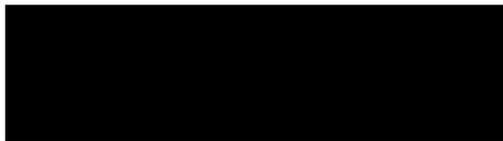


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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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DATE: JUN 02 2011 OFFICE: NEWARK, NJ

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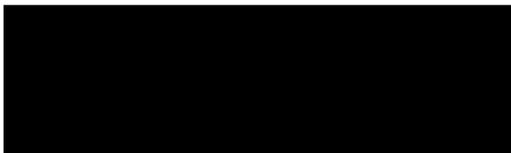


IN RE:



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:



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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey and 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 Korea 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 committed a crime involving moral turpitude. The applicant is the father of two U.S. citizens and the son of a U.S. citizen. He seeks a waiver of inadmissibility in order to remain in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated January 13, 2009.

On appeal, counsel asserts that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant had failed to establish that his mother and children would suffer extreme hardship as a result of his inadmissibility. Counsel submits additional evidence in support of the waiver application. *Form I-290B, Notice of Appeal or Motion*, received February 13, 2009.

The record contains, but is not limited to, the following evidence: counsel's brief; statements from the applicant, his spouse, his son, his daughter, and his mother; medical records and statements relating to the applicant, his spouse and his mother; a psychosocial assessment of the applicant's family; school records, documentation of educational loans; and tuition payments relating to the applicant's children; tax returns and W-2 forms for the applicant; a business registration certificate relating to a business previously owned by the applicant; a country conditions report on Korea; documentation of the Social Security income received by the applicant's mother and her husband; bank statements for the applicant and his spouse, and for a former business; a statement relating to the applicant's automobile insurance; a letter of support from the applicant's minister; documentation of the applicant's charitable donations; and court records relating to the applicant's criminal history. The entire record has been reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(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

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.

This case, however, arises within the jurisdiction of the Third Circuit Court of Appeals, which has adopted the traditional categorical approach to determine whether an offense constitutes a crime involving moral turpitude. *See Jean-Louis v. Holder*, 582 F.3d 462, 473-82 (3rd Cir. 2009) (declining to follow the “realistic probability approach” put forth by the Attorney General in *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008)). The categorical inquiry in the Third Circuit consists of looking “to the elements of the statutory offense . . . to ascertain that least culpable conduct necessary to sustain a conviction under the statute.” *Id.* at 465-66. The “inquiry concludes when we determine whether the least culpable conduct sufficient to sustain conviction under the statute ‘fits’ within the requirements of a CIMT.” *Id.* at 470. However, if the “statute of conviction contains disjunctive elements, some of which are sufficient for conviction of [a CIMT] and other which are not . . . [an adjudicator] examin[es] the record of conviction for the narrow purpose of determining the specific subpart under which the defendant was convicted.” *Id.* at 466. This is true even where clear sectional divisions do not delineate the statutory variations. *Id.* In so doing, an adjudicator may only look at the formal record of conviction. *Id.* Accordingly, the AAO will limit any inquiry into the nature of the applicant’s offense to his record of conviction.

The record reflects that, on December 18, 1992, the applicant was convicted under 18 U.S.C. § 371 of Conspiring to Obtain Alien Registration Receipt Cards in violation of 18 U.S.C. 1546(a). The applicant was sentenced to 150 days of home confinement, fined \$5,000, required to perform 320 hours of community service and placed on probation for three years.

At the time of the applicant’s conviction, 18 U.S.C. § 371 provided:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

At the time of the applicant’s conviction, 18 U.S.C. § 1546 provided, in pertinent part:

Fraud and misuse of visas, permits, and other documents

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States,

knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service [now Director, USCIS], or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement –

Shall be fined under this title or imprisoned not more than five years, or both.

In *Omagah v. Ashcroft*, the Fifth Circuit Court of Appeals considered a conviction under 18 U.S.C. § 371 for a violation of 18 U.S.C. § 1546 and noted that the BIA had properly focused on the latter statute in its consideration of the case as the former “generically prohibits conspiring to ‘defraud’ or ‘commit an offense against’ the United States. 288 F.3d 254, 261 (5th Cir. 2002). The Court also observed, however, that 18 U.S.C. § 1546, encompasses crimes that involve moral turpitude and those that do not because it punishes a spectrum of offenses, including “(1) simple, knowing possession of illegal documents, (2) possession of illegal documents with an intent to use them, and (3) forgery of illegal documents.” 288 F.3d 254, 261 (5th Cir. 2002). Having reviewed the Fifth Circuit’s decision in *Omagah*, the AAO concludes that the applicant’s conviction for Conspiring to Obtain Alien Registration Receipt Cards is not categorically a crime involving moral turpitude and will engage in a second-stage inquiry and review the applicant’s record of conviction. The record of conviction consists of such documents as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 698, 704, 708.

In the present case, the record of conviction consists of the information or indictment, and the judgment for the applicant's conviction. While the judgment lists only the statutes violated by the applicant, the information or indictment describes his offense as follows:

1. From in or about June, 1991 through in or about March, 1992, the defendant, [REDACTED] and others known and unknown to the United States, knowingly and willfully combined, agreed and conspired:
 - a. to commit an offense against the United States by knowingly obtaining alien registration receipt cards which defendant [REDACTED] knew to be procured by fraud and otherwise unlawfully obtained in violation of Title 18, United States Code, Section 1546(a); and
 - b. to defraud the United States by impeding, impairing and obstructing the lawful governmental functions of the Immigration and Naturalization Service . . . in the administration of the immigration laws and the maintenance of proper records of the immigration status of aliens.

In *Matter of Omagah*, the Fifth Circuit specifically addressed the possession of illegal documents with an intent to use them, the second of the spectrum of offenses punished under 18 U.S.C. § 1546(a), and indicated that it found reasonable "the BIA's decision to classify, as moral turpitude, conspiracy to possess illegal immigration documents with the intent to defraud the government." 228 F.3d at 261. In this case, the information from the applicant's record of conviction reflects that his conviction was for conspiracy to obtain alien registration receipt cards in order to defraud the U.S. government, which is categorically a crime involving moral turpitude. *Compare Matter of Serna*, 20 I&N Dec. 579 (BIA 1992) ("possession of an altered immigration document with the knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a crime involving moral turpitude."). Accordingly, the AAO finds the offense for which the applicant was convicted under 18 U.S.C. § 371 to be a crime involving moral turpitude and to bar his admission to the United States under section 212(a)(2)(i)(I) of the Act.

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

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

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

- (i) [T]he 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 that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

The offense committed by the applicant took place more than 15 years ago and is, therefore, also eligible for consideration under the provisions of section 212(h)(1)(A) of the Act. However, the AAO finds that no purpose would be served by such consideration as the applicant is also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.¹ Even if found to qualify for a waiver under section 212(h)(1)(A), the applicant must still establish extreme hardship to a qualifying relative under section 212(i) of the Act. The AAO will, therefore, consider the applicant's eligibility for the more restrictive section 212(i) waiver as a finding of extreme hardship will also satisfy the waiver requirement of 212(h)(1)(B) of the Act.

Section 212(a)(6)(C)(i) of the Act states:

(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 reflects that the applicant repeatedly used a fraudulent I-551 (A29 358 205) to enter the United States during 1991 and 1992. Therefore, he is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having obtained admission to the United States through fraud or willful misrepresentation of a material fact.

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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission would impose extreme hardship on a qualifying relative, which includes the U.S. citizen

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. See *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); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3^d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his U.S. citizen children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother is the qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 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 BIA 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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The BIA 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 BIA 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).

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel contends that the applicant's mother, who is now 83 years of age, would suffer financial hardship if she returns with him to Korea as he will not be able to support her or the other members of his family. Counsel states that it has been more than two decades since the applicant left Korea and that, even if he is able to obtain employment upon his return, his income will be substantially lower than in the United States because of his age and reduced employment opportunities. Counsel also claims that the applicant's mother suffers from hypertension, heart palpitations, atrial fibrillation, Alzheimer's Disease and dementia, constant pain and arthritis caused by a previously broken arm. He contends that the applicant's mother is taking medication for her heart condition, pain, Alzheimer's Disease and dementia.

Copies of medical prescriptions found in the record demonstrate that the applicant's mother has been prescribed Actonel for her osteoporosis, as well as Zocor and aspirin for her heart condition. Further proof that the applicant's mother suffers from heart problems is found in an August 31, 2006 handwritten statement from [REDACTED] who indicates that he has advised that the applicant's mother be hospitalized for acute onset atrial fibrillation. Medical records from Flushing Hospital Medical Center demonstrate that the applicant's mother was subsequently hospitalized in connection with this condition. Other records from Englewood Hospital and Medical Center establish that the applicant's mother had surgery for a broken wrist in 2004. The record also includes documentation that establishes the applicant's mother is on Medicare.

The record further contains the section on Korea from the Department of State's Country Reports on Human Rights Practices – 2005. This document, however, which addresses human rights concerns in the Republic of Korea, does not establish that the applicant would be unable to support his family upon return to Korea. While the report addresses worker rights in Korea and indicates that the Federation of Korean Trade Unions and other labor unions asserted that the minimum wage in Korea did not meet the basic requirements of urban workers in 2005, the record fails to indicate how the expressed concerns about workers rights and the minimum wage would affect the applicant's ability to earn a living and, therefore, his ability to support his mother in Korea. General economic or country conditions in an alien's native country do not establish hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996) (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985)).

While the record does not support all of counsel's claims regarding the hardship that would be experienced by the applicant's mother upon her return to Korea, it does establish that she suffers from two significant health conditions, atrial fibrillation and osteoporosis, and that she is currently cared for by physicians who are familiar with her medical history and needs. When the applicant's mother's advanced age, her health conditions, the disruption in her medical treatment that would result from her departure from the United States, and the stress normally created by relocation are considered in the aggregate, the AAO finds the record to establish that the applicant's mother would suffer extreme hardship if she returned to Korea.

Counsel also contends that the applicant's mother would experience significant hardship if she remains in the United States without him. Counsel asserts that the applicant's mother is heavily dependent on the applicant for her daily needs, to meet her financial obligations and to obtain the

health care she needs for her medical conditions. Counsel states that the applicant's removal would result in financial devastation for his mother and that she would be unable to support herself in his absence. He further claims that the applicant's removal would affect his mother's health as her multiple medical problems would be exacerbated by his departure.

In a January 28, 2009 statement, the applicant's mother claims that she relies on her son to drive her to doctors' appointments at a hospital where the doctors speak Korean and that he assists her in paying for her medical care as she does not receive sufficient Social Security income to pay all her healthcare costs. The applicant's mother acknowledges that she has another son living in the United States but states that they have not spoken in five or six years because he is estranged from the family. Although she does not have much longer to live, the applicant's mother asserts, she hopes to die knowing that the applicant is able to live legally in the United States and care for his family.

In support of the preceding claims, the record contains a March 1, 2009 psychosocial assessment of the applicant's family prepared by licensed clinical social worker [REDACTED]. In her assessment, [REDACTED] finds that the applicant's removal would result in psychological and financial hardship to the applicant's mother. She reports that the applicant's mother lives with her elderly husband who is obese, has hypertension, needs a cane to walk and is "sometimes difficult, arguing and yelling at her." [REDACTED] also reports that the applicant's mother has been diagnosed with Alzheimer's Disease and that her short term memory is poor. She further states that the applicant's mother indicated during her interview that she has heart palpitations and headaches, that she fractured her wrist and hip in a fall, and that she has arthritis in both knees and is unsteady on her feet.

[REDACTED] evaluation concludes that the applicant's mother is dependent on the applicant for many things, including daily reminders to take her medications, shopping for groceries and cleaning her home, and that he is her primary caregiver. She also indicates that the applicant gives his mother \$300-500 each week to help her and her second husband with their bills. She states that the applicant's mother is so completely dependent on her son that she would be unable to survive without him. The applicant's mother, [REDACTED] contends, is "a fragile, needy, elderly woman who is inextricably bound" to the applicant and that her medical problems would be exacerbated by his removal and "the trauma of the loss of her son could even contribute to an earlier death."

The record includes copies of 2004 and 2005 Social Security Benefit Statements for the applicant's mother and her second husband. During 2004, the applicant's mother and her husband received \$6,634.80 and \$15,274.80 respectively in Social Security benefits; in 2005, their payments totaled \$6,813.60 and \$15,687.50. No other evidence of their income is found in the record.

The AAO acknowledges that the applicant's mother would suffer emotionally if he is removed and that her advanced age and health make a separation from her son more onerous than might otherwise be the case, thereby distinguishing the emotional hardship she would suffer from that normally created by the separation of families. We therefore find that when the applicant's mother's emotional hardship, her age, and her health problems are viewed in the aggregate, the applicant has demonstrated that she would suffer extreme hardship if the waiver application is denied and she remains in the United States without him.

In that the applicant has demonstrated that his mother would experience extreme hardship as a result of his section 212(a)(6)(C)(i) inadmissibility, he has established statutory eligibility for relief

under section 212(i) of the Act. Further, as previously discussed, he has also met the extreme hardship requirement for a waiver under section 212(h) of the Act.

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(h)(1)(B) 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 significant: the applicant's conviction for a crime involving moral turpitude for which he now seeks a waiver; his use of a fraudulent Form I-551 to enter the United States; and his periods of unauthorized residence and employment in the United States. The mitigating factors are the applicant's U.S. citizen mother and children, the extreme hardship to his mother if the waiver application is denied; the length of time that has passed since the applicant committed the offense that resulted in his conviction; his long-term payment of taxes; his business interests in the United States; the February 2, 2009 letter of support written by the minister of the [REDACTED] of Bernardsville that reports the applicant's involvement in community projects providing care for the less fortunate, his appointment as a deacon of his church, his leadership of a church mission organization, and his counseling of struggling teenagers; the documentation of his charitable contributions to World Vision and the Christian Children's Fund; and his own health problems.

The AAO finds that the offense committed by the applicant and his misrepresentation 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.