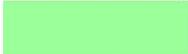




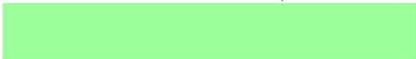
(b)(6)

DATE: **APR 02 2013**

OFFICE: CHICAGO, ILLINOIS

File: 

IN RE:

Applicant: 

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-601 waiver application was denied by the Field Office Director, Chicago, Illinois and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

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. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her lawful permanent resident spouse and her four U.S. citizen children, ages 18, 15, 14 and 12-years-old.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director*, dated June 24, 2011. The field office director further found that the applicant did not warrant a favorable exercise of discretion and denied the application as a matter of discretion. *Id.*

On appeal counsel asserts that the field office director's decision does not accurately address whether the applicant's convictions amount to crimes involving moral turpitude, and that both the applicant's lawful permanent resident spouse and her four U.S. citizen children would suffer extreme hardship if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion*, received July 22, 2011 and *Counsel's Appeal Brief*, received August 19, 2011.

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; various immigration applications and petitions; hardship letters from the applicant's spouse and eldest daughter; two letters from the applicant; letters of character reference, support and concern from family, friends and others; medical records for the applicant's mother-in-law and related internet articles; school-related records concerning the applicant's children and internet articles concerning single-parent households; financial and employment-related records; country conditions articles and reports for Mexico; and documentation related to the applicant's criminal record. The entire record was reviewed and considered in rendering this decision on the appeal.

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

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

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

In *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 record shows that the applicant pled guilty and was convicted on June 22, 2001 of Attempted Making of a False Application or Affidavit – Perjury, in violation of 625 Illinois Compiled Statutes (ILCS) 5/6-302(a)(1), for her conduct on April 23, 2001 when she was 25-years-old. The applicant was sentenced to six months of probation as well as monetary fines and costs. The record of conviction shows that in an attempt to procure an Illinois driver’s license, the applicant presented documents containing false information concerning her identity.

At the time of the applicant’s conviction, 625 ILCS 5/6-302 stated, in pertinent part:

(a) It is a violation of this Section for any person:

1. To display or present any document for the purpose of making application for a driver’s license or permit knowing that such document contains false information concerning the identity of the applicant

(b) Sentence.

1. Any person convicted of a violation of this Section shall be guilty of a Class 4 felony.

Under Illinois law, the applicant could have been sentenced to up to three years of imprisonment for her Class 4 felony conviction. Thus, this conviction does not qualify for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act. Counsel has not provided any evidence of a prior case in which a conviction was obtained under 625 ILCS 5/6-302(a)(1) for conduct that did not involve moral turpitude, and the AAO is unaware of any such prior case. Counsel did not provide any evidence that the applicant’s behavior that resulted in her conviction did not involve moral turpitude. The AAO therefore finds the applicant inadmissible under section

212(a)(2)(A)(i)(I) as a consequence of her conviction for making a false application for a driver's license.

The record shows that the applicant pled guilty and was convicted on [REDACTED] of Retail Theft, a misdemeanor, in violation of Chapter 52 of the Dekalb, Illinois Municipal Code, section 52.80.

At the time of the applicant's conviction, Section 52.80 of the Dekalb Municipal Code stated:

A person commits the offense of retail theft when he or she knowingly:

1. Takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise; or
2. Alters, transfers, or removes any label, price tag, marking indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale, in a retail mercantile establishment and attempts to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of the full retail value of such merchandise; or
3. Transfers any merchandise displayed, held, stored or offered for sale, in a retail mercantile establishment from the container in, or on which such merchandise is displayed to any other container with the intention of depriving the merchant of the full retail value of such merchandise; or
4. Under-rings with the intention of depriving the merchant of the full retail value of the merchandise; or
5. Removes a shopping cart from the premises of a retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of depriving the merchant permanently of the possession, use or benefit of such cart; or
6. Represents to a merchant that he or another is the lawful owner of property, knowing that such representation is false and convey or attempts to convey that property to a merchant who is the owner of the property in exchange for money, merchandise credit or other property of the merchant; or
7. Uses or possess any theft detection shielding device or theft detection device remover with the intention of using such device to deprive the merchant

permanently of the possession, use or benefit of any merchandise displayed, held, stored or offered for sale in retail mercantile establishment without paying the full retail value of such merchandise; or

8. Obtains or exerts unauthorized control over property of the owner and thereby intends to deprive the owner permanently of the use or benefit of the property when a lessee of the personal property of another fails to return it to the owner, or if the lessee fails to pay the full retail value of such property to the lessor in satisfaction of any contractual provision requiring such, within 30 days after written demand from the owner of its return. A notice in writing, given after the expiration of the leasing agreement, by certified mail, to the lessee at the address given by the lessee and shown on the leasing agreement shall constitute proper demand.

The BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. See *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). In *Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the Board of Immigration Appeals found that violation of a Pennsylvania retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently. In fact, each subsection of section 52.80 of the Dekalb Municipal Code proscribes conduct that involves permanently depriving a retail establishment or owner of property of possession, use, or benefits of the property. Thus, the AAO finds that the applicant's conviction for Retail Theft under 720 ILCS 5/16A-3(A) constitutes a crime involving moral turpitude.

The AAO finds sufficient support that the applicant has been convicted of two crimes involving moral turpitude, both rendering her inadmissible under section 212(a)(2)(A)(i)(I) of the Act. She 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

(b)(6)

(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.

The record indicates that the applicant's conviction for attempted making of a false application or affidavit – perjury occurred in 2001 and her conviction for retail theft occurred in 2010, both less than 15 years ago, and thus she is not eligible for a waiver pursuant to section 212(h)(1)(A) of the Act. However, she may be considered for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

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 or child of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's lawful permanent resident spouse and her four U.S. citizen children are qualifying relatives. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is “not a definable term of fixed and inflexible content or meaning,” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

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

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's spouse is a 46-year-old native of Mexico and lawful permanent resident of the United States who has been married to the applicant since August 1994. They have four U.S. citizen children together:

The couple's two-year-old U.S. citizen grandson, also resides with them. The applicant's spouse states that he would experience extreme hardship of a financial and emotional nature in the applicant's absence and he does not know how he would live on a day by day basis without her. He explains that he and the applicant

have been married for more than 18 years and while they briefly separated in early 2011, it was simply a temporary measure during which he moved in with his brother always intending to resolve their differences and return to the family home which he did a short time later. The applicant's spouse writes that his large family's monthly expenses (including mortgage, car payments and insurance, utilities and cell phones) are approximately \$3,207 plus approximately \$400 to \$600 per month for food, and a water bill they pay every three months and which most recently was \$323. Using these figures, which are corroborated by documentary evidence submitted for the record, the applicant's spouse's household expenses are approximately \$3,800 per month and he earns a salary of approximately \$1,252 per month while the applicant earns anywhere from \$1,040 to \$1,500 per month making her income indispensable to the family being able to meet their monthly obligations. While the applicant's spouse concedes that he may be able to increase his hours at work, he still would be unable to meet his household's monthly expenses alone, his ability to maintain the household in the applicant's absence and care for his four children and young grandson would be compromised, and he may incur additional expenses for childcare currently provided by the applicant when their eldest daughter is at work.

The applicant's spouse writes that in addition to the applicant working full-time and often up to 20 hours overtime weekly to support their family financially, she continues to work hard from the moment she arrives at home cooking dinner, helping the children with their homework, and caring for their grandson. He states that he would not be able to do what the applicant does, his mood and work performance would be negatively affected and he is simply incapable of being both a father and a mother to their children. The applicant concurs that she knows her spouse well and he could not handle the increased stress of taking on all responsibilities for the children and the household alone. The applicant's spouse explains that in addition to caring for their immediate family of seven, he and the applicant are responsible for caring for his elderly mother who suffers from a number of serious medical conditions and lives with them several months each year. Responsibility for caring for [REDACTED] a lawful permanent resident, is split between the applicant's spouse and his brothers and every three months she rotates her residence among them. Medical documentation in the record shows that [REDACTED] suffers peripheral vascular disease and her right leg was amputated below the knee, leaving her wheelchair bound. She additionally suffers from noninsulin dependent diabetes and ankylosing spondylitis. The applicant's spouse explains that during the months his mother stays with his family, it is the applicant who cares for her on a daily basis and tends to her near constant pain and inability to do anything on her own. He expresses concern about developing diabetes himself in the future as it is a hereditary disease running in his family.

The applicant's spouse writes that he is deeply concerned by the possibility of his four children being separated from the applicant and the impact their hardship would have on him. He explains that [REDACTED] as an unmarried teenage mother, relies on the applicant not only to care for her young son but for advice and emotional support the applicant's spouse is not equipped to provide. The applicant's spouse states that their son, [REDACTED] struggles in school and that it is the applicant who helps him daily with his homework and provides the support he needs to succeed. Similarly, while their youngest daughters are doing well in school, the applicant's spouse explains that it is the applicant to whom they are very attached and rely upon for advice and personal support he is unable to provide.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse including the economic impact of losing the applicant's steady employment income without which he would be unable to meet the family's financial obligations; the emotional impact of separation after more than 18 years of marriage and raising four children together; the physical and familial impact of the loss of the applicant's daily caring for her household, cooking their meals, helping the children with homework, providing childcare for their grandson while their daughter goes to work, and serving as the family's source of emotional support; the loss of the applicant's assistance in caring for her spouse's elderly and severely disabled mother who resides with them for several months each year; and hardship to the applicant's spouse as a result of the emotional and financial hardship his four U.S. citizen children would suffer in the applicant's absence. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's lawful permanent resident spouse will suffer extreme hardship due to separation from the applicant.

Addressing relocation, the applicant's spouse indicates that he has not resided in Mexico for many years, his entire family resides lawfully in the United States including his mother and four brothers, that he has no family in Mexico, no home, and no employment prospects for himself or the applicant with which they could support their large family. The applicant's spouse writes that he does not want his U.S. citizen children to have to struggle in Mexico where medical, educational, and employment opportunities are far below those available to them in the United States. He explains that he does not wish to lose his status as a lawful permanent resident of the United States after working long and hard to secure it. The applicant's spouse indicates that both he and the applicant enjoy steady, full-time employment in the United States, employment they would lose upon relocation, and they own a home on which they faithfully pay their mortgage, something they will be unable to afford in Mexico. The applicant's eldest daughter expresses concern for the violent and dangerous conditions in Mexico and country-conditions articles and reports have been submitted for the record. The AAO has additionally reviewed the U.S. State Department's current *Mexico Travel Warning*, dated November 20, 2012. Therein, U.S. citizens are warned that crime and violence are serious problems throughout the country and can occur anywhere. U.S. citizens have fallen victim to transnational criminal organization activity including homicide, gun battles, kidnapping, carjacking and highway robbery, and the number of kidnappings and disappearances throughout Mexico is of particular concern.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including his adjustment to a country in which he has not resided for many years; that he has resided for many years in the United States where he enjoys close family ties – particularly to his four U.S. citizen children and grandson who reside with him, his elderly and severely disabled lawful permanent resident mother who resides with him several months each year, and his three lawful permanent resident brothers and one U.S. citizen brother; his close community ties in the United States demonstrated by numerous letters of support and concern by others; his stated economic, employment, educational, medical and safety concerns regarding Mexico; that he owns a home in the United States and enjoys steady, long-term employment; that he would likely lose his lawful permanent resident status as a result of permanent relocation to Mexico; and the great difficulties inherent in relocating a family of seven to a foreign country in

which none of the five children have ever resided or studied. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's lawful permanent resident spouse would suffer extreme hardship were he to relocate to Mexico to be with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin*, *supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin*, *supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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).

Id. at 301.

The favorable factors in the present case include extreme hardship to the applicant's lawful permanent resident spouse as a result of the applicant's inadmissibility; the applicant's significant community ties to the United States as demonstrated by numerous attestations by others to her good moral character and essential presence in the community; the applicant's expressions of regret and remorse for her previous criminal activities; that she has provided essential emotional, physical and familial support to her lawful permanent husband of more than 18 years, to his elderly and severely disabled mother, to her own four U.S. citizen children and her U.S. citizen grandson for whom she provides childcare so that her unmarried teenage daughter can work and continue her education; her home ownership in the United States, long-time, steady employment with the same employer, and her payment of taxes in the United States. The unfavorable factors are the applicant's immigration violations and violations of criminal law. Her immigration violations include entering the United States without inspection, remaining in the country without authorization for more than 20 years, and lengthy periods of unauthorized employment in the United States. The applicant's criminal record includes her convictions for making a false application or affidavit for an Illinois driver's license in 2001 and for retail theft in 2010, the latter of which is particularly troubling given how recently it occurred. Although the applicant's violations of immigration and criminal law cannot be condoned, the AAO finds that the positive factors in this case outweigh the negative factors. Therefore, pursuant to section 212(h) of the Act, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The application is approved.