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



**PUBLIC COPY**



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Date: NOV 07 2011 Office: MEXICO CITY (CIUDAD JUAREZ)

FILE: 

IN RE: Applicant: 

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

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 Acting District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who was found to be inadmissible under 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), as an alien convicted of a crime involving moral turpitude, and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and has a U.S. citizen son. He seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(a)(9)(B)(v) of the Act so as to immigrate to the United States. The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant filed a timely appeal.

On appeal, counsel states that the applicant's U.S. citizen spouse will experience extreme financial and emotional hardship if the waiver is denied.

The AAO will first address the finding of inadmissibility for unlawful presence, which is found under section 212(a)(9)(B) of the Act. That section provides, in part:

(B) Aliens Unlawfully Present

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

. . .

(iii) For purposes of this paragraph, no period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in February 1991. The applicant began to accrue unlawful presence from January 13, 2002, when he turned 18 years old, until August 2007, when he left the country and

triggered the ten-year bar, rendering him inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

Now we will address the finding of inadmissibility under section 212(a)(2)(A) of the Act. That section 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).

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.

The record reflects that on October 21, 2005, the applicant was found guilty and convicted of assault causes bodily injury family violence, a class A misdemeanor, in violation of section 22.01 of the Texas Penal Code. The applicant was ordered to pay a fine and serve 365 days in the county jail. The judge determined that in the interests of justice the defendant will be granted community service for under the terms of Article 42.12 of the Code of Criminal procedure for 12 months.

At the time of the applicant’s conviction, section 22.01 of the Texas Penal Code stated:

- (a) A person commits an offense if the person:
  - (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person’s spouse;
  - (2) intentionally or knowingly threatens another with imminent bodily injury, including the person’s spouse; or

(3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

...

The Texas Penal Code states that “ ‘[b]odily injury’ means physical pain, illness, or any impairment of physical condition.” Tex. Penal Code Ann. § 1.07(a)(7). The intent element, “reckless,” is defined in Section 6.03(c) of the Texas Penal Code:

A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Section 12.21 of the Texas Penal Code states that the punishment for a class A misdemeanor is a fine not to exceed \$4,000, confinement in jail for a term not to exceed one year, or both such fine and confinement.

Crimes of assault and battery may or may not involve moral turpitude; an assessment of both the mental state and level of harm to complete the offense is required. *See Matter of Solon*, 24 I&N Dec. 239 (BIA 2007). Intentional conduct resulting in a meaningful level of harm may be found to be morally turpitudinous, and aggravating factors are to be taken into consideration. *Id.* at 242. In *In re Samudo*, 23 I&N Dec. 968, 972 (BIA 2006), the Board indicated that simple assault and battery offenses generally do not involve moral turpitude; however, that determination can be altered if there is an aggravating factor such as the infliction of bodily harm upon persons whom society views as deserving of special protection, such as children or domestic partners or intentional serious bodily injury to the victim. In *In Re Fualaau*, 21 I&N Dec. 475 (BIA 1996), the Board held that third degree assault with a criminally reckless state of mind was not a crime involving moral turpitude, and that “for an assault of the nature . . . to be deemed a crime involving moral turpitude, the element of a reckless state of mind must be coupled with an offense involving the infliction of serious bodily injury.”

Upon review of the Texas law at issue here, we find that not all of the actions punishable encompass conduct involving moral turpitude. A crime involves moral turpitude when a vicious motive or a corrupt mind or knowing or intentional conduct is a statutory element of the offense. *See Perez-Contreras, supra*. However, the mental state underlying a conviction for recklessly causing bodily injury under section 22.01 of the Texas Penal Code would not involve moral turpitude where such actions do not involve serious bodily injury. *See In Re Fualaau, supra*. An offense involving minimal harm could support a conviction under section 22.01 of the Texas Penal Code. In *Lewis v. State*, 530 S.W.2d 117, 118 (Tex.Cr.App.1975), the Court of Appeals stated that the element of

“bodily injury” was proven when the victim testified to suffering physical pain when the defendant grabbed her briefcase and twisted her arm back, causing her to sustain a small bruise. Thus, not all of the conduct punishable under the statute involves moral turpitude.

Because section 22.01 of the Texas Penal Code encompasses conduct that both does and does not involve moral turpitude, a conviction under its provisions is not categorically a crime involving moral turpitude. The record contains the complaint, which stated that the applicant “did then and there intentionally, knowingly or recklessly cause bodily injury to another, [REDACTED] a member of the defendant’s family, by hitting said [REDACTED] about the body with the defendant’s hand.” As previously discussed, the Board in *In re Sanudo* determined that (for intentional assaults) bodily harm upon individuals deserving of special protection such as a child, domestic partner, or a peace officer, constitutes morally turpitudinous conduct. 23 I&N Dec. 968, 971-72 (BIA 2006). It is not clear from the complain that the applicant’s assault on his spouse was intentional, rather than reckless. However, because we find that the applicant meets the requirements for waiver, for purposes of this appeal, we will assume that his conduct was intentional. We thus do not disturb the finding that the applicant’s crime of hitting his wife with his hands and causing bodily harm to her in violation of section 22.01 of the Texas Penal Code involves moral turpitude, rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The applicant was convicted of the crime of assault causing bodily injury (family violence). The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien’s underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The AAO notes that the words “violent” and “dangerous” and the phrase “violent or dangerous crimes” are not further defined in the regulation, and the AAO is aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, “crime of violence,” is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. §

16, or the specific language thereof, in 8 C.F.R. § 212.7(d). Thus, we find that the statutory terms “violent or dangerous crimes” and “crime of violence” are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependant on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms “violent” and “dangerous”. The term “dangerous” is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms “violent” and “dangerous” in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual “case-by-case basis.” 67 Fed. Reg. at 78677-78.

The AAO finds that the crime of assault causing bodily injury (family violence) is a violent crime. In the instant case, as we find that there are not national security or foreign policy considerations that would warrant a favorable exercise of discretion, the applicant must, in addition to the statutory requirement of proving extreme hardship, demonstrate that denial of admission would result in exceptional and extremely unusual hardship, to a qualifying relative, who in the instant case is the applicant’s U.S. citizen wife and son.

In *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001), the Board determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that “must be ‘substantially’ beyond the ordinary hardship that would be expected when a close family member leaves this country.” However, the applicant need not show that hardship would be unconscionable. *Id.* at 61. The AAO notes that the exceptional and extremely unusual hardship standard in cancellation of removal cases is identical to the standard put forth by the Attorney General in *Matter of Jean, supra*, and codified at 8 C.F.R. § 212.7(d).

The Board stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative’s family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative’s ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. The 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 an exclusive list. *Id.*

We note that in *Monreal*, the Board provided additional examples of the hardship factors it deemed relevant for establishing exceptional and extremely unusual hardship:

[T]he ages, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives. For example, an applicant who has elderly parents in this country who are solely dependent upon him for support might well have a strong case. Another strong applicant might have a qualifying child with very serious health issues, or compelling special needs in school. A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.

23 I&N Dec. at 63-4.

In the precedent decision issued the following year, *Matter of Andazola-Rivas*, the Board noted that, “the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by comparing it to the hardship others might face.” 23 I&N Dec. 319, 323 (BIA 2002). The issue presented in *Andazola-Rivas* was whether the Immigration Judge correctly applied the exceptional and extremely unusual hardship standard in a cancellation of removal case when he concluded that such hardship to the respondent’s minor children was demonstrated by evidence that they “would suffer hardship of an emotional, academic and financial nature,” and would “face complete upheaval in their lives and hardship that could conceivably ruin their lives.” *Id.* at 321 (internal quotations omitted). The Board viewed the evidence of hardship in the respondent’s case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The Board noted:

While almost every case will present some particular hardship, the fact pattern presented here is, in fact, a common one, and the hardships the respondent has outlined are simply not substantially different from those that would normally be expected upon removal to a less developed country. Although the hardships presented here might have been adequate to meet the former “extreme hardship” standard for suspension of deportation, we find that they are not the types of hardship envisioned by Congress when it enacted the significantly higher “exceptional and extremely unusual hardship” standard.

23 I&N Dec. at 324.

However, the Board in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as *Andazola-Rivas*, clarified that “the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief.” 23 I&N Dec. 467, 470 (BIA 2002). The Board found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The Board noted that these factors included her heavy financial and familial burden, lack of support from her children’s father, her U.S. citizen children’s unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The Board stated, “We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship

standard will be met.” *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate. See *Gonzalez Recinas*, 23 I&N Dec. at 469 (“While any hardship case ultimately succeeds or fails on its own merits and on the particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship.”).

On appeal, counsel states that the applicant’s U.S. citizen spouse will experience extreme financial and emotional hardship if the waiver is denied. Counsel indicates that the applicant and his wife were married on June 17, 2005, but have known each other since 1998 and have a close bond. Counsel declares that the applicant’s spouse is in financial straits without her husband and has to work full-time in order to pay child care, vehicle and utility expenses, and assist the applicant financially. Counsel states that prior to the departure the applicant’s wife could work part-time and take care of her son, who has epilepsy. Counsel states the applicant’s wife has bipolar disorder, attention deficit disorder and depression, and her mental health has worsened since the applicant’s absence. Counsel conveys that the applicant’s wife will experience severe hardship in Mexico because she, like the applicant, will not find a job due to Mexico’s poor economy. Further, counsel conveys that even if they found work, they would not earn enough money for a decent living. Counsel indicates that the applicant’s wife has lived in the United States since she was three years old and would have to give up the privilege of living here if she relocated to Mexico.

The applicant’s wife stated in the affidavit dated June 28, 2008 that her husband had financially supported the family as the owner of a landscaping business, which allowed her to take care of their son, who has epilepsy. She stated that she now must work full time and have her mother take care of her son. She indicated that she sends her husband \$200-300 every two weeks because he has been unable to find a steady job in Mexico. The applicant’s wife described a close relationship with her husband and she indicated that she has bi-polar disorder, attention deficit disorder, and depression and her mental health worsened since her husband’s absence. In addition, she stated that she cannot imagine living in Mexico where they would not earn enough money to support their family if they could find work. The applicant’s wife conveyed that her son has access to doctors and dentists in the United States and his condition is controlled; however, in Mexico she could not afford pediatric care and he would have a bleak future. Lastly, the applicant’s spouse asserted that her husband has always helped with their son and she could never have imagined how badly the loss of her husband would affect her life and that of their son.

In regard to the submitted evidence, the letter from Dr. Dale L. Messer dated June 20, 2008 stated that the applicant’s 21-year-old wife is under his care for bipolar disorder, attention deficit, and depression. The record also contains insurance information from BlueCross BlueShield for the applicant’s wife and son; a Medicaid claim from the Women’s Health Program for the applicant’s wife reflects that she became eligible for benefits on February 2, 2007; a Medicaid claim for the applicant’s son reflects eligibility as of May 1, 2006; prescriptions for lamotrigine, Lexapro, lithium for the applicant’s wife; a doctor’s note dated August 17, 2007 stating that the applicant’s son suffers from febrile seizures; wage statements reflecting the applicant’s wife earns \$9.50 per hour; statements indicating the applicant’s wife pays \$120 to her mother for childcare and \$500 for rent; a finance statement for a vehicle; credit card and utility invoices; a letter dated September 10, 2007

from the applicant's wife in which she expresses anxiety about her husband's safety in Mexico and conveys that she was there for one week and witnessed robberies; and other documentation.

In view of the stated emotional and financial hardship factors to the applicant's wife and child if they remain in the United States without the applicant, which is consistent with the aforementioned evidence of financial and medical records and doctor's statements, we find that based on the unique factors in this case, the applicant has demonstrated that his wife and son will experience hardship that will be "exceptional and extremely unusual" if they remain in the United States without him.

Furthermore, the stated hardship to the applicant's wife and son if they join the applicant to live in Mexico are also financial and emotional in nature. The applicant's wife indicates that she has lived in the United States since she was three years old and her husband has lived here since he was six years old. The record reflects that the applicant's wife has serious mental health problems of depression, bipolar disorder, and attention deficit, which will significantly impact her ability to obtain a job in Mexico. Further, the record shows that her child suffers from epilepsy. Both the applicant's wife and child are covered by insurance and Medicaid. The applicant's wife is distressed about not being able to obtain jobs in Mexico that will provide a sufficient income in which to support their family, having her child forego medical attention, and placing their personal safety at risk. In view of her serious mental health problems, her anxiety and concerns about living in Mexico and the impact that living there will have on her child, who also has serious health problems, we find that the effect on the applicant's wife if she joined her husband to live in Mexico will be emotional hardship that is "exceptional and extremely unusual."<sup>1</sup>

Furthermore, the AAO finds that the gravity of the applicant's offense does not in this case override the extraordinary circumstances discussed. In determining the gravity of the applicant's offense, the AAO must not only look at the criminal act itself, but also engage in a traditional discretionary analysis and "balance 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." *Matter of Mendez-Morales*, 21 I&N Dec. 296, 300 (BIA 1996)(Citations omitted).

The adverse factors in the present case are the applicant's conviction for assault and his entry without inspection and unlawful presence in the United States. The favorable factors in the present case are the extreme hardship to the applicant's wife and child and the passage of six years since he was convicted of the offense. The record reflects that the applicant completed an anger management course. Further, the victim of the crime, the applicant's wife, has issued an affidavit stating that the applicant has a close relationship with her and their son and that he helps to take care of their son. The applicant does not appear to have been arrested for any other criminal offenses and he has not been charged with any other immigration violations.

The AAO finds that the crime and immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable

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<sup>1</sup> The applicant has also demonstrated that denial of admission would result in extreme hardship to his wife, the less stringent extreme hardship standard required for a waiver of inadmissibility for unlawful presence under section 212(a)(9)(B)(v) of the Act.

factors in the present case outweigh the adverse factors such that a favorable exercise of discretion is warranted. Therefore, the applicant has established his eligibility for sections 212(h) and 212(a)(9)(B)(v) of the Act waivers.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained and the application is approved.