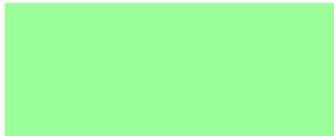


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS-2090
Washington, DC 20529-2090

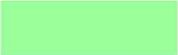


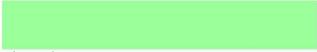
U.S. Citizenship
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Services



DATE: **JAN 30 2013**

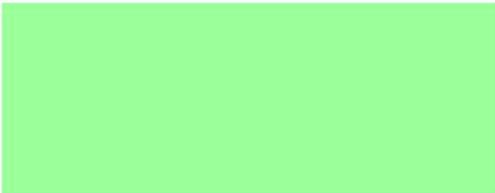
Office: SAN FRANCISCO, CA

FILE: 

IN RE: 

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 that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant is married to a U.S. citizen and the son of a Lawful Permanent Resident. He 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.

The Field Office Director concluded that the record did not establish that the bar to the applicant's admission would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated November 3, 2010.

On appeal, counsel contends that the evidence of record does demonstrate that the applicant's inadmissibility would result in extreme hardship for his spouse and that the Field Office Director's failure to reach this conclusion was an abuse of discretion. *Form I-290B, Notice of Appeal or Motion*, dated November 30, 2010.

The evidence of record includes, but is not limited to, counsel's brief; statements from the applicant, his spouse, his father and sister, his mother-in-law and brother-in-law, and a friend of his spouse; a list of the applicant's and his spouse's financial obligations, as well as documentation of those obligations; earnings statements for the applicant's spouse; tax returns and W-2 Wage and Tax Statements for the applicant's spouse; a 2010 billing statement from the Internal Revenue Service relating to payment of back taxes; documentation relating to bankruptcy and foreclosure proceedings and educational certificates issued to the applicant's spouse; medical documentation relating to the applicant's spouse and mother-in-law; online information from the State of California relating to the definition of veterinary technician and the duties of the position; country conditions information on Pakistan and court records relating to the applicant's convictions. The entire record was reviewed and all relevant information considered in reaching a decision on the appeal.

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

(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.

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. The methodology adopted by the Attorney General consists of a three-pronged approach. 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. 24 I&N Dec. at 698 (citing *Duenas-Alvarez*, 549 U.S. at 193). 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 or “modified categorical” inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. 24 I&N Dec. 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. Finally, 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.

The record reflects that the applicant pled guilty to Third Degree Theft, Iowa Code §§ 714.1 and 714.2.3, on May 25, 1999, with judgment deferred. He was placed on probation for one year, ordered to pay \$250 to an agency designated by the Boone County (Iowa) attorney, as well as court costs. On November 15, 1999, the applicant was convicted of Carrying Concealed Weapon, Iowa Code § 724.4(1), a misdemeanor. He was sentenced to two years in jail, which was suspended; placed on probation for a period not to exceed two years; fined \$500 and ordered to pay court costs. On December 6, 2006, the applicant pled no contest in the Superior Court of California, County of Contra Costa, to Receiving Stolen Property, California (Cal.) Penal Code § 496(a). He was placed on probation for two years; sentenced to 25 days in jail, with credit for one day served; fined \$100, which was stayed; and ordered to pay restitution in the amount of \$100, as well as court fees.

The record also reflects that, in 2000, the applicant was convicted of Attempt to Purchase Alcohol, Ames (Iowa) Municipal Code § 17.1(1)(T), and in 2002 of several violations of the California Vehicle Code.

At the time of the applicant's conviction for Theft, Iowa Code § 714.2.3 stated:

3. The theft of property exceeding five hundred dollars but not exceeding one thousand dollars in value . . . is theft in the third degree. Theft in the third degree is an aggravated misdemeanor.

Theft was defined by Iowa Code § 7.14.1 as:

A person commits theft when the person does any of the following:

1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.

U.S. Courts have held that theft offenses, whether grand or petty, involve moral turpitude. See *Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974)(stating "It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude . . ."); *Morasch v. INS*, 363 F.2d 30, 31 (9th Cir. 1966)(stating, "Obviously, either petty or grand larceny, i.e., stealing another's property, qualifies [as a crime involving moral turpitude].") However, the Board of Immigration Appeals (BIA) has indicated that a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973).

Iowa courts have found the word "deprive" as used in Iowa Code § 714.1 to involve more than a temporary taking of another's property. The deprivation intended must be either permanent, for such an extended period of time or under such circumstances that the benefit or value of the property is lost, or to have involved the disposition of the property in such manner or under such circumstances as to make it unlikely that the owner will recover the property. *State v. Berger*, App. 1989, 438 N.W.2d 29. Therefore, we find the applicant's theft violation under Iowa Code § 714.1 was not committed with the intent to deprive his victim of his or her property only temporarily.

At the time of the applicant's conviction for Receiving Stolen Property, Cal. Penal Code § 496(a) provided:

- (a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, is punishable by imprisonment in a state prison, or in a county jail for not more than one year. However, if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed

four hundred dollars (\$400), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year.

The Ninth Circuit Court of Appeals addressed the issue of whether Cal. Penal Code § 496(a) constitutes a crime involving moral turpitude in *Castillo-Cruz v. Holder*, 581 F.3d 1154 (9th Cir. 2009). The Court determined that Cal. Penal Code § 496(a) does not require a perpetrator to have the intent to permanently deprive the owner of his or her property, but rather permits conviction for an intent to deprive the owner of his or her property temporarily. *Id.* Accordingly, the applicant's violation of Cal. Penal Code § 496(a) is not categorically a crime of moral turpitude.

As the applicant's conviction is not categorically a crime involving moral turpitude, the AAO, pursuant to *Silva-Trevino*, has conducted a second-stage or modified categorical review of the applicant's record of conviction, which in the present case includes the information, plea agreement, and sentencing document. Count Two of the information, which charges the applicant with Receiving Stolen Property describes the applicant's offense as follows:

On or about September 13, 2006, . . . the Defendant . . . did unlawfully buy, receive, conceal, sell, withhold, and aid in concealing, selling, and withholding a check, property which had been obtained by theft and by extortion, knowing that the property had been stolen and obtained by extortion.

At the time of the applicant's conviction, Cal. Penal Code § 518 defined extortion as:

[o]btaining of property from another, with his consent; or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.

The Board of Immigration Appeals has long held that extortion and blackmail are crimes involving moral turpitude. See *Matter of F*, 3 I&N Dec. 361 (BIA 1940); *Matter of G-T-*, 4 I&N Dec. 446 (BIA 1951). Therefore, as the specific offense of which the applicant was convicted involved the receipt of stolen property obtained through extortion, the AAO finds the record to establish that his 2006 conviction under Cal. Penal Code § 296(a) was a conviction for a crime involving moral turpitude.

As the applicant's two theft convictions bar his admission to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, the AAO finds further consideration of his criminal record to be unnecessary. The applicant does not contest his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

A waiver of section 212(a)(2)(A)(i)(I) inadmissibility is found in section 212(h) of the Act, which states 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)(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

A waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, the U.S. citizen or lawfully resident spouse, parent or child of an applicant. The qualifying relatives for the purposes of this proceeding are the applicant's spouse and father. Accordingly, hardship to the applicant will be considered only insofar as it results in hardship to his spouse and/or father. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 BIA 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 BIA 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 BIA 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 BIA 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.

On appeal, counsel resubmits the brief that previously accompanied the Form I-601. In that brief, she asserts that the applicant’s spouse needs the applicant to help her care for her mother who has diabetes and other health problems, including vision loss. Counsel contends that the applicant’s mother has difficulty getting around and caring for herself, and that the applicant and his spouse spend a great deal of time assisting her, e.g., driving her to doctors’ appointments and the grocery store, helping her find her medication and pay her bills. Without the applicant’s assistance, counsel contends, his spouse would not be able to provide the level of care her mother requires and would suffer as a result of having to witness the resulting deterioration in her mother’s health. While counsel acknowledges that the applicant’s spouse has an adult brother, she states that he is a single father who works full-time and, therefore, does not have time to assist his mother.

Counsel also asserts that the applicant’s spouse’s mental health and well-being are dependent on the applicant’s love and emotional support. She notes that the applicant’s spouse has previously been hospitalized for depression and that she has begun to sink into depression once again as a result of her worry over the applicant’s immigration problems. Counsel further maintains that, without the applicant’s physical, emotional and financial support, his spouse will not be able to achieve her immediate goal of becoming a registered Veterinary Technician or to realize her ultimate dream of becoming a veterinarian.

In statements, dated August 3, 2009 and June 20, 2012, the applicant’s spouse asserts that she and the applicant have been married for nine years and that she would be lost without him. She states that when she first met the applicant, she was suffering from depression and taking heavy antidepressant medication. Thereafter, she indicates, she was admitted to a psychiatric facility for 72

hours, but that she was able to recover with the applicant's help. The applicant's spouse maintains that if the applicant is removed, she would have no place to live, no means of support, would lose her much loved pets and would suffer health problems. She reports that she and the applicant lost their home to foreclosure in 2008 and now rent a house, but that, as of June 20, 2012, they are two months behind in paying their rent. The applicant's spouse states that the applicant's removal would not only result in financial hardship for her but that she would lose a "piece of [her] heart" and that her dreams of having children would be shattered.

To demonstrate his spouse's history of mental health problems, the applicant has submitted a range of medical documentation, which includes a copy of a 2001 Involuntary Patient Advisement that indicates the applicant was involuntarily admitted to [REDACTED] for a period of 72 hours in November 2001 because she had been judged to be a danger to herself, i.e., she had attempted to drink boric acid to kill herself. Discharge instructions, dated November 14, 2001, reflect that the applicant's spouse was prescribed Prozac and was to follow-up with a psychiatrist on November 26, 2001.

More recent documentation of the applicant's spouse's mental health status comes from a June 18, 2010 report of a telephonic interview conducted by [REDACTED] MFT, MH Access, who concluded that the applicant's spouse was suffering from Depressive Disorder. [REDACTED] notes reflect that the applicant's spouse informed her that she was depressed, did not want to get out of bed and had been calling in sick to her job. These same notes also indicate that the applicant informed [REDACTED] about her previous three-day hospitalization for depression, that she had taken Prozac and Zoloft in the past, and was drinking heavily, a pint of liquor a day.

Following from these notes are a July 19, 2010 Adult Clinical Assessment and July 27, 2010 Initial Psychiatric Assessment from [REDACTED] which find the applicant's spouse to be struggling with depression and experiencing stress as a result of her concerns over her spouse's removal to Pakistan. Together, these assessments report the applicant's spouse's hospitalization in 2001 following a suicide attempt and indicate that she took Prozac for two years thereafter. They also record that that the applicant's spouse has a history of substance abuse, including cocaine, alcohol and methamphetamines, beginning at 15 years of age. Although they indicate that she stopped using cocaine and methamphetamines with help of a hospital and the support of the applicant, they also report the applicant's spouse as drinking three to four times a week during the previous year. The July 27, 2010 assessment finds the applicant's spouse to be depressed and alcohol dependent, and recommends that she resume taking Prozac.

The most recent medical evidence concerning the applicant's spouse's mental health is found in an August 27, 2012 statement from [REDACTED] in which she reports that she is treating the applicant's spouse for depression. [REDACTED] states that the applicant's spouse has suffered from depression for more than ten years and was previously hospitalized for a suicide attempt. She notes that the applicant's spouse has historically relied on alcohol and marijuana to self-medicate and that with the return of depressive symptoms, has resumed heavy drinking as a way of coping. [REDACTED] also notes that the applicant has resumed taking the antidepressant, fluoxetine (Prozac), and has begun to feel better, reducing her alcohol intake and

trying to be more physically active. She indicates, however, that it will take another four to six weeks to determine the correct dosage. [REDACTED] concludes that given the fact that the applicant previously did well on medication, she should also react well now "as long as there are no more major stresses in her life and she has the support of her husband and family."

Further evidence of the decline in the applicant's spouse's mental health is provided by June 5, 2010 and July 1, 2011 statements from [REDACTED] who describes herself as the applicant's spouse's best friend. [REDACTED] asserts that she has noted significant changes in her friend's behavior and self-image as a result of her concerns over the potential removal of the applicant. She states that it appears as though the applicant's spouse has "gradually given up on life" and is slipping back into depression. [REDACTED] notes that the applicant's spouse previously attempted suicide and states that she does not want to lose her best friend forever. In a June 4, 2010 statement, the applicant's mother-in-law also indicates that she is worried about her daughter's mental health as she has become severely depressed and her behavior has changed dramatically. She notes that her daughter's depression has made her a "bit aggressive" in their relationship and that her daughter sometimes even forgets her promises.

In this same statement, the applicant's mother-in-law indicates that she depends on the applicant and her daughter for assistance as she has recently been diagnosed with diabetes and loss of vision, a complication of diabetes. She states that she is not able to drive or take care of personal errands or pay her bills, and that the applicant and her daughter take turns helping her. She states that although she has a son with whom she lives, she cannot depend on him for care as he is a single father who divides his time between his employment and his young child. In a May 9, 2012 statement, the applicant's spouse's brother maintains that he is a single father of three children and must work full-time to support them. As a result, he asserts, his schedule does not allow him to care for his mother and that her care falls largely on the applicant's shoulders as his sister is always working.

Two statements from [REDACTED] the most recent of which is dated May 9, 2012, indicate that the applicant's mother-in-law has been her patient for more than five years. [REDACTED] reports that the applicant's mother-in-law suffers from multiple medical problems, including diabetes, memory loss, hearing loss and arthritis. She further states that while her patient's diabetes is currently stable, she needs to be seen for continued education on her condition.

The record also contains financial documentation that establishes the applicant and his spouse sought bankruptcy protection in March 2007, but lost their home to foreclosure later in the year. It also includes a list of the applicant's and his spouse's monthly obligations, totaling \$2,479 and several 2012 earnings statements for the applicant's spouse from [REDACTED] which, counsel states, establish that she earns, on average, a bi-weekly income of \$568.38.

Although the record does not support all of the preceding claims of hardship, the AAO finds it to contain sufficient evidence to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and she remains in the United States. In reaching this conclusion, we have taken particular note of the applicant's spouse's history of mental health

problems and substance abuse, as well as her current circumstances. We find that when these factors are considered in the aggregate with those hardships established by the record and those routinely created by the separation of families, the applicant has established that his spouse would experience extreme hardship if the waiver application is denied and she remains in the United States.

On appeal, counsel asserts that it would be very difficult for the applicant's spouse to become accustomed to Pakistan's culture and society. She states that the applicant's spouse has lived in the United States since she was nine-years-old, growing up with U.S. ideals of freedom and equality, and that in Pakistan she would be expected to be subservient to the applicant. Counsel further maintains that the applicant's American citizenship would place her in jeopardy in Pakistan, as its society is hostile to the United States. She also contends that the applicant's spouse would have difficulty integrating into Pakistani society as she does not speak Urdu and, further, would be unable to further her education and achieve her dream of becoming a Doctor of Veterinary Medicine.

In support of counsel's assertions, the record contains online articles published by Reuters and the New York Times in 2009, which report on violence against women in Pakistan and a copy of the executive summary from "Violence Against Women in Pakistan, A Qualitative Review of Statistics for 2009" by Dr. Rakhshinda Perveen, prepared under the Aurat Foundation's Policy and Data Monitoring on Violence Against Women Project, which states that the number of cases involving violence against women has increased substantially since 2008, as has the level of cruelty toward women. Also found in the record are a 2009 article from USA Today and a 2010 article from The Times (London) that report on the rise in kidnapping for ransom in Pakistan, and a 2010 article entitled "Pakistan's Suspicious Public" in Foreign Policy Magazine, which, in part, focuses on the negative views of the United States in Pakistan.

The applicant has also submitted an undated statement from his father reiterating the difficulties the applicant's spouse would face upon relocation. The applicant's father asserts that as his daughter-in-law is not of Pakistani descent, she does not know or understand the culture and, further, does not speak Urdu, much less read or write it. He also states that the applicant grew up in Iowa and that he, too, is unable to speak, read or write Urdu. The applicant's father also warns that, in Pakistan, his daughter-in-law would lose many of the rights and freedoms she enjoys in the United States and that as an American citizen she would be in constant and continuing danger as Pakistan is a very unstable and insecure society.

Having reviewed the record before us, the AAO finds the applicant to have established that relocation to Pakistan would result in extreme hardship for his spouse. We note that the applicant's spouse became a Lawful Permanent Resident when she was 16-years-old and that her family ties are to the United States. She is also unfamiliar with Pakistani culture and society, and does not speak, read or write Urdu. Further, we acknowledge the country conditions information submitted for the record, as well as the concerns expressed for the applicant's spouse's safety in Pakistan, and note that the U.S. Department of State has issued a travel warning for Pakistan, last updated on September 19, 2012. The travel warning, which advises U.S. citizens against travel to Pakistan based on on-going security concerns, indicates that the "presence of al-Qaida, Taliban elements and indigenous militant sectarian groups poses a potential danger to U.S. citizens throughout Pakistan."

When these hardship factors are considered in the aggregate, the AAO finds that the applicant's spouse would experience extreme hardship if she relocated to Pakistan with the applicant.

As the applicant has established that the bar to his admission would result in extreme hardship for a qualifying relative, the AAO now turns to a consideration of whether he also merits a waiver of inadmissibility as a matter 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-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the applicant's case are the offenses that now bar his admission to the United States, as well as his 1999 conviction for carrying a concealed weapon, his 2000 attempt to purchase alcohol and his 2002 driving violations; and his unlawful residence and employment in the United States. The mitigating factors include the applicant's U.S. citizen spouse; his Lawful Permanent Resident father; the extreme hardship his spouse would experience if the waiver application is denied; his mother-in-law's health problems; the April 28, 2008 court order setting aside his 2006 conviction for receiving stolen property and dismissing the charge against him; the statement from his mother-in-law regarding the important role he plays in her life; his sister's statement noting the positive changes he has made to his life; and his statement of remorse.

The AAO acknowledges the negative factors in this case, particularly the recent nature of the applicant's 2006 offense. However, we, nevertheless, find that when taken together, the mitigating

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factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained

ORDER: The appeal is sustained.