated that his spouse would experience exceptional and extremely unusual hardship in both scenarios, he has not shown that he merits a favorable exercise of discretion. Although hardship to his spouse and his attempt to seek proper admission to the United States after discovering his inadmissibility are favorable factors in his case, the unfavorable factors include his significant criminal history between December 14, 2001 and November 25, 2011, for convictions that include other crimes involving moral turpitude and numerous alcohol-related offenses. As the most recent convictions, including one for a racially or religiously aggravated crime, concern crimes committed less than three years ago, the record does not reflect the applicant's rehabilitation.

The record does not contain sufficient evidence demonstrating that, in light of these activities, a favorable exercise of discretion is warranted. Thus, were the applicant able to establish exceptional and extremely unusual hardship to his U.S. citizen wife as a result of a denial of his waiver request, we do not find the favorable factors in the present matter to outweigh the negative ones, and thus, we would not favorably exercise the Secretary's discretion.

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.