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



H2

Date: OCT 03 2011      Office: TAMPA      FILE: [REDACTED]

IN RE:      Applicant: [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:



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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Tampa, Florida, 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 to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and children.

The district director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated March 31, 2009.

On appeal, counsel for the applicant asserts that the applicant has shown that his family will suffer extreme hardship should the applicant reside outside the United States, and that the applicant merits approval of his waiver application. *Statement from Counsel on Form I-290B*, dated March 13, 2009.

The record contains, but is not limited to: statements from the applicant, as well as the applicant's wife, stepdaughter, and other individuals; documentation regarding the applicant's wife's medical care and prescriptions; documentation of the applicant's transfer of money to his mother; photographs of the applicant and his family; documentation in connection with the applicant's and his wife's employment, income, banking, and expenses; and documentation in connection with the applicant's criminal conviction. The entire record was reviewed and considered in rendering this decision.

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.)

The record shows that on July 27, 2005 the applicant was convicted in the United States District Court for the Middle District of Florida of Misuse of a Social Security Number under 42 U.S.C. § 408(a)(7)(B). He was sentenced to 24 months probation, yet he faced a possible maximum sentence of five years of incarceration.

At the time of the applicant's conviction, the pertinent sections of 42 U.S.C. § 408(a) provided:

In general

Whoever--

...

(7) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—

...

(B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person . .

shall be guilty of a felony and upon conviction thereof shall be fined under Title 18 or imprisoned for not more than five years, or both.

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 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.

The present case arises in the Eleventh Circuit. The AAO is not aware of any binding precedent decisions that address whether a conviction under 42 U.S.C. § 408(a)(7)(B) constitutes a crime involving moral turpitude. While other U.S. Courts of Appeals have issued decisions directly addressing

this determination, the Eleventh Circuit has not. The Board of Immigration Appeals (BIA) has not published a decision interpreting 42 U.S.C. § 408(a)(7)(B), and this matter has not reached the Supreme Court.

In the absence of clear, binding precedent, the AAO looks to other circuits for instructive decisions. However, there is disagreement among the U.S. Courts of Appeals that have decided this issue. In *Beltran-Tirado v. I.N.S.*, 213 F.3d 1179 (9<sup>th</sup> Cir. 2000), the Ninth Circuit held that the crime of using a false social security number under 42 U.S.C. § 408(g)(2) (recodified at section 408(a)(7)(B)) was not a crime involving moral turpitude. The Ninth Circuit examined a 1990 statutory amendment to section 408, which provided that individuals who had been granted permanent resident status under the amnesty or registry statutes were exempt from prosecution for certain past uses of false social security numbers, including using a false social security number to obtain employment resulting in eligibility for social security benefits. 213 F.3d at 1183, 1184 n.8. Relying on a congressional conference report accompanying the statutory amendment, in which Congress indicated that “individuals provided exemption from prosecution under this proposal should not be considered to have exhibited moral turpitude with respect to the exempted acts for purposes of determinations made by the Immigration and Naturalization Service,” the Ninth Circuit concluded that an individual’s conduct of using a false social security number does not involve moral turpitude. *Id.* at 1184.

However, in *Hyder v. Keisler*, 506 F.3d 388, 393 (5<sup>th</sup> 2007), the Fifth Circuit rejected the Ninth Circuit’s reasoning in *Beltran-Tirado*, stating that the court “expanded a narrow exemption beyond what Congress intended.” In *Serrato-Soto v. Holder*, 570 F.3d 686, 692 (6<sup>th</sup> Cir. 2009), the Sixth Circuit concurred with the Fifth Circuit, noting that “[t]he amendment and legislative history upon which the Ninth Circuit relied applies to aliens who have already been granted status as lawful permanent residents and only applies to future criminal prosecutions.” (citing 42 U.S.C. § 408(e)). The Sixth Circuit agreed that the fact that Congress chose to exempt a certain class of aliens from prosecution for certain acts does not necessarily mean that those acts do not involve moral turpitude in other contexts. 570 F.3d at 692 (citing *Hyder v. Keisler*, 506 F.3d at 393).

In examining 42 U.S.C. § 408(a)(7)(B), we find it significant that it requires an intent to deceive. The AAO has examined relevant decisions to assess the relationship between an “intent to deceive” and an intent to commit fraud. In the unpublished *Ahmed v. Holder*, 324 Fed.Appx. 82 (2<sup>nd</sup> Cir. 2009), the Second Circuit found that an offense under 42 U.S.C. § 408(a)(7)(B) does not constitute a crime involving moral turpitude, holding that “[t]he intent to deceive is not equivalent to the intent to defraud, which generally requires an intent to obtain some benefit or cause a detriment.” 324 Fed.Appx. at 84 (citing *Mikes v. Straus*, 274 F.3d 687, 696 (2d Cir. 2001)). The Second Circuit continued:

There are many situations in which a person may have the intent to deceive without having the intent to defraud. For instance, a homeowner who, for the purpose of deterring burglaries, intentionally deceives [a] passersby regarding the presence of an alarm system is not acting with the intent to defraud. Similarly, a person who secures employment on the basis of a false social security number has the intent to deceive

the employer and violates § 408(a)(7)(B), but has not necessarily acted with the intent to defraud the employer or the government. For this reason, [the applicant's] case is distinguishable from the many cases holding crimes of fraud to be crimes involving moral turpitude. *See generally, e.g., Jordan v. De George*, 341 U.S. 223, 71 S.Ct. 703, 95 L.Ed. 886 (1951). It also is distinguishable from cases involving the impairment of governmental services, *e.g., Rodriguez*, 451 F.3d at 63, because [the applicant's] crime was misrepresenting his social security number "for any ... purpose," 42 U.S.C. § 408(a)(7), and did not necessarily impair any governmental services.

*Id.*

Conversely, in *Guardado-Garcia v. Holder*, the Eighth Circuit found that an offense under 42 U.S.C. § 408(a)(7)(B) does constitute a crime involving moral turpitude, stating that "[i]ntent to deceive for the purpose of wrongfully obtaining a benefit is an essential element of § 408(a)(7)(B). Accordingly, the [BIA's] interpretation of that crime as one involving moral turpitude is reasonable." 615 F.3d 900, 902 (8<sup>th</sup> Cir. 2010) (citing *Lateef v. Department of Homeland Security*, 592 F.3d 926, 929 (8<sup>th</sup> Cir. 2010)).

Crimes in which an intent to commit fraud is a statutory requirement have been categorically treated as crimes involving moral turpitude. The AAO is not aware of any decisions from the Eleventh Circuit that address whether a statutory requirement of "intent to deceive" should be treated equally as an intent to defraud for the purpose of determining whether an offense is a crime involving moral turpitude. However, in *Itani v. Ashcroft*, 298 F.3d 1213, 1216 (11<sup>th</sup> Cir. 2002), the Eleventh Circuit stated that "[g]enerally a crime involving dishonesty or a false statement is considered to be one involving moral turpitude." In *Matter of Correa-Garces*, 20 I. & N. Dec. 451, 454 (BIA 1992), the BIA found that an applicant had been convicted of a crime involving moral turpitude where the offense in question involved "making false statements on an application for a United States passport under another name; and for willfully, knowingly, and with intent to deceive, falsely representing a social security account number as having been issued to him, for purposes of obtaining a passport in that other name." Though the offense here only required an intent to deceive, the BIA addressed the crime by stating that "[c]rimes involving fraud are considered to be crimes involving moral turpitude." *Id.*; *see also Matter of Flores*, 17 I&N Dec. 225, 228 (BIA 1980) ("where fraud is inherent in an offense, it is not necessary that the statute prohibiting it include the usual phraseology concerning fraud in order for it to involve moral turpitude."); *Padilla v. Gonzales*, 397 F.3d 1016, 1020 (7<sup>th</sup> Cir. 2005) ("moral turpitude may inhere in crimes that do not contain fraud as an element."). These statements support finding that crimes requiring an intent to deceive can be crimes involving moral turpitude, just as those requiring intent to defraud involve moral turpitude.

Based on the foregoing, as all offenses under 42 U.S.C. § 408(a)(7)(B) require a false representation of a social security number with an intent to deceive, we find that the applicant's conviction under 42 U.S.C. § 408(a)(7)(B) for misuse of a social security number is a crime involving moral turpitude. Thus, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and he requires a waiver under section 212(h) of the Act.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

(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

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

A waiver of inadmissibility under section 212(h) 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 wife and children are the qualifying relatives 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 deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

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

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

In a statement dated May 8, 2009, the applicant stated that his wife and three children will suffer extreme hardship should he be removed from the United States. He noted that his two older children are from a prior marriage, and that he has a daughter with his current wife, all of whom are U.S. citizens. He explained that his two older children reside with their mother in Brownsville Texas, and that he visits them approximately once each year and that they visit him in Florida every few years. He indicated that he works to support his family, and that they will suffer without his income. He added that he pays approximately \$450 each month in child support, and he contributes additional

funds when available. He stated that his former wife does not have a legal immigration status in the United States, and she does not work. He provided that, although his former wife remarried, her husband's income is not sufficient to support them and his two older children. He asserted that he would be unable to earn sufficient income to continue his current level of support of his two older children should he depart the United States.

The applicant explained that his current wife earns approximately \$11 per hour working full-time in a fish farm, and her income would not be sufficient to pay their bills or credit card debt. He indicated that his wife is unable to work additional hours due to her medical and emotional conditions, including fibromyalgia, which causes her constant body pain. He added that his wife's physical pain contributes to her struggles with depression. He stated that his wife requires his assistance to care for their daughter and household due to her physical limitations. He indicated that his wife has two adult daughters from a prior marriage, and that one of them resides in his household and he supports her.

The applicant provided that he has other family members residing in the United States, including his brother and sister. He explained that he has an elder sister and elderly parents residing in Mexico, yet they would be unable to help him should he return there. He noted that his mother is a U.S. citizen and his father is a lawful permanent resident, yet they returned to Mexico when they got older, and they barely earn enough income support themselves. He noted that he sends his parents extra money when he can. He added that his father has mobility and circulatory problems, and his mother has rheumatoid arthritis and high blood pressure which inhibits her ability to work. He noted that his sister in Mexico does not work and is unable to assist him.

The applicant asserted that his wife and youngest daughter would be compelled to relocate to Mexico with him which would cause them hardship. He noted that his daughter does not speak Spanish, and she would have difficulty adjusting to life in Mexico and completing academic activities. He explained that his wife would no longer be able to see her doctors on a regular basis, and her conditions would become worse. He stated that his wife must continue her medications, and he thinks they may be unavailable to her should they reside in Mexico.

In a statement dated May 8, 2009, the applicant's wife reiterated the assertions of the applicant discussed above. She added that she was born in Texas and she has resided in the United States for her entire life. She stated that she has six siblings, three of who reside near her in Tampa, Florida. She explained that two of her siblings reside in Mexico yet they would be unable to support her family should they relocate there. She cited poor conditions in Mexico, including high rates of crime and violence, in part related to conflict between drug cartels and the government. She stated that job opportunities are poor, and the applicant's chance of giving their daughter a decent life there is small.

The applicant's wife listed her and the applicant's income and expenses, and she explained that she would suffer significant financial hardship without the applicant's assistance. She noted that they would be unable to make their house payments which would force her to move out or lose the house.

The applicant's wife described her medical problems, including fibromyalgia with significant symptoms including widespread pain in her muscles, ligaments, and tendons, as well as fatigue and tender spots on her back, shoulders, and neck. She discussed her treatment and response to

medications, and noted that she is able to afford these health services due to her insurance in the United States. She explained that she may not be able to continue to pay for medical insurance without the applicant's assistance. She stated that her condition is often incapacitating, and the applicant assumes responsibility for their daughter.

The applicant's wife expressed concern for the hardships their youngest daughter would face should she relocate to Mexico due to differences in language and culture. She stated that all of her dreams for their daughter would be crushed, and she would have to make the difficult choice of relocating their daughter to Mexico for leaving her with family in the United States so she could pursue her education.

The applicant provided a letter from my physician for his wife, [REDACTED] who stated that the applicant's wife has been diagnosed with fibromyalgia and B12 deficiency, and she underwent an evaluation with her rheumatologist due to the severity of her symptoms. [REDACTED] added that the applicant's wife was placed on multiple medications. A physician who evaluated the applicant's wife, [REDACTED], indicated that he saw her due to arthralgia, myalgia, and that the location is in both wrists, shoulders, hips, both knees, both ankles, bilateral seat, cervical spine, lumbar spine, neck, both upper arms, and both forearms. [REDACTED] rated the severity of the applicant's wife's symptoms a 10 on a scale of 1 to 10, and noted that her symptoms had worsened. The applicant provided documentation to show that his wife takes prescription medication used for treating depression and generalized anxiety disorder, managing pain, and treating osteoarthritis and rheumatoid arthritis.

Upon review, the applicant has shown that his wife will suffer extreme hardship should the present waiver application be denied. The applicant has submitted sufficient documentation to show that his wife suffers from significant health problems, including fibromyalgia, which impacts her daily functioning. The applicant's wife engages in consistent employment, yet the record shows by a preponderance of the evidence that she would face physical and emotional challenges should she attempt to increase her hours or intensity of employment. The AAO appreciates the relationship between the applicant's wife's financial situation and her ability to assume additional employment. The record supports that the applicant's and his wife's present financial obligations require both of their incomes, and his wife would be unable to meet her present needs without his contribution. Thus, should she remain in the United States without the applicant, she would face unmet economic need without the apparent capacity to increase her income due to her health challenges. The applicant's wife's health issues place her in circumstances not commonly faced by individuals who become separated from a spouse due to inadmissibility.

It is evident that the applicant's wife would endure additional hardship in the applicant's absence due to the need to continue to care for their young daughter. The applicant and his wife have provided detailed explanation to show the applicant's significant level of contribution to their household including caring for their daughter at times when the applicant's wife's health limits her ability.

The separation of spouses often results in significant emotional difficulty, yet this constitutes a common result when an individual departs United States due to inadmissibility. Nevertheless, in the present matter, the AAO acknowledges that the applicant's wife has a close relationship with the

applicant and that she has additional dependence on him due to her health challenges. The record supports that she would face substantial psychological hardship should they become separated, which is supported by the fact that she has been prescribed medication that treats depression and anxiety.

The applicant has submitted sufficient explanation to support that his wife will suffer extreme hardship should she relocate to Mexico. As discussed above, her health issues constitute challenges not commonly faced by individuals who face the inadmissibility of a spouse. Should she relocate to Mexico, she would be separated from the doctors who presently provide her care in the United States. The AAO acknowledges the applicant's wife's concern for her access to medical care and medication in Mexico due to the loss of the health insurance she has in the United States.

The applicant's wife would face other difficulties should she relocate to Mexico, including separation from her lengthy and consistent employment, the inability to reside in the residence that she and the applicant own, the emotional hardship of her daughter losing access to her academic activities and culture, financial challenges, and separation from her three siblings who reside near her in the United States. While these issues constitute common challenges when individuals relocate abroad due to the inadmissibility of a spouse, all elements of hardship must be considered in aggregate, and due consideration is given to these difficulties.

Considering the totality of the applicant's wife's circumstances, the applicant has shown that she will face extreme hardship should the present waiver application be denied.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. All negative factors may be considered when deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra*, at 12.

The negative factors in this case consist of the following:

The applicant overstayed his B-2 nonimmigrant status and remained for a lengthy duration without a legal immigration status. The applicant was convicted of a crime involving moral turpitude.

The positive factors in this case include:

The applicant has been convicted of a single crime, and he has submitted a detailed explanation of his actions, expressed remorse, and requested forgiveness for his transgression. The applicant's wife will suffer extreme hardship should he be compelled to depart the United States. The applicant's children will suffer significant hardship should the present waiver application be denied. The applicant has engaged in employment and voluntarily offered significant economic support to his wife, children, and parents. The applicant has cared for his U.S. citizen wife during times of illness and cultivated a strong family unit. Numerous individuals have offered letters in support of the applicant's waiver application attesting to his good character and hard-working nature.

While the applicant's violation of U.S. immigration and criminal law cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant also bears the burden of persuasion. *See Matter of Mendez-Morales*, 21 I&N Dec. at 301 (applicant must show that he merits a favorable exercise of discretion). In this case, the applicant has met his burden that he is eligible for a waiver and he merits approval of his application.

**ORDER:** The appeal is sustained.