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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

H5

[redacted]

Date: JUL 26 2011 Office: CHICAGO, IL FILE: [redacted]

IN RE: [redacted]

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

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.

Thank you,

Michael Dunaway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. A subsequent motion to reopen was filed on March 25, 2008 and was denied by the district director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico 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 into the United States by fraud or willful misrepresentation on December 12, 1998. The applicant is married to a U.S. citizen and has three U.S. citizen children. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated February 21, 2008, the district director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for having entered the United States on December 12, 1998 by presenting a fraudulent passport. In her decision the district director makes note of the applicant's criminal conviction for battery, causing bodily harm, but does not make a finding as to whether the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude. Finally, the district director concludes that the applicant has failed to show that his spouse would suffer extreme hardship as a result of his inadmissibility. The application was denied accordingly.

In a Motion to Reopen, dated March 19, 2008, counsel states that she is submitting additional documentation in the applicant's case and that the district director committed many factual errors in her decision.

In a decision on the applicant's Motion to Reopen, dated April 28, 2008, the district director found that counsel failed to show that her decision was made in error and denied the motion accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated March 19, 2008, counsel states again that she is submitting additional documentation in the applicant's case and that the district director committed many factual errors in her decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) 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.

The record indicates that in a sworn statement, dated September 20, 2006 the applicant stated that on December 12, 1998 he entered the United States at the San Ysidro port of entry by using a fraudulent passport. Thus, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO notes that because of the potential seriousness of the applicant's criminal conviction it is necessary to review whether the applicant's conviction for battery deems him inadmissible under

section 212(a)(2)(A) of the Act. On March 10, 2011, the AAO issued a request for further evidence to obtain the complete record of conviction for this crime. The AAO finds that the applicant's battery conviction is not for a crime involving moral turpitude and thus the applicant is not inadmissible under section 212(a)(2)(A) of the Act.

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) 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).

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 new 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).

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." *Silva-Trevino*, 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. *Id.* 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.

The record indicates that on October 6, 2003 in Cook County, Illinois the applicant was convicted of Battery, causing bodily harm under 720 of the Illinois Complied Statutes (ILCS) 5/12-3-A-1. The applicant was sentenced to 12 months probation. The AAO notes that the maximum sentence for a Class A misdemeanor in Illinois does not exceed imprisonment for one year.

At the time of the applicant's conviction, 720 ILCS 5/12-3 stated:

> (a) A person commits battery if he intentionally or knowingly without legal justification and by any means, (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.
>
> (b) Sentence.
> Battery is a Class A misdemeanor.

The AAO notes that assault and battery crimes may or may not involve moral turpitude. *See Matter of Danesh*, 19 I&N Dec. 669, 670 (BIA 1988). The BIA has stated that offenses characterized as simple assaults or batteries are generally not considered to be crimes involving moral turpitude. *See Matter of Perez-Contreras, supra*; *Matter of Short*, 20 I&N Dec. 136, 139 (BIA 1989). In addition, the BIA has recognized that not all crimes involving the injurious touching of another person reflect moral depravity on the part of the offender. *See Matter of Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006).

The BIA has found further that a finding of moral turpitude involves an assessment of both the state of mind and the level of harm required to complete the offense. *See In re Solon*, 24 I&N Dec. 239, 242 (BIA 2007). Thus, intentional conduct resulting in a meaningful level of harm, which must be more than mere offensive touching, may be considered morally turpitudinous. However, as the level of conscious behavior decreases, i.e., from intentional to reckless conduct, more serious resulting harm is required in order to find that the crime involves moral turpitude. Moreover, where no conscious behavior is required, there can be no finding of moral turpitude, regardless of the resulting harm. This body of law, then, deems intent to be a crucial element in determining whether a crime involves moral turpitude. *Id.*

The AAO finds that to have a conviction for battery under 720 ILCS 5/12-3 it must be proven that the offender intended the result of his actions. One is presumed to intend the natural and probable consequences of his actions. *People v. Martinez* (1st Dist.1979), 78 Ill.App.3d 590, 598, 33 Ill.Dec. 635, 642, 396 N.E.2d 1359, 1366. However, 720 ILCS 5/12-3 encompasses a spectrum of levels of harm from physical harm, which would be considered morally turpitudinous, to mere offensive touching, which would not be morally turpitudinous. Because the record was not clear regarding the level of harm involved in the applicant's offense, on March 10, 2011 the AAO issued the request for further evidence.

In response to the request for further evidence counsel submitted a brief, the criminal disposition for the applicant's October 6, 2003 conviction, the criminal complaint, the court file involving the conviction, copies of the Illinois statutes involved in his conviction, a copy of the BIA case *Matter of Ahortalejo-Guzman*, 25 I&N Dec. (BIA 2011), and copies of the applicant's children's birth certificates.

In her brief, counsel asserts that the applicant was not charged or convicted of intentional conduct, but was convicted of knowing conduct; that although charged under the insulting and provoking nature section of 720 ILCS 5/12-3, he was convicted under the bodily harm section, and that although the victim of his crime was a police officer, the applicant was not convicted of battery against a peace officer.

The AAO notes that the criminal complaint in the applicant's case, dated September 7, 2003, charges the applicant with knowingly and without legal justification making contact of an insulting and provoking nature with a police officer in that he pushed the police officer in the body with his hands. Although at times treated differently in other criminal law jurisdictions and statutes, under 720 ILCS 5/12-3, knowing and intentional conduct are treated the same. *People v. Martinez* (1st Dist.1979), 78 Ill.App.3d 590, 598, 33 Ill.Dec. 635, 642, 396 N.E.2d 1359, 1366. Thus, the applicant's

conviction for knowing conduct under 720 ILCS 5/12-3 means that the applicant intended the result of his actions and would include the highest leave of culpability.

The AAO now turns to the level of bodily harm required to commit the offense. As stated above, the BIA has recognized that not all crimes involving the injurious touching of another person reflect moral depravity on the part of the offender and that only intentional conduct resulting in a meaningful level of harm, which must be more than mere offensive touching, may be considered morally turpitudinous. *See Matter of Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006) and *In re Solon*, 24 I&N Dec. 239, 242 (BIA 2007).

The AAO finds that in the applicant's case it is necessary to review the "record of conviction" to determine the level of harm involved in the applicant's offense. Again, as stated above, the AAO notes that the criminal complaint in the applicant's case, dated September 7, 2003, charges the applicant with knowingly and without legal justification making contact of an insulting and provoking nature with a police officer in that he pushed the police officer in the body with his hands. Thus, the AAO finds that the level of bodily harm involved in the commission of the applicant's offense was minimal and did not result in a meaningful level of harm.

In her brief, counsel states further that the applicant cannot be found to have committed battery with an aggravating factor as Illinois law penalizes aggravated battery and domestic battery under separate and distinct statutory sections. Counsel cites to 720 ILCS 5/12-3.4 as the section of statute involving aggravated battery, which includes use of a deadly weapon, great bodily injury, and battery committed against a peace officer. She asserts that the applicant was convicted of misdemeanor battery and not aggravated battery.

The AAO agrees with counsel in that to find that the applicant has committed aggravated battery or battery against a peace officer under 720 ILCS 5/12-3.4 would be to relitigate the applicant's offense. Moreover, a conviction under 720 ILCS 5/12-3.4 requires that the offender have knowledge that the intended victim of their crime is a peace officer and statements submitted as part of the record assert that at the time of the offense the applicant was not aware that the person he pushed was a police officer.

Therefore, AAO finds that the record of conviction establishes that although the applicant acted intentionally, his actions did not result in any meaningful level of harm and thus, he was not convicted of a crime involving moral turpitude.

Although the applicant is not inadmissible under section 212(a)(2)(A) of the Act, he is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission into the United States by a material misrepresentation on December 12, 1998 and does require a section 212(i) waiver of inadmissibility.

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

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the

> application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) 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 or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* 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 exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the

combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The AAO notes that the record of hardship includes: a statement from the applicant, a statement from the applicant's spouse, a statement from the applicant's father-in-law, financial documentation, a psychological evaluation for the applicant's spouse, medical documentation, documentation from the applicant's daughter's school, articles regarding country conditions in Mexico, and letters from various family members and friends.

In an affidavit dated December 6, 2006, the applicant's spouse states that she met the applicant in 1993 when she was 15 years old, that four years later she became pregnant with the applicant's child, and that they married soon after. The applicant's spouse states that she suffered depression in the past when she and her whole family moved to Chicago and that because they could not afford a doctor, the applicant is the only person who helped her out of the depression. She states that she is concerned that if she is separated from the applicant she will suffer depression again. The applicant's spouse also states that she has never worked and has no job skills. She describes how the applicant is her emotional and financial support and how if they relocated to Mexico their situation would be even more difficult. The applicant states in an undated affidavit that he believes his wife would struggle financially in the United States without him because she has not even graduated high school and will not be able to make more than the minimum wage. He also states that he thinks his spouse will become depressed again if he leaves the United States because she became depressed once before after giving birth. The applicant also expresses concern over how his departure would emotionally affect his children.

A psychological evaluation, dated March 10, 2008, and completed by a [redacted] supports the statements made by the applicant and her spouse and indicates that the applicant's spouse has lived in the United States for thirty years with no work history and limited English skills. [redacted] states that the applicant's spouse is fully emotionally and financially dependent on the applicant and is exhibiting symptoms of depression. [redacted]

finds that the applicant's spouse is at risk for severe depression if the applicant is removed and recommends that the applicant be allowed to stay in the United States.

In a letter dated March 18, 2008, a [redacted] states that the applicant's daughter is under his medical care for shortness of breath related to stress at school and anxiety. [redacted] states that over the past few weeks the applicant's daughter's symptoms have become more recurrent when she learned that he father could be deported from the United States. [redacted] also states that the applicant's family has been attending counseling sessions with [redacted] per their referral.

The AAO notes that the record also contains class pictures of the applicant's daughter, report cards and awards for the applicant's daughter, and three letters from teachers of the applicant's daughter stating that the applicant and his spouse are engaged parents, that their daughter is a wonderful student, and that they are concerned the absence of the applicant will hinder his daughter's social and academic progress.

The AAO notes that the record includes financial documentation that was included as part of the applicant's request for a fee waiver. This documentation indicates that the applicant, his spouse, and two daughters reside in the same household with his father-in-law, mother-in-law, and brother-in-law. In an affidavit dated March 18, 2008, the applicant states that he is having trouble finding work in construction and that his wife cannot work because she suffers from depression and high anxiety. He states that his father-in-law pays half of the household expenses.

Finally, the applicant has submitted three articles concerning women living in Mexico and a 2005 State Department Country Report on Human Rights Practices in Mexico. The articles address the labor market in Mexico and how it affects women. One article states that even when women do find employment they may not find employment paying them a living wage. The AAO also notes that the record indicates that the applicant and his spouse were born in Morelia, Michoacan, Mexico and may reside in this part of Mexico.

The U.S. Department of State Travel Warning for Mexico, dated September 10, 2010 states that since 2006 the Mexican government has been engaged in an extensive effort to combat drug-trafficking organizations (DTOs). The warning states that Mexican DTOs, meanwhile, have been engaged in a vicious struggle with each other for control of trafficking routes and in order to prevent and combat violence, the government of Mexico has deployed military troops and federal police throughout the country. The warning states that U.S. citizens should expect to encounter military and other law enforcement checkpoints when traveling in Mexico and are urged to cooperate fully as DTOs have erected unauthorized checkpoints, and killed motorists who have not stopped at them. The warning states further that in confrontations with the Mexican army and police, DTOs have employed automatic weapons and grenades and in some cases the assailants have worn full or partial police or military uniforms and have used vehicles that resemble police vehicles. The warning also states that according to published reports, 22,700 people have been killed in narcotics-related violence since 2006 including innocent bystanders. The AAO notes that the warning specifically states that the area of Michoacán is of particular concern. The warning states that the state of Michoacán is home to one of Mexico's most dangerous DTOs, "La Familia" and that in June 2010, 14 federal police were killed in an ambush near Zitacuaro in the southeastern corner of the state.

The warning states further that in April 2010, [redacted] was shot in a DTO ambush, that security incidents have also occurred in and around the State's world famous butterfly sanctuaries, and in 2008, a grenade attack on a public gathering in Morelia, the state capital and where the applicant and his spouse were born, killed eight people.

The AAO finds that the applicant has established that his spouse would suffer extreme hardship as a result of his inadmissibility. The violence in Michoacan, Mexico where the applicant and his spouse are from is severe and the applicant's spouse would be relocating with three children. It is reasonable to believe that living with and raising three children with this kind of violence would create a stressful atmosphere, resulting in emotional hardship to the applicant's spouse. Thus, in addition to employment concerns, the applicant's spouse would face serious concerns for her and her family's safety if she relocated to Mexico. The AAO also finds that the record indicates that the applicant's spouse would face extreme hardship as a result of separation. The applicant's spouse has no work history or education to obtain employment to support her children. The record indicates that the applicant's spouse is emotionally dependent on the applicant and has suffered problems with depression in the past. Moreover, the AAO finds that it would be hardship to have a spouse relocate to a location experiencing significant violence when the separation would be permanent, as in this case. Thus, the AAO finds when taken together, the hardships that would be suffered by the applicant's spouse as a result of the applicant's inadmissibility rise to the level of extreme.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether section 212(a)(9)(B)(v) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion 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 he is excluded and 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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[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 adverse factors in the present case are the applicant's fraudulent entry into the United States and the applicant's criminal record.

The favorable factors in the present case are the extreme hardship to the applicant's U.S. citizen wife and children if he were to be denied a waiver of inadmissibility and, as indicated by the applicant's spouse, daughter, and numerous other letters of recommendation from family, friends, and coworkers, the applicant's attributes as a good father, husband, worker, and member of the community.

The AAO finds that the immigration violation and crime committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.