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

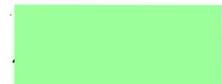


U.S. Citizenship  
and Immigration  
Services

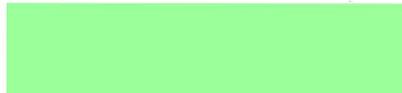


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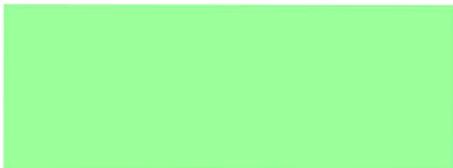


IN RE: Applicant:



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.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Canada 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)(II), for having been convicted of crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen wife and U.S. citizen children.

In a decision dated January 30, 2009, the field office director denied the Form I-601 application for a waiver, finding that the applicant failed to establish that his U.S. citizen wife and children would experience extreme hardship as a consequence of his inadmissibility. On March 3, 2009, the applicant filed a motion to reopen and reconsider the director's decision, contending that the director failed to consider his eligibility for a waiver under section 212(1)(a) of the Act. Counsel for the applicant asserted that the convictions rendering the applicant inadmissible occurred more than 15 years before his application for admission. Counsel further asserted that the record evidence demonstrates the applicant's rehabilitation and that his admission would not be contrary to the national security or welfare of the United States. In a decision dated November 12, 2010, the director denied the applicant's motion to reconsider and reopen, finding that the applicant's criminal history shows that he is not rehabilitated and demonstrates that he does not qualify for a favorable exercise of discretion.

On appeal, counsel for the applicant asserts that the director erred in finding that he is not rehabilitated. Counsel contends that the evidence outlining the applicant's service to the community, filing of income tax returns, and the absence of any alcohol-related offenses in 15 years demonstrate rehabilitation. Counsel also stated that, even if the applicant requires a waiver of inadmissibility under section 212(h)(1)(B), he has demonstrated that the qualifying relatives will experience extreme hardship if the waiver application is denied.

The record contains, but is not limited to: counsel's brief; copies of the birth certificates of the applicant's two children; the applicant's marriage certificate; copies of the applicant's income tax returns; a letter from the applicant's medical doctor; a letter from the children's school principal; a letter from the applicant's clinical supervisor at [REDACTED]; and documentation regarding the applicant's criminal history in Canada and the United States.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

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

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

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

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 reflects that on March 14, 2005, the applicant was convicted in the 66th Judicial District Court of the State of Michigan of reckless driving in violation of Michigan Vehicle Code (MVC) § 257.626. The offense of reckless driving in Michigan is a misdemeanor punishable by imprisonment for not more than 93 days. Section 257.626 of the Michigan Vehicle Code provides, in pertinent part, that "[a] person who drives a vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving."

In *Matter of P-*, the BIA stated that one of the criteria to ascertain whether a particular crime involves moral turpitude is that the reprehensible act be accompanied by a vicious motive or corrupt mind. 2 I&N Dec. 117, 121 (BIA 1944). Although evil intent signifies a crime involving moral turpitude, willfulness in the commission of the crime does not, by itself, suggest that it involves moral turpitude. *Goldeshtein v. INS.* 8. F.3d 645, 648 (9th Cir. 1993). The AAO notes that the statute under which the applicant was convicted is a divisible statute violated by either willfully or wantonly driving a vehicle with disregard for the safety of persons or property. The Michigan courts have not defined these terms in the context of the reckless driving statute. However, in *Jennings v. Southwood*, 446 Mich. 125, 140; 521 NW2d 230 (1994), the Michigan Supreme Court stated that "willful" means intentional and that "wanton" means an indifference to whether harm will result as to be the equivalent of a willingness that it does. Based upon these definitions, the AAO notes that both modalities of the Michigan reckless driving crime may include the necessary culpable mental state that satisfies the *scienter* requirement articulated by the Attorney General in *Silva-Trevino*. See *Matter of Silva-Trevino*, 24 I&N Dec. at 706 & n.5 (noting that crimes involving moral turpitude involve reprehensible conduct that is committed intentionally or with some other form of *scienter*, such as willfulness or recklessness). Yet, the AAO also notes that the Michigan reckless driving statute does not include as an element a reprehensible act which shocks the public conscience as being inherently base, vile, or depraved. That is, the offense of reckless driving, which requires only the act of driving a vehicle in a reckless manner — without proof of injury to others, the intent to inflict the same, or any other aggravating factor — does not rise to the level of depravity necessary to be considered a crime involving moral turpitude under federal immigration law. Further, when the AAO considers section 257.626 of the MVC, which is the provision under which the applicant was convicted, with sections, 750.82, 257.626(3), 257.625, and 750.479a, which include felonious assault with an automobile, felony operation of a vehicle, operating under the influence of intoxicating liquor causing bodily impairment, and fleeing and eluding a police officer causing collision or bodily impairment, we find that there is not a realistic probability that the base crime of reckless driving involves moral turpitude. *Silva-Trevino*, 24 I&N Dec. at 699 n.2.

The AAO recognizes that in the case of *Matter of Ruiz-Lopez*, 25 I&N Dec. 551 (BIA 2011), the BIA found that the offense of attempting to elude a pursuing police vehicle while driving with wanton or willful disregard for the lives or property of others is a crime involving moral turpitude. However, the BIA noted that the finding resulted from the "building together of the elements by which the criminalize[d] conduct deviate[d] further and further from the private and social duties

that persons owed to one another and to society in general.” *Id.* at 556 (citations omitted). To violate the statute at issue in that case, the BIA noted that an individual must recklessly endanger the person or property of others in the course of impending law enforcement activity by willfully disobeying a police officer’s directive to stop. *Id.* In contrast, the Michigan reckless driving statute only requires the act of driving a vehicle with intentional disregard for the safety of persons or property, or driving a vehicle with indifference as to whether harm will result to a person or property. As such, the Michigan statute does not require the actual endangerment of a person or property, nor knowledge that damage is likely to be done to a person or property; it only requires the disregard for their safety. As noted above, such aggravating factors, including the actual causation of bodily harm while operating a motor vehicle, are covered by other sections of Michigan’s Penal and Vehicle Codes. Thus, by the language of the statute, the applicant’s reckless driving conviction does not render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The record also indicates that the applicant was convicted on multiple occasions for “driving under the influence of alcoholic liquor” and “operating a motor vehicle while license suspended.” The record reflects that: on November 3, 1997, the applicant was convicted in the 53rd District Court of Michigan for the offense of operating a motor vehicle while license suspended, in violation of MVC § 257.904; on or about June 11, 1996, the applicant was convicted in the 51st District Court of Michigan of operating a motor vehicle under the influence of alcoholic liquor, in violation of MVC § 257.625, and of operating a motor vehicle while license suspended, in violation of MVC § 257.904; on or about March 18, 1993, the applicant was convicted in the Ontario Court of Justice of operating a vehicle while impaired, in violation of section 253 of the Canada Criminal Code; on or about February 14, 1989, the applicant was convicted in the Judicial District Court of Hamilton-Wentworth, Ontario, Canada, of operating a motor vehicle while disqualified, in violation of section 259 of the Canada Criminal Code; on or about February 17, 1989, the applicant was convicted in the Ontario Court of Justice of operating a motor vehicle while impaired by alcohol or drugs, in violation of section 253 of the Canada Criminal Code; on or about March 21, 1988, and on or about April 28, 1988, the applicant was convicted of operating a motor vehicle with more than 80 mg of alcohol in blood, in violation of section 237 of the Canada Criminal Code.

The AAO has reviewed the elements of the above-mentioned driving offenses and finds that, with the exception of the applicant’s June 11, 1996 convictions, none of them are crimes involving moral turpitude. Driving with a suspended license is a regulatory offense, which generally is not a crime involving moral turpitude. See *Matter of L-V-C-*, 22 I&N Dec. 594 (BIA 1999) (regulatory offenses are not generally considered turpitudinous); Cf. *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1018 (9th Cir. 2005) (“Where an act is only statutorily prohibited, rather than inherently wrong, the act generally will not involve moral turpitude.”); *Benitez v. Bunevant*, 198 Ariz. 90, 95 (2000) (“[O]ffenses similar in quality to driving on a suspended license have been found lacking moral turpitude.”). Additionally, simple driving under the influence (DUI) is not a crime involving moral turpitude. See *Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999) (simple driving while intoxicated would not likely be a crime involving moral turpitude); and *Matter of Torres-Varela*, 23 I&N Dec 78 (BIA 2001) (DUI with 2 or more prior DUI convictions is not a crime involving moral turpitude).

However, the record indicates that on June 11, 1996, the applicant was convicted of driving under the influence of alcohol, under 257.625(1)(a) and driving while license suspended, under MVC § 257.904(1). The BIA held in *Matter of Torres-Varela* that simple driving under the influence is not a crime involving moral turpitude. 23 I&N Dec. at 85-86. Conversely, the BIA held in *Matter of Lopez-Meza* that aggravated driving under the influence under Arizona law involves moral turpitude because the State must prove that a person drove under the influence of alcohol, knowing that his or her driver's license was suspended, revoked, canceled, or refused and that he or she was therefore not permitted to drive. 22 I&N Dec. at 1196.

Section 257.904(1) of the MVC provides, in pertinent part, that “[a] person whose operator’s or chauffeur’s license . . . has been suspended or revoked and who has been notified as provided in section 212 of that suspension or revocation . . . shall not operate a motor vehicle.” Thus, the elements of driving on a suspended license are: “(1) that the defendant’s license has been suspended; (2) that the defendant has been notified of the suspension; and (3) that the defendant operated a motor vehicle while his license was suspended.” *People v. McMcaster*, 154 Mich.App. 564, 572 (1986) (emphasis added). The Michigan statute therefore contains a knowledge requirement; that is, the State must show that a defendant operated a motor vehicle after being notified of the suspension of his or her license. *See Id.* Here, the applicant’s June 11, 1996 driving under the influence did have the aggravating factor of driving a motor vehicle when a driving privilege is suspended or revoked. Accordingly, the applicant’s June 11, 1996 conviction constitutes a crime involving moral turpitude. *See Matter of Lopez-Meza, supra*, (driving under the influence when the driver knows he or she is prohibited from driving under any circumstances is a crime involving moral turpitude). Regarding these offenses, the applicant has not shown that he is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The applicant has other convictions. On October 12, 1995, the applicant was convicted in the 52nd District Court of the State of Michigan of assault and battery-domestic, in violation of Michigan Penal Code (MPC) § 750.81(2). A person is guilty of violating section 750.81(2) of the Michigan Code if he or she “assaults or assaults and batters his or her spouse or former spouse, an individual with whom he or she has had a dating relationship, a child in common, or resident or former resident of his or her household.”

It is noted that as a general rule, a simple assault and battery offense does not involve moral turpitude. *Matter of Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996). However, this general rule does not apply where an assault or battery necessarily involves an aggravating factor that significantly increases their culpability. *See, e.g., Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988). Assault and battery offenses requiring the “intentional infliction of serious bodily injury on another have been held to involve moral turpitude because such intentionally injurious conduct reflects a level of immorality that is greater than that associated with a simple offensive touching.” *Matter of Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006).

In *Matter of Tran*, 21 I&N Dec. 291, 294 (BIA 1996), the BIA held that the willful infliction of corporal injury on “a person with whom one has . . . a familial relationship is an act of depravity which is contrary to accepted moral standards.” The statute at issue there required the willful infliction of “corporal injury resulting in a traumatic condition” upon the perpetrator’s spouse, a

person with whom he or she was cohabiting, or the mother or father of his or her child. *Id.* at 292 (quoting section 273.5(a) of the California Penal Code). The BIA concluded in that case that the crime involved moral turpitude.

In *Matter of Sanudo*, the BIA examined the California crime of domestic battery and found that, unlike the statute in *Matter of Tran*, there was no requirement that there be “actual or intended physical harm to the victim.” *Sanudo*, 23 I&N Dec. at 973. The offense at issue involved nothing “more than the minimal nonviolent ‘touching’ necessary to constitute” the battery offense. *Id.* at 972-73. As the BIA explained, moral turpitude is found in general assault and battery offenses when the offense “necessarily involved the *intentional* infliction of *serious* bodily injury.” *Id.* at 971 (emphasis in the original). The BIA concluded that an intentional touching of a domestic partner without causing or intending to cause physical injury does not involve moral turpitude. *Id.* at 972-73; see also *Galeana-Mendoza v. Gonzales*, 465 F.3d 1054, 1055, 1061-62 (9th Cir. 2006).

In Michigan, simple assault is either an attempt to commit a battery or an unlawful act that places another person in reasonable apprehension of receiving an immediate battery. *People v. Robinson*, 145 Mich. App. 562, 564, 378 N.W.2d 551 (1985). An assault may be established by showing that one has attempted an intentional, unconsented, and harmful or offensive touching of a person. *People v. Starks*, 473 Mich. 227, 229, 701 N.W.2d 136, 138 (2005). Battery has been defined as “an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person.” *People v. Nickens*, 470 Mich. 622, 628, 685 N.W.2d 657 (2004). While the state courts have interpreted the Michigan assault and battery statute to require intent to cause harm, the harm necessary to sustain a conviction may be to the integrity of the person. *Id.* at 663 (finding that the defendant’s conduct of yelling profanities against a person and spitting on a person sufficient to sustain a conviction for assault and battery). As such, a conviction for assault and battery in Michigan does not require the actual infliction of physical injury and may include any unwarranted touching, however slight. See *People v. Datema*, 448 Mich. 585, 592, n. 8, 533 N.W.2d 272 (1995) (stating that it is not necessary that the touching essential to constitute a battery result in any injury); *People v. Terry*, 217 Mich. App. 660, 662-63, 553 N.W.2d 23, 25 (1996) (noting that the lack of physical injury is irrelevant when determining whether a defendant committed an assault and battery). Further, the applicant was not convicted of assault with aggravating circumstances, such as aggravated assault, under MPC § 750.81a, assaulting a person performing duty, under MPC § 750.81d, or assault with a deadly weapon, under MPC § 750.82.

Like the BIA in *Matter of Sanudo*, the AAO finds that the Michigan assault and battery statute does not require the infliction of some tangible harm to the victim, the use of a deadly weapon, or any other aggravating circumstance. 23 I&N Dec. at 972-973 (internal quotation marks and citations omitted); cf. *Sosa-Martinez v. Attorney General*, 420 F.3d 1338, 1342 (11th Cir. 2005) (concluding “that any intentional battery that includes, as an element of the offense either (1) that it caused great bodily harm, permanent disability, or permanent disfigurement, or (2) involved the use of a deadly weapon, constitutes a crime of moral turpitude”). Accordingly, the AAO finds that a Michigan conviction for assault and battery is not a crime involving moral turpitude because “none of the circumstances in which there is a realistic probability of conviction involves moral turpitude.” *Silva-Trevino*, 24 I&N Dec. at 699 n.2.

The record further reflects that on November 17, 1990, the applicant was convicted of “false pretence” in violation of section 362(1)(a) of the Canada Criminal Code. Section 361 defines a “false pretence” as “a representation of a matter of fact either present or past, made by words or otherwise, that is known by the person who makes it to be false and that is made with a fraudulent intent to induce the person to whom it is made to act on it.” In *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973), the BIA analyzed the “false pretence” crime under the Criminal Code of Canada, which reads, in pertinent part, as follows:

- (1) Every one who commits an offence who by a false pretence, whether directly or through the medium of a contract obtained by a false pretence, obtains anything in respect of which the offence of theft may be committed or causes it to be delivered to another person . . . is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

The BIA found that, because the statute contains a fraud element, a conviction under any of the acts described in section 362 of the Criminal Code of Canada involves moral turpitude. *Id.* at 332. Thus, the AAO finds that the applicant’s conviction for “false pretences” renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The applicant has not disputed inadmissibility resulting from this conviction on appeal. Since the AAO has determined that the applicant was convicted of two crimes involving moral turpitude, rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, it need not consider whether his convictions for theft in Canada in 1990, 1989, and 1987; his two convictions for “taking vessel without consent” in Canada in 1988; or his convictions for “breach of probation” in Canada in 1994, 1993, and 1992, involve moral turpitude.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

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

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

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien’s application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has rehabilitated.

The AAO notes that the applicant's most recent conviction for a crime involving moral turpitude occurred on or about June 11, 1996. As the conduct underlying the conviction took place over 15 years ago, he meets the requirement of section 212(h)(1)(A)(i) of the Act, and the AAO will assess his eligibility for a waiver under the additional requirements of section 212(h)(1)(A) of the Act. An application for admission or adjustment is a "continuing" application, and inadmissibility is adjudicated on the basis of the law and facts in effect at the time of admission. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992). Section 212(h)(1)(A) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that he has rehabilitated.

Section 212(h)(1)(A)(iii) of the Act requires that the applicant establish his rehabilitation. Evidence in the record to establish the applicant's eligibility under section 212(h)(1)(A)(iii) of the Act consists of letters commending his character. In a letter dated February 19, 2009, the children's school principal states that the applicant is actively involved in the educational activities of his children. The school principal further indicates that the applicant is involved in the school's sports program, and that he serves as a football and soccer coach. The applicant's spouse conveys in her letter dated December 4, 2006, that her children will benefit from the love and support of their father. She states that though the applicant "had a problem with alcohol that definitely put [their] relationship to the test," the birth of their oldest son helped him change for the better and that he is now a respectful, caring, and positive role model for their sons. She asserts that the applicant turned his efforts towards his employment as a builder and his family. The applicant's mother-in-law, in her letter, states that though the applicant "had some problems with alcohol and driving" in the past, he has grown into a responsible and supportive husband, father, and member of her family. The record includes additional letters from the applicant's family members and friends, all attesting to his character and positive influence on his children.

To further support his claim that he has rehabilitated, the applicant submitted a letter dated February 9, 2009, from Dr. [REDACTED] in which he states that the applicant has been his patient since 2003 and that "there is no evidence that he has had nor has he ever had any alcohol problem." Dr. [REDACTED] asserts that the applicant has never displayed the behavioral characteristics of an alcoholic. However, the AAO notes that the record is inconsistent with Dr. [REDACTED] statements regarding his assertion that the applicant has never had any alcohol-related problems. Firstly, the record includes a letter from [REDACTED] a Clinical Supervisor at [REDACTED] in which she indicates that the applicant completed treatment at their center on October 3, 2005. In the letter, dated February 24, 2009, [REDACTED] also states that the applicant shared learning about the recovery process and gained new skills to help him throughout his life. The applicant also received information on new coping skills and breaking through dysfunctional cycles. Secondly, the record reflects that the applicant has been convicted of driving under the influence of alcohol on five separate occasions, with his first alcohol-related conviction on March 18, 1988, and his last "driving under the influence of alcohol" conviction occurring on June 11, 1996. The record also reflects that the applicant's alcohol-related arrests span 17 years, with his last arrest for an alcohol-related offense occurring on January 28, 2005. As such, Dr. [REDACTED] assertions are directly contradicted by the letter submitted by [REDACTED] the applicant's judicial record of conviction, and the letters submitted by the applicant's wife and mother-in-law.

Additionally, though the record includes several character reference letters attesting to the applicant's rehabilitation and qualities, the AAO notes that the record does not include a single letter, statement, or declaration from the applicant himself in support of his claim that he has rehabilitated. The record does not contain a declaration from the applicant indicating that he is remorseful, that he accepts responsibility for his crimes, and that he is resolved not to repeat such conduct. This lack of evidence, coupled with the above-noted inconsistencies and the fact that the applicant's criminal activity spans 18 years, leads the AAO to find that the applicant has not shown that he has been rehabilitated. The AAO acknowledges that the applicant has not been convicted of a crime since 2005; however, the applicant's extensive criminal history and the absence of evidence from the applicant demonstrating his remorse and efforts towards rehabilitation do not show that he has rehabilitated. Additionally, based on the aforementioned, the AAO also finds that the applicant has not demonstrated that his admission would not be contrary to the national safety and welfare of the United States.

The AAO also finds that the applicant does not merit a favorable exercise of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The negative factors in this case are: the applicant's long period of unlawful presence in the United States; and the applicant's extensive criminal record, spanning 18 years and including convictions for theft, false pretences, breach of probation, driving with a suspended license, driving under the influence of alcohol, assault and battery, and reckless driving. The record includes evidence

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demonstrating that the applicant has been convicted on 20 separate occasions in Canada and on four separate occasions in the United States. These convictions call into question the applicant's moral character and his regard for the laws of both his home country and the United States.

The positive factors in this case are: the applicant's long residence in the United States; the applicant's family ties in the United States, including his U.S. citizen wife and U.S. citizen children; and the absence of a criminal record in the United States since January 2005.

Here, the applicant's extensive criminal history constitutes a significant negative factor. The applicant's offenses of theft, false pretences, breach of probation, reckless driving, six DUI convictions and two convictions for driving without a license raise a serious concern regarding his character. The AAO further finds his criminal record to reflect a long-term and continuing disregard for the laws of the United States, and to be a significant negative factor in his case. In reaching its decision, the AAO has taken particular notice of the applicant's U.S. citizen wife and children. However, the AAO does not find the favorable factors in the present matter to outweigh the negative and will not favorably exercise the Secretary's discretion. As the applicant has not demonstrated rehabilitation or that he favors an exercise of discretion, the AAO will not consider whether the applicant's inadmissibility would result in extreme hardship to his U.S. citizen wife and children.

In proceedings for an 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.