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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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**U.S. Citizenship
and Immigration
Services**

H2

Date: DEC 02 2011 Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: [REDACTED]

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

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,

A handwritten signature in black ink that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native of Colombia and a citizen of Venezuela who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude and pursuant to section 212(a)(2)(D) of the Act, 8 U.S.C. § 1182(a)(2)(D), for engaging in prostitution. The record indicates that the applicant has a U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her husband.

In a decision, dated February 13, 2008, the director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative. The director also found that because the applicant had been arrested and convicted of crimes involving moral turpitude, had been living in the United States illegally since 2001, and had not provided evidence that she had reformed, that she did not warrant the favorable exercise of discretion. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated March 14, 2008, counsel states that the director denied the applicant's waiver application on the basis of incorrect information and that the director failed to consider all the evidence submitted. Counsel submits a brief and additional evidence on appeal.

The record indicates that on May 11, 1995 and May 10, 2004 the applicant pled guilty to prostitution in violation of § 230.00. On January 20, 1998, the applicant was charged with petit larceny and criminal possession of an anti-security device. On March 24, 1998, in connection with this charge, she pled guilty to disorderly conduct in violation of § 24.00. Finally, on February 1, 2006, the applicant pled guilty to attempted unauthorized practice of a profession.

Section 212(a)(2)(D) of the Act provides, in pertinent part, that:

- (D) Prostitution and commercialized vice.—Any alien who—
 - (i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,
 - (ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or
 - (iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution,

is inadmissible.

The AAO notes that the Director found the applicant inadmissible to the United States under section 212(a)(2)(D) of the Act for having been arrested and convicted of prostitution. This finding by the director does not clearly indicate under which section of 212(a)(2)(D) of the Act the applicant was found inadmissible. Therefore, the AAO will address each subsection under 212(a)(2)(D) as it relates to the applicant's conduct.

Section 212(a)(2)(D)(i) of the Act renders inadmissible any alien who "is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status." In order for the applicant to be inadmissible under section 212(a)(2)(D)(i), the applicant must have engaged in prostitution. The AAO notes that "each case must be determined on its own facts but the general rule is that to constitute 'engaging in' there must be a substantial, continuous and regular, as distinguished from casual, single or isolated, acts." *Matter of T*, 6 I&N Dec. 474, 477 (BIA 1955); see also *Kepilino v. Gonzales*, 454 F.3d 1057, 1061 (9th Cir. 2006) ("The term 'prostitution' means engaging in promiscuous sexual intercourse for hire. A finding that an alien has 'engaged' in prostitution must be based on elements of continuity and regularity, indicating a pattern of behavior or deliberate course of conduct entered into primarily for financial gain or for other considerations of material value as distinguished from the commission of casual or isolated acts.").

Therefore, in order for the applicant to have engaged in prostitution, there must be evidence showing that the acts of prostitution were substantial, continuous and regular. The AAO notes that the record indicates that the applicant was convicted of prostitution once in 1995 and once in 2004, almost ten years later. A record of two criminal convictions is not sufficient to establish that the applicant's acts of prostitution were substantial, continuous and regular. Therefore, based on the record, the AAO finds that the applicant is not inadmissible to the United States under section 212(a)(2)(D)(i) of the Act.

Section 212(a)(2)(D)(ii) of the Act renders inadmissible any alien who attempts to procure, procures or has procured prostitutes or persons for the purpose of prostitution. The language of section 212(a)(2)(D)(ii), on its face, relates only to persons who procure others for the purpose of prostitution or who receive the proceeds of prostitution. The AAO notes that in *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549, 552 (BIA 2008), the Board of Immigration Appeals (Board) held that "Congress appears to have been primarily concerned with excluding and removing aliens who were involved in the business of prostitution, using the term 'procure' in its traditional sense to refer to a person who receives money to obtain a prostitute for another person." The AAO notes that there is no evidence in the record that the applicant procured others for the purpose of prostitution or was receiving money to obtain a prostitute for another person. Therefore, the AAO finds that there is insufficient evidence showing that the applicant's conduct renders her inadmissible under section 212(a)(2)(D)(ii) of the Act.

Section 212(a)(2)(D)(iii) of the Act renders inadmissible any alien who comes "to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution." The AAO

notes that the record does not establish that the applicant was “coming to” the United States to engage in prostitution; therefore, the applicant is not inadmissible under section 212(a)(2)(D)(iii) of the Act. For the reasons stated above, the AAO finds that the two criminal convictions relied on by the District Director is insufficient to support a finding that the applicant is inadmissible under section 212(a)(2)(D)(iii) of the Act.

The AAO finds that the District Director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(2)(D) of the Act, as there is insufficient evidence in the record to support the finding that the applicant engaged in prostitution, procured prostitutes, or came to the United States to engage in prostitution. However, the applicant is inadmissible for having been convicted of crimes involving moral turpitude.

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 the recently decided *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.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

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

provides that “[a] person is guilty of prostitution when such person engages or agrees or offers to engage in sexual conduct with another person in return for a fee. Prostitution is a class B Misdemeanor.” In *People v. Costello*, 90 Misc.2d 431, 432, 395 N.Y.S.2d 139 (N.Y.Sup. 1977), the Supreme Court, stated that:

The term “prostitution” itself has a commonly understood meaning, and the use of the term “fee” in the statutory definition is the key to that meaning. The legislature has enacted the section to prohibit commercial exploitation of sexual gratification. The methods of obtaining that gratification are as broad and varied as the term “sexual conduct,” but the common understanding of the term “prostitution” involves the areas of sexual intercourse, deviate sexual intercourse, and masturbation. The many non-physical facets of sexual conduct are defined and regulated by other statutes (e. g., obscenity and exposure of a female).

Moreover, we note that in *People v. Hinzmann*, 177 Misc.2d 531, 677 N.Y.S.2d 440 (N.Y. City Crim.Ct., 1998), the Criminal Court noted that the purpose of Article 230 was “to prohibit the commercial exploitation of sexual gratification,” and that “[t]he sexual conduct need not in fact be consummated; the offer or agreement to trade the sexual conduct with another person for a fee may be sufficient”. *Id.* at 533. (See, Donnino, Practice Commentaries, McKinney’s Cons Laws of NY, Book 39, Penal Law art 230, at 145 [1989’].) The Court indicated that *Costello*’s interpretation of the term “sexual conduct” has been followed by other courts, and that a more expansive interpretation of “sexual conduct” is warranted. *Id.* at 533-534. Thus, the Court held that the combination of “lap dancing” with the touching of naked breasts and buttocks to be encompassed within the meaning of “sexual conduct.” *Id.* The Court reasoned that:

[T]he defendants agreeing to sit on the officer’s lap and “move around” while the officer would touch their naked breasts and buttocks were suggestive of conduct done to satisfy a sexual desire. This was not merely nude dancing, which generally is protected as expressive conduct under the First Amendment. . . . In addition, there are sufficient allegations the defendants agreed to perform these acts in exchange for money. That is the essence of prostitution.

Id. at 534.

In *Matter of Turcotte*, 12 I&N Dec. 206 (BIA 1967), the respondent was charged with prostitution and the Board held that the charge of “offer to commit or to engage in prostitution, lewdness, or assignation,” a misdemeanor under Florida law, was a crime involving moral turpitude. *Id.* at 207. Furthermore, in *Matter of W*, 4 I&N Dec. 401 (BIA 1951), the Board held that the respondent’s conviction for violation of an ordinance of the City of Seattle, Washington, which ordinance stated that “[i]t shall be unlawful to commit or offer or agree to commit any act of prostitution, assignation, or any other lewd or indecent act,” involved moral turpitude. The Board stated that “[i]t is well established that the crime of practicing prostitution involves moral turpitude.” *Id.* 401-404.

In *Costello*, the Court held that even though the term “prostitution” has no statutory definition, the term has its “commonly understood meaning,” which involves sexual intercourse, deviate sexual intercourse, and masturbation; and “the use of the term “fee” in the statutory definition is the key to that meaning.” *Id.* at 432. “Sexual conduct” was expanded in *Hinzmann* to encompass the combination of “lap dancing,” which was the agreement “to sit on the officer’s lap and “move around” while the officer

would touch their naked breasts and buttocks.” The Court reasoned that it was the defendants’ agreement to perform those acts in exchange for money that was “the essence of prostitution.” *Id.* at 534. In view of the holdings in *Turcotte* and *Matter of W*, in so far as they relate to prostitution, we find that the acts proscribed under NYPL § 230.00, which are done specifically for prostitution, are morally turpitudinous. Thus, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of two crimes involving moral turpitude.

Having found that the applicant has been convicted of two crimes involving moral turpitude, we will not discuss whether her convictions for disorderly conduct and attempted unauthorized practice of a profession may also be crimes involving moral turpitude.

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

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

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

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

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the applicant is inadmissible occurred more than 15 years before the date of the applicant’s application for a visa, admission, or adjustment of status. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

Since only one of the criminal convictions for which the applicant was found inadmissible occurred more than 15 years ago, the inadmissibility cannot be waived under section 212(h)(1)(A) of the Act. However, the applicant's inadmissibility can be waived under section 212(h)(B) of the Act.

A waiver of inadmissibility under section 212(h)(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. Hardship to the applicant 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-Morales*, 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 record of hardship includes: counsel's brief, an affidavit from the applicant's spouse, financial and employment information for the applicant and her spouse, and a psychological evaluation for the applicant's spouse.

In an affidavit, dated May 28, 2007, the applicant's spouse states that at the age of 58 years old, if the applicant is ordered removed he will suffer financially and emotionally. He states that he is forever traumatized as a result of growing up in Colombia in poverty and with his family and himself receiving death threats. He states that he has no desire to return to Colombia and to relive this brutality. He states further that he has endured many tragic deaths in his life, including his father when he was 19 years old and the mother of his two children when she was only 21 years old. The applicant's spouse states that he had to raise his two small children on his own and during that time he experienced depression and suicidal ideations. He states that today he still suffers from depression and anxiety, experiencing frequent panic attacks and severe headaches. The applicant's spouse also states that he has difficulty sleeping, feels hopeless, cries often, and continues to have suicidal thoughts. He states that with the applicant in his life he feels emotionally secure, happy, and loved. He states that the applicant has also endured much hardship in her life, including an abusive husband, and that he feels they are kindred spirits. He states that the applicant brings him psychological peace and that if he is separated from her he believes he will have a complete mental breakdown.

The applicant's spouse also states that the applicant is his primary caretaker because his daughter lives in Boston and his son is in the U.S. Army Special Forces.

Finally, the applicant's spouse states that he will suffer financially without the applicant. He states that he earns approximately \$26,000 per year as a lab animal technician for the [REDACTED] and that the applicant earns \$10.00 per hour as a home health aid. He states that on December 6, 2006, he and the applicant purchased a home with a monthly housing cost of

approximately \$2,700 per month and that without the applicant's income he would not be able to meet these costs.

The applicant's spouse's statements are supported by counsel's brief and a psychosocial report completed by [REDACTED] on May 2, 2007. [REDACTED] states that the applicant's spouse has a long history of serious medical problems and psychiatric issues including post-traumatic stress disorder, depression, anxiety, and suicide attempts. [REDACTED] states that the applicant provides the love and support her spouse needs to lead a dignified life filled with love and meaning. During his interview with [REDACTED] the applicant's spouse stated that he suffered from debilitating depression and suicidal thoughts since childhood. [REDACTED] finds that the applicant suffers from post-traumatic stress as a result of the poverty and hardships he suffered while growing up in Colombia. The applicant's spouse also stated that he tried to hang himself after the mother of his children died, but a friend found him and talked him out of it. He also stated that he suffers from panic attacks and his anxiety is present in most of his everyday activities. [REDACTED] states that the applicant's spouse has two children, five grandchildren, and three siblings who are all U.S. citizens. The psychosocial report indicates further that the applicant's spouse is a very active member of his church, which he states provides him with community and comfort. Finally, [REDACTED] report also indicates that the applicant's spouse did not complete high school and after working many different jobs, he now has employment where he received full benefits, including health insurance.

The AAO notes that documentation in the record also supports the hardship claims regarding the applicant and her spouse's income and the applicant's spouse's familial ties in the United States.

The AAO finds that the applicant has established that her spouse would suffer extreme hardship as a result of her inadmissibility. In the applicant's case her spouse would suffer extreme emotional hardship. The record establishes through statements and a psychosocial report that the applicant's spouse suffers from a history of mental health problems beginning when he was a child. The AAO finds that separating the applicant's spouse, who suffers from major depressive disorder, panic attacks, and post-traumatic stress, from his source of support is extreme hardship. The AAO finds further that because of applicant's spouse's mental health, age, and education level, relocating to Colombia or Venezuela would be extreme hardship. Relocating to Colombia or Venezuela would separate the applicant from his children, grandchildren, his church, and his employment. Thus, the AAO finds that the applicant has shown that her spouse would suffer extreme hardship as a result of her inadmissibility.

The record reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility under section 212(h)(1)(B) of the Act. The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(A) 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-Morales*, 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 four criminal convictions from 1995 to 2006 and her unlawful residence in the United States. The AAO does note that the applicant has had no criminal record since she married her spouse in November 2006.

The favorable factors in the present case are the emotional hardship to the applicant's spouse if she were not granted a waiver of inadmissibility; the applicant's consistent record of employment as a home health care provider since 2007, and as indicated through statements in the record, the support and love the applicant provides to her spouse and the community ties she has established volunteering with her church.

The AAO finds that the crimes committed by the applicant are 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.