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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

H2

[redacted]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date:
(CJS 2006 572 564 relates)

APR 18 2011

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director ("District Director"), Mexico City, Mexico. 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 Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien unlawfully present in the United States for more than one year. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The District Director determined that the applicant failed to demonstrate extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated April 15, 2008.

On appeal, the applicant's spouse asserts that she is suffering extreme hardship as a result of the applicant's inadmissibility. *Statement on Notice of Appeal (Form I-290B),* dated May 8, 2007.[1]

The record includes, but is not limited to, statements from the applicant's spouse, a letter from the applicant's friend, medical documentation, a psychological evaluation, conviction records, a letter from the applicant's spouse's employer, a letter from the applicant's spouse's college, and photographs.[2] The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO conducts the final administrative review and enters the ultimate decision for U.S. Citizenship and Immigration Services on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. See *Helvering v. Gowran*, 302 U.S. 238, 245-246 (1937); see also, *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), aff'd. 345 F.3d 683 (9th Cir. 2003).

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-

---

[1] The record contains a Notice of Entry of Appearance (Form G-28) from [redacted] However, the Form G-28 does not establish Ms. [redacted] eligibility to appear either as an attorney or as an accredited representative of an organization recognized by the Board of Immigration Appeals as defined in 8 C.F.R. §§ 103.2 and 292.1(a)(4). Accordingly, we will treat the appeal as self-represented.

[2] The applicant also submitted a document in Spanish without a corresponding English translation. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

. . . .

(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.

. . . .

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record reflects that the applicant entered the United States from Mexico without inspection in April 1991. The applicant resided in the United States until he departed to Mexico in July 2007. The applicant accrued unlawful presence from December 15, 2001, the date he turned 18 years old, until his departure in July 2007. Consequently, the applicant accrued unlawful presence for a period of over five years prior to his departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year, and seeking admission within 10 years of his departure from the United States.

Section 212(a)(2) of the Act states in pertinent part:

(A) Conviction of certain crimes. –

(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-

(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 record reflects that on September 20, 2003, the applicant was convicted in the Superior Court of California, County of Los Angeles, of possession of burglary tools in violation of California Penal Code § 466, a misdemeanor. The applicant was placed on summary probation for a period of three years under the term that he serves two days in Los Angeles County Jail, and pay administrative fees (Case No.

At the time of the applicant's conviction, Cal. Penal Code § 466 provided:

> Every person having upon him or her in his or her possession a picklock, crow, keybit, crowbar, screwdriver, vise grip pliers, water-pump pliers, slidehammer, slim jim, tension bar, lock pick gun, tubular lock pick, floor-safe door puller, master key, ceramic or porcelain spark plug chips or pieces, or other instrument or tool with intent feloniously to break or enter into any building, railroad car, aircraft, or vessel, trailer coach, or vehicle as defined in the Vehicle Code, or who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument named above so that the same will fit or open the lock of a building, railroad car, aircraft, vessel, trailer coach, or vehicle as defined in the Vehicle Code, without being requested to do so by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing or having reason to believe that it is intended to be used in committing a misdemeanor or felony, is guilty of a misdemeanor. Any of the structures mentioned in Section 459 shall be deemed to be a building within the meaning of this section.

A conviction under Cal. Penal Code § 466 requires that an individual have the (1) an intent feloniously to break or enter into any building, railroad car, aircraft, or vessel, trailer coach, or vehicle; or (2) knowingly make a key or other instrument so that the same will fit or open the lock of a building, railroad car, aircraft, vessel, trailer coach, or vehicle without being requested to do so by some person having the right to open the same; or (3) make, alter, or repair any instrument or thing, knowing or having reason to believe that it is intended to be used in committing a misdemeanor or felony.

The Board of Immigration Appeals (BIA) has held that the offense of possession of burglary tools does not involve moral turpitude unless the offense is necessarily accompanied by an intent to commit a turpitudinous offense such as larceny. *See Matter of Serna*, 20 I&N Dec. 579, 584 (BIA 1992); *Matter or S-*, 6 I&N Dec. 769 (BIA 1955). The above statutory provisions are divisible because they encompass offenses that may or may not involve moral turpitude.

However, the AAO will need not address whether the applicant's crime is one involving moral turpitude because he is eligible for the "petty offense" exception to inadmissibility arising under section 212(a)(2)(A)(i)(I) of the Act. Section 212(a)(2)(A)(ii)(II) of the Act provides an exception for aliens who have been convicted of only one crime if the maximum penalty possible for the crime

of which the alien was convicted did not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of 6 months. Here, the applicant qualifies for the exception because he was sentenced to three years probation under the condition of two days imprisonment and the maximum possible term of imprisonment for his misdemeanor offense was not to exceed one year. *See* Cal. Penal Code § 19.2 (West 2003). Therefore, the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and this part of the District Director's decision will be withdrawn from the record.

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.

Section 212(i) of the Act provides that:

> (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.

The record reveals that subsequent to the director's decision, on June 21, 2010, the applicant applied for admission into the United States at the San Ysidro port-of-entry by presenting a false Mexican passport containing a I-551 stamp. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact to procure admission into the United States.

Section 212(i) and 212(a)(9)(B)(v) waivers of the bar to admission resulting from respective violations of sections 212(a)(6)(C) and 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is relevant to section 212(i) and 212(a)(9)(B)(v) waiver proceedings only to the extent it results in hardship to a qualifying relative, in this case the applicant's spouse. 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the

United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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.*, *In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. [redacted] was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be

considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

On appeal, the applicant's spouse asserts that she is 23-years-old and has high blood pressure. She states that she can't sleep at night, feels depressed, cries frequently, and has gained weight. The applicant's spouse states that she comes from a traditional and religious family. She contends that she has not been able to follow family traditions because of her separation from the applicant. She asserts that she fears for her husband's safety in Tijuana. *Letter of* dated May 8, 2008.

The applicant's spouse asserts in a letter filed with the waiver application that she was demoted at work because of her "personal problems" due to her separation from the applicant. She also asserts that she could not complete her Associates Degree because of their separation. She states that she moved to her parents' home and cannot afford to pay them rent. The applicant's spouse notes that she had to go to the doctor because of her high blood pressure. She states that she had to borrow money from her friends to visit the applicant in Tijuana. The applicant's spouse notes that she cannot afford baby formula, and that taking her daughter to the doctor is a hardship because she has to take time off work. She indicates that the applicant can only support himself with his employment in Tijuana. *Letter of* dated August 27, 2007; *See Letter of* from dated July 23, 2007.

The AAO acknowledges that the applicant's spouse is experiencing emotional hardship as a result of her separation from the applicant. The applicant's spouse has described her strong family bond with the applicant and her interests in keeping their family unified. *See Letter of* dated May 8, 2008. The record contains a psychological evaluation diagnosing her with adjustment disorder with anxiety and depressed mood. *See Psychological Assessment of* , dated May 5, 2008. The applicant's spouse has claimed that her emotional suffering is exacerbating her high blood pressure. *See Letter of* dated May 8, 2008. The record contains an "excuse slip" from the San Fernando Medical Center, stating, in part, that the applicant's spouse suffers from "hypertension" and "chest pain episodic." The applicant's spouse submitted evidence that she filled a prescription for Hydrochlorothiazide, which is "a 'water pill,' is used to treat high blood pressure and fluid retention caused by various conditions, including heart disease." U.S. National Library of Medicine.

The AAO will give considerable weight to the emotional hardship the applicant's spouse is suffering as a result of separation from the applicant. In *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and that "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its

discretion." (Citations omitted). Similarly, in *United States v. Arrieta*, the Ninth Circuit assessed the factors to be considered in a section 212(h) waiver and stated, "Of particular importance is the evidence Mr. produced of the effect that separation from him would have on his immediate family members, as to whom he provided essential emotional and other non-economic familial support. We have previously explained that 'preservation of family unity' may be a central factor in an extreme hardship determination." 224 F.3d 1076, 1082 (9th Cir. 2000).

All elements of hardship to the applicant's spouse if she remains separated from the applicant have been considered in the aggregate. The AAO finds that the emotional suffering the applicant's spouse is suffering combined with her psychological and medical conditions go beyond the common results of separation from inadmissible family member and rise to the level of extreme hardship.

Although the applicant has established extreme hardship to his spouse upon separation, he must also establish that she would suffer extreme hardship upon relocation to Mexico. As stated, to endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad is a matter of choice and not the result of removal or inadmissibility.

On appeal, the applicant's spouse claims that the applicant's residence in Tijuana is unsafe because "there are so many shootings, gangs, criminal actions happening." She contends that he is in danger and she fears for his life as well as her own. *Letter of* dated May 8, 2008.[3]

The AAO notes that the U.S. Department of State has issued the following travel warning on the violence along the U.S.-Mexico border:

> Much of the country's narcotics-related violence has occurred in the northern border region. For example, since 2006, three times as many people have been murdered in Ciudad Juarez, in the state of Chihuahua, across from El Paso, Texas, than in any other city in Mexico. More than half of all Americans killed in Mexico in FY 2009 whose deaths were reported to the U.S. Embassy were killed in the border cities of Ciudad Juarez and Tijuana.
>
> Since 2006, large firefights have taken place in towns and cities in many parts of Mexico, often in broad daylight on streets and other public venues. Such firefights have occurred mostly in northern Mexico, including Ciudad Juarez, Tijuana, Chihuahua City, Nogales, Nuevo Laredo, Piedras Negras, Reynosa, Matamoros and Monterrey. Firefights have also occurred in Nayarit, Jalisco and Colima. During some of these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area.

---

[3] The applicant indicated on his Biographic Information Form (Form G-325A) that he is a resident of Tijuana. *See* Form G-325A, dated August 20, 2007. The record contains a letter from the applicant's employer, Panasonic, which is located in Tijuana. *See Letter from* dated April 15, 2008. The AAO finds that this is sufficient evidence to confirm the applicant's residence in Tijuana.

> The situation in northern Mexico remains fluid; the location and timing of future armed engagements cannot be predicted. U.S. citizens are urged to exercise extreme caution when traveling throughout the region, particularly in those areas specifically mentioned in this Travel Warning.

U.S. Department of State, *Travel Warning - Mexico*, dated September 10, 2010.

The psychological report notes that the applicant's spouse is suffering from hyper vigilance because of her concern for the applicant's safety. The applicant's spouse reported that "Because of a drive by shooting, two employees at Panasonic Co., where her husband works in Tijuana were shot while having lunch. Her husband's house was broken into by thieves." *Psychological Assessment of* The AAO will give considerable weight to the high level of crime and violence the applicant's spouse would face upon relocation to the applicant's residence in Tijuana.

The applicant's spouse reported in her psychological evaluation that she would experience "the loss of a way of life and the loss of opportunities for employment" in Mexico. She stated that "she will be deprived of the love of her relatives and friends if she leaves to be reunited with her husband in Mexico." *Psychological Assessment of* The record reflects that the applicant's spouse is a U.S. citizen who was born in the United States. *See Alien Relative Petition (Form I-130)*. The applicant's spouse has described her "united and traditional" family, including her parents, sister and brother. *See Letter of* dated May 8, 2008. She has indicated that after the applicant's departure she moved to her parents' home. *See Letter of* dated August 27, 2007. The AAO recognizes that the applicant's spouse's relocation to Mexico would result in her departing her native country and severing ties to her family members.

All elements of hardship to the applicant's spouse, should she relocate to Mexico have been considered in the aggregate. The AAO finds that based on the foregoing hardships, including the crime and violence in Tijuana, and the emotional hardship of severing ties in the United States, the applicant's spouse would suffer extreme hardship upon relocation to Mexico. Therefore, the applicant has established that his spouse would suffer extreme hardship if he is denied admission to the United States.

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 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. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). 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).

On appeal, the applicant's spouse claims that her husband's unlawful presence was the result of having been brought to the United States when he was seven years old by his parents. She states that his criminal conviction was because during his adolescence "he was exposed to the low-economic

and social standards of the working, immigrations [sic] in the community where he was raised." She claims that the applicant "was subsequently never arrested for any other reasons and he established a good record of moral responsibility." *Statement on Notice of Appeal (Form I-290B)*, dated May 8, 2007. However, subsequent to the director's decision, the applicant's spouse was apprehended at the San Ysidro port-of-entry for "presenting a counterfeit Mexico passport bio page with a counterfeit Temporary ADIT I-551 Stamp." *Record of Deportable/Inadmissible Alien (Form I-213)*, dated June 22, 2010. In a sworn statement, the applicant admitted that he purchased this document from an unknown individual at a bar in Tijuana for $200.00. *Sworn Statement of* [redacted] dated June 22, 2010.

The AAO finds that the applicant's recent attempt to unlawfully enter the United States by misrepresentation is evidence that he has not reformed from committing immigration violations. Not only did the applicant attempt to reenter the United States while his immigration case is pending, but he did so unlawfully by presenting false documentation that he purchased. The AAO does not find that the extent of the extreme hardship to the applicant's spouse outweighs the negative factors discussed. Therefore, we conclude that the grant of relief in the exercise of discretion would not be warranted in this case, and the appeal must be dismissed.

ORDER: The appeal is dismissed.