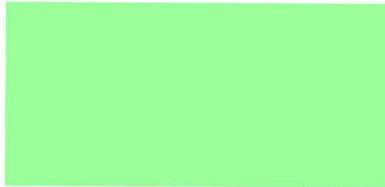




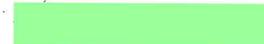
**U.S. Citizenship
and Immigration
Services**

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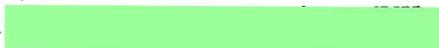


DATE: **JAN 10 2013**

OFFICE: VIENNA, AUSTRIA



IN RE:



APPLICATION:

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

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".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-601 waiver application and the Form I-212 application for permission to reapply for admission were concurrently denied by the Field Office Director, Vienna, Austria and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the applications will be approved.

The applicant is a native and citizen of Poland 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; section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States; and section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) as an applicant who departed the United States while an order of removal was outstanding. The applicant seeks a waiver of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h) and 1182(a)(9)(B)(v), and permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his U.S. citizen spouse.

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 August 2, 2011. The Field Office Director concurrently denied the Application for Permission to Reapply for Admission as a matter of discretion because granting the permission would serve no purpose as the applicant's waiver application has been denied and he remains inadmissible. *Id.*

On appeal counsel asserts that the adjudicator relied upon evidence not in the record, ignored evidence in the record, used speculation and conjecture, applied an incorrect hardship standard, and failed to review the cumulative effect of the hardship factors rather than assessing each factor individually. *See Form I-290B, Notice of Appeal or Motion*, received August 30, 2011.

The record contains, but is not limited to: Form I-290B, counsel's appeal brief and earlier letter in support of a waiver; various immigration applications and petitions; a hardship letter; letters from the applicant; letters from the applicant's spouse's parents; letters of character reference, support and concern; two psychological evaluations; medical records; financial records; employment-related records; Poland country conditions reports; birth, marriage and divorce certificates and family photos; the applicant's criminal record and documents related to his removal proceedings and departure from the United States. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

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

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record shows that the applicant was admitted on or about March 10, 2001 as a non-immigrant visitor with authorization to remain temporarily in the United States until September 9, 2001. The applicant remained beyond the authorized period, finally departing the United States on March 2, 2010 while a removal order issued by an immigration judge on January 2, 2003 was outstanding. The applicant accrued unlawful presence in the United States in excess of one year and as he is seeking admission within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). He requires a waiver under section 212(a)(9)(B)(v) of the Act. Because the applicant departed the United States while an order of removal was outstanding, he was additionally found to be inadmissible pursuant to 212(a)(9)(A)(ii) of the Act. The applicant requires permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act. The record supports these findings, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(A)(ii) of the Act.

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 reflects that on October 18, 2002 the applicant was convicted in the United States District Court for the District of Minnesota for Possession and Use of Counterfeit Visas, in violation of 18 U.S.C. § 1546(a), and Aiding and Abetting, in violation of 18 U.S.C. § 2. The applicant was sentenced to time served and released from custody upon posting a bond of \$10,000.

The applicant does not contest whether he has been convicted of a crime involving moral turpitude, or whether he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The AAO finds sufficient support that the applicant has been convicted of a crime involving moral turpitude, and rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. 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 or child of the applicant. A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 or parent 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 U.S. citizen spouse is his only qualifying relative. 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-Moralez*, 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.*

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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 27-year-old native of Poland and citizen of the United States who has been married to the applicant since May 2008. She states that since the day the applicant departed to Poland she has experienced nothing but despair, anxiety, stress and depression, struggles to function normally at work and at home, is suffering from depression and anxiety attacks, and though seeing a counselor and taking medication for these conditions her symptoms get worse by the day. [REDACTED] prepared a psychological assessment, dated October 24, 2010, in which she diagnosed the applicant's spouse with Post Traumatic Stress Disorder (PTSD), Acute Anxiety and Depression following lengthy interviews and psychological testing on September 24, 2010 and October 8, 2010. At that time [REDACTED] concluded that the applicant's spouse had severe diminished capacity and that further months of ambiguity awaiting a decision on the applicant's waiver application would activate and increase her symptomology specifically of clinical depression and traumatic stress possibly somatizing on physiological levels. An updated psychological assessment by [REDACTED] dated September 23, 2011 has been submitted on motion. Therein [REDACTED] explains that she interviewed, conducted psychological testing and counseled the applicant's spouse on September 8, 15 and 22, 2011 and has scheduled additional weekly therapeutic sessions to address acute symptoms. [REDACTED] writes that as a clinical specialist, she was struck by the increased emotional distress currently displayed by the applicant's spouse who suffers increased PTSD, anxiety, fear and depression. [REDACTED] notes that the applicant's spouse's repeated apathy, flat affect and medical emergencies identify the effect of stress levels visibly increased and apparent since the previous year. [REDACTED] reports that she has agreed to provide *pro bono* counseling therapeutic sessions to the applicant's spouse due to her imminent needs and despite that she can no longer afford health insurance and thus is unable to pay for these services. [REDACTED] states that dealing with separation from the applicant would exacerbate the applicant's spouse's PTSD symptomology and that a waiver denial would constitute catastrophic trauma and extreme hardship.

While no updated letter or affidavit from the applicant's spouse has been submitted on appeal, Ms. [REDACTED] relays recent developments that have been reported to her. She writes that since the waiver

application was denied, the applicant's spouse filed bankruptcy, suffered a ruptured abdominal cyst, has had to cancel her health insurance due to the financial inability to afford it, and requested and received a demotion at work because she was no longer psychologically able to function and perform the demands of her higher paying and more responsible position. Corroborating documentary evidence has been submitted concerning these assertions. The record shows that on August 4, 2011 the applicant's spouse presented to a hospital emergency room with severe abdominal pain and was diagnosed with a ruptured left hemorrhagic ovarian cyst and discharged the same day with close follow-up by a gynecologist. As noted by counsel, the waiver denial notice preceded said emergency by only two days perhaps indicating a correlation.

reports that despite earning less money as a result of her requested demotion, the applicant's spouse continues to send money to Poland to support the applicant who maintains he has been unable to secure employment despite diligent efforts. The applicant's spouse continues to reside with her parents to whom she pays \$500 monthly in support because her father, who can no longer drive a truck due to severe back pain and spasms, has been unemployed since November 2008 and his benefits expire in November 2011. The applicant's spouse's mother states that she and her husband are very dependent financially upon their only child who pays for utilities, rent and groceries. She explains that while she earns commission as a cosmetologist she would be unable to support herself and her husband on her earnings alone.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse including her diminished emotional, psychological and physical functioning and health since the applicant's departure to Poland; her significant psychological conditions as detailed by her treating clinician who has agreed to treat her on a *pro bono* basis as a result of serious concern for her well-being; and her economic difficulties which have resulted in the filing of a chapter 7 bankruptcy petition and reportedly being no longer able to afford health insurance, particularly on her decreased salary and while she continues to support her parents financially as well as the applicant who has reportedly been unable to secure employment in Poland. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse will continue to suffer extreme hardship due to separation from the applicant.

Addressing relocation, the applicant's spouse indicates that she has not resided in Poland for many years, is not as fluent in Polish as she is in English and cannot write the language. She states that she would be unable to secure employment in Poland and has even made inquiries and efforts to find work there as corroborated by the record. The applicant's spouse expresses fear of being homeless and wandering in Poland where the applicant owns no property of his own and has not found steady employment. She explains that in the United States she has been employed by the same company for more than five years, has moved up in various positions and would have to forfeit this security for unemployment and uncertainty in Poland where her grandparents are her only relatives. While highlighted portions of the CIA World Factbook printout submitted for the record indicate that Poland still faces the lingering challenges of unemployment and that its gross domestic product per capita was \$18,800 in 2010, the evidence is insufficient to demonstrate that the applicant and/or her spouse will be unable to secure employment in Poland sufficient to support themselves or that they will be unable to reside with the family members with whom the

(b)(6) applicant currently lives. While the applicant has not secured “steady employment,” it is noted that he has found some work albeit at a wage much lower than one might expect to earn in the United States. The AAO is unable to determine the applicant’s income potential or the amount of income he earned while in the United States, however, as despite reporting that he was a self-employed painter from 2002 to 2010, there is no indication in the record that the applicant ever paid income taxes or filed a tax return.

The applicant’s spouse states that she is an only child, is very close to her parents and has never lived more than three blocks from them. She explains that flying from Poland to Chicago to visit them would be very expensive and cost-prohibitive were she to reside in Poland where her standard of living would be below what she enjoys in the United States. [REDACTED] asserts that the applicant’s spouse is her parents’ only resource and support system and the applicant’s spouse’s mother writes that she and her husband rely on the applicant’s spouse for financial support and are not sure how they would survive without her. While the AAO recognizes that the applicant’s spouse’s father has been unemployed for a number of years and that the applicant’s spouse lives with her parents, pays rent to them and contributes to other related expenses, the evidence does not establish that her 48-year-old mother would be unable to secure or increase employment sufficient to support herself and her husband, that her mother’s two brothers whom the applicant’s spouse states live in the United States would be unable to assist financially, or that that applicant’s 53-year-old father will be unable to secure employment in the future and contribute financially to his household. [REDACTED] writes that for the applicant, losing her sense of community, friends, and only home she has known will create additional hardship. [REDACTED] expresses the opinion that for the applicant’s spouse, separation from either her husband or her parents creates extreme hardship “as she feels she is, realistically, the only one designated to rescue her family.”

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant’s spouse including her adjustment to a country in which she has not resided for a number of years and one in which she is not as fluent in the language as she is in English; that she has resided for many years in the United States where she enjoys close family ties – particularly to her mother and father with whom she lives and who have expressed financial dependence on her; her close church and community ties in the United States demonstrated by numerous letters of support and concern by others; her stated economic, employment, educational, housing and quality-of-life concerns regarding Poland; and her current psychological and even physical condition as a result of separation from the applicant and the foreseeable likelihood that her condition would continue to deteriorate as a result of separation from her parents to whom she is exceptionally close. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant’s U.S. citizen spouse would suffer extreme hardship were she to relocate to Poland 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-Morales*, 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.

(b)(6) 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 U.S. citizen 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 his good moral character

(b)(6)

and essential presence in the community; the applicant's expressions of regret and remorse for his previous criminal activities and evidence of his reform and rehabilitation as demonstrated by numerous attestations by others; the necessary emotional, physical and familial support he provided to his U.S. citizen spouse and her parents while residing in the United States; and that he has remained outside the United States following his removal, making no known attempts to unlawfully enter the country despite being separated from his spouse. The unfavorable factors are the applicant's immigration violations and violations of criminal law. His immigration violations include his remaining in the United States beyond the period authorized, his failure to depart the United States when ordered removed, and his periods of unlawful presence and unauthorized employment in the United States. The applicant's criminal record includes his convictions for using counterfeit visas and aiding and abetting in violations of federal criminal law. It is also noted that the applicant appears to have never paid income taxes or filed a tax return for the income he earned over nearly a decade in the United States in violation of state and federal tax laws. Although the applicant's violations of immigration law, criminal law, and tax law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, pursuant to sections 212(h) and 212(a)(9)(B)(v) of the Act, the AAO finds that a favorable exercise of discretion is warranted.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be approved as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, the burden of 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 applications approved.

ORDER: The appeal is sustained. The applications are approved.