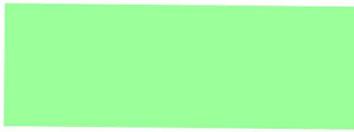




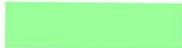
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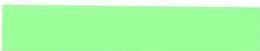


Date: **MAY 07 2013**

Office: LOS ANGELES

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(h) and (i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and (i)

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 "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude, and section 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for having made a willful misrepresentation to gain admission into the United States. The applicant is the spouse of a U.S. citizen. On July 26, 2009, she filed an Application for Waiver of Ground of Inadmissibility (Form I-601). The applicant seeks waivers of inadmissibility pursuant to sections 212(h) and (i) of the Act, 8 U.S.C. §§ 1182(h) and (i), in order to remain in the United States with her U.S. citizen spouse and children.

In a decision dated July 12, 2010, the field office director found that the applicant failed to establish that her qualifying relatives would experience extreme hardship as a consequence of her inadmissibility and denied the Form I-601 waiver application accordingly.

On appeal, counsel for the applicant contends that the director erred in finding that the applicant had failed to demonstrate extreme hardship to her qualifying relatives, as required for the waiver applications. Counsel further asserts that the record evidence demonstrates that the applicant merits a favorable exercise of discretion.

The record includes, but is not limited to: counsel's brief; counsel's letter in response to a request for evidence; a declaration by the applicant's husband; a letter from Child Support Services; a psychological evaluation; school records; documentary evidence demonstrating the lawful residence of the applicant's family; birth certificates of the applicant's children and stepchildren; income tax returns and utility bills; character reference letters; country conditions documentation; and documentation regarding the applicant's criminal proceeding.

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 (Board) 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 December 5, 2012, the AAO issued a request for evidence (RFE), as documentation in the record indicated that the applicant was arrested on July 16, 2008, on counts of

child cruelty. The AAO requested the applicant submit a certified disposition for the aforementioned arrest together with the additional available official records relating to all of the applicant's arrests and convictions.

On February 20, 2013, counsel for the applicant submitted his response to the RFE. In addition to a response letter, counsel furnished the following evidentiary items: an incident report for the July 18, 2008 arrest; a supplementary report prepared by the [REDACTED] Sheriff's Department for the July 18, 2008 arrest; a [REDACTED] Sheriff's Department report indicating that the [REDACTED] District Attorney declined to prosecute the case; a Last Minute Information for the Court noting that the District Attorney declined to file the case related to the applicant's July 18, 2008 arrest; a document from the California Superior Court certifying that no cases have been filed for the applicant from 2008 to December 12, 2012; and a certified disposition by the California Superior Court indicating that documents pertaining to the applicant's previous convictions have been destroyed.

Specifically, counsel submitted a Supplemental Report by Detective [REDACTED] of the [REDACTED] Sheriff's Department, dated July 29, 2008, in which he indicates that the applicant was arrested on July 18, 2008 for "willful cruelty to a child, 273a(b) P.C." and that "th[e] case was presented to the [REDACTED] District Attorney's Office, [REDACTED] branch office whereby criminal charges were declined due to lack of sufficient evidence." Further, counsel submitted a document prepared by the Department of Children and Family Services and titled "Last Minute Information for the Court," dated July 21, 2008, in which it is noted that "[Detective [REDACTED] presented the case to the D.A. who decided not to file charges on the [applicant]. Detective [REDACTED] stated that the information provided to the D.A. does not arise to a criminal act."

Additionally, the applicant submitted a document dated December 19, 2012 prepared by [REDACTED] certifying that a thorough search of all court criminal records revealed that from 2008 to December 19, 2012, the applicant has had "No Case[s] Filed" in the Superior Court.

From the documentary evidence in the record, it does not appear that the applicant admitted to the essential elements of willful cruelty to a child in violation of section 273a(b) of the California Penal Code, as required by the Board in *Matter of K*, 7 I&N Dec. 594 (BIA 1957). Moreover, the evidence submitted in response to the RFE establishes that the applicant was never charged with a crime by the [REDACTED] District Attorney due to statements and official reports. As such, there is no evidence that the applicant admitted, committed, or was convicted of a crime of willful cruelty to a child. Accordingly, the relevant evidence in the record does not reflect that the applicant's July 18, 2008 arrest renders her inadmissible under section 212(a)(2) of the Act.

The field office director found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) for having been convicted of crimes involving moral turpitude. The record reflects that on January 24, 2002, the applicant was convicted in the Superior Court of California, [REDACTED] of petty theft in violation of section 484(a) of the California Penal Code. She was sentenced to one day in jail and 12 months of probation.

At the time of the applicant's conviction for petty theft, Cal. Penal Code § 484(a) provided, in pertinent part:

Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. . . .

U.S. Courts have held that the crime of theft or larceny, whether grand or petty, involves 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, 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).

The Ninth Circuit Court of Appeals in *Castillo-Cruz v. Holder* determined that petty theft under Cal. Penal Code § 484(a) is a crime categorically involving moral turpitude. 581 F.3d 1154, 1160 (9th Cir. 2009). The Ninth Circuit reviewed lower court case law on convictions under Cal. Penal Code § 484(a), and determined that a conviction for theft (grand or petty) under the California Penal Code requires the specific intent to deprive the victim of his or her property permanently. *Id.* at 1160 (citations omitted). Consequently, the AAO finds that the applicant's conviction for theft under Cal. Penal Code § 484(a) is categorically a crime involving moral turpitude which renders her inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act.

Though the record reflects that on September 20, 2004, the Superior Court of California, [REDACTED] ordered the finding of guilt vacated after the applicant's successful completion of probation pursuant to section 1203.4 of the California Penal Code, we note that a state court's expungement of the applicant's conviction under the aforementioned statute does not eliminate the immigration consequences of her criminal conviction. This particular section of the California Penal Code is a rehabilitative type of statute, which serves to dismiss, cancel, or vacate a prior conviction as a result of the successful completion of a term of probation, restitution, or other condition of sentencing. The Ninth Circuit Court of Appeals, the jurisdiction in which this case arises, has deferred to the Board's determination regarding the effect of post-conviction expungements pursuant to a state rehabilitative statute. In general, a criminal conviction remains valid for immigration purposes regardless of the effect of a post-conviction type of rehabilitative statute, unless the conviction was expunged or vacated because of a procedural or constitutional defect in the underlying trial court proceedings. See *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999). Thus, the court's order of September 20, 2004, that expunged the applicant's misdemeanor conviction under section 1203.4 of the California Penal Code is ineffective to remove the immigration effect of the underlying conviction. The applicant does not

dispute her inadmissibility from this conviction on appeal.

The applicant has other convictions. The record shows that she was convicted on September 27, 1999 in the Municipal Court of [REDACTED] of grand theft of property in violation of section 487(a) of the California Penal Code. For this offense, the applicant was sentenced to 24 months of probation. At the time of the applicant's conviction, California Penal Code § 487(a) provided, in pertinent part, that: "Grand theft is theft committed... [w]hen the money, labor, or real or personal property taken is of a value exceeding four hundred dollars."

In *Matter of Chen*, 10 I&N Dec. 671 (BIA 1050), the Board held that the crime of grand theft in violation of section 487(a) of the California Penal Code categorically involves moral turpitude. *Id.* at 672; *see also Matter of V-T-*, 2 I&N Dec. 213, 214 (BIA 1944) ("Grand theft in violation of [the California Penal Code] manifestly involve[s] moral turpitude."). Further, the Ninth Circuit Court of Appeals in *Castillo-Cruz v. Holder* determined that the crime of theft in California requires the specific intent to deprive the victim of his or her property permanently, and is therefore a crime categorically involving moral turpitude. 581 F.3d at 1160; *see also Cantu v. Gonzalez*, 168 Fed. Appx. 210 (9th Cir. 2006) (noting that an alien's conviction for grand theft in violation of California Penal Code § 487(a) constitutes a conviction for a crime involving moral turpitude). Thus, there is ample support that the applicant's act of grand theft constitutes a crime involving moral turpitude. The applicant does not dispute her inadmissibility from this conviction on appeal.

As the applicant has been found inadmissible based upon her September 20, 2004 petty theft conviction and her September 27, 1999 grand theft conviction, the AAO need not address whether the applicant's November 8, 2000 conviction for "writing a check knowing there were insufficient funds for payment" involves moral turpitude.

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

(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 –

....

(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 . . . .

However, the field office director further found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for having made a willful misrepresentation to gain admission into the United States. Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that in a sworn statement taken on May 24, 2002 by Immigration Officer [REDACTED] regarding the applicant's fraudulent entry into the United States, the applicant admitted under oath to entering the United States through the [REDACTED] port of entry in September 1995 using a lawful permanent resident card that belonged to another person. Accordingly, the applicant obtained an immigration benefit through the willful misrepresentation of a material fact and is barred from admission to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute her inadmissibility from this ground on appeal.

The applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, and needs to apply for a discretionary waiver of the ground of inadmissibility pursuant to section 212(i) of the Act. Section 212(i) of the Act provides, in pertinent part, that:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien ...

The AAO begins its analysis by noting that a waiver of inadmissibility under sections 212(h) and 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which for purposes of section 212(h) includes the U.S. citizen or lawful permanent resident spouse, parent, son, or daughter of the applicant. However, for purposes of a section 212(i) waiver, the qualifying relatives include only the spouse or parent of the applicant. Thus, in order for the waiver pursuant to section 212(i) to be granted, the applicant's children are not qualifying relatives and she must establish that denial of admission would impose extreme hardship upon her U.S. citizen husband. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The applicant's U.S. citizen husband therefore meets the definition of a qualifying relative.

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). These 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 the 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 to 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; severed community ties; cultural readjustment after living in the United States for many years; cultural adjustment of qualifying relatives who have never lived outside the United States; inferior economic and educational opportunities in the foreign country; or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

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

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant is 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 AAO now turns to the issue of whether the applicant has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

The asserted hardship factors to the applicant's husband are the emotional, financial, and psychological hardships in the event of separation. The record reflects that the applicant's husband

is 39 years of age, was born in [REDACTED] California, and has lived his entire life in that city. With regards to emotional hardship upon separation, the applicant's husband indicates in a declaration dated April 9, 2010, that he met the applicant in 2003 and immediately fell in love. Their son, [REDACTED] was born on May 10, 2005. The applicant's husband indicates that he has three children from a prior marriage, two of whom live with him and the applicant.

The applicant's husband states that separation from the applicant would put him in an unbearable situation, as he would be unable to care for their [REDACTED] on his own. The applicant's husband indicates that their family would be destroyed if the applicant is removed to Mexico. He states that he has grown extraordinarily close with the applicant's two children from a prior relationship, and that separation from them would cause him emotional hardship given that he acts as their father figure and cares for them. The applicant indicates in a declaration dated April 9, 2010, that if removed from the United States, she would have no choice but to take her children with her. The applicant's husband further states that separation would be hard on his children from a prior relationship, as they have all grown extremely close and have learned to live together as a family. He indicates that the distress his children are presently experiencing as a result of the applicant's immigration situation is causing him an emotional trauma. The AAO acknowledges the emotional hardships to the applicant's husband in the event of separation and notes that U. S. courts, including the Ninth Circuit Court of Appeals, have considered family separation as one of the most important hardship factors. *See, e.g., Batsidas v. I.N.S.*, 609 F.2d 101, 105 (3<sup>rd</sup> Cir. 1979) (The family and relationships between family members occupy a place of central importance in our nation's history and are a fundamental part of the values which underlie our society); *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (the most important single hardship factor may be the separation of the alien from family living in the United States);

The record includes a letter by Dr. [REDACTED] Ph.D., in which he states that the applicant's husband has been diagnosed with anxiety disorder and emerging depression. In his report, dated August 26, 2010, Dr. [REDACTED] attributes this diagnosis to separation from the applicant due to her immigration situation. He further concludes that this unsettled immigration situation has caused the applicant's husband and their children emotional stress and strain. Dr. [REDACTED] mentions that the applicant's husband reported symptoms of daily fear, helplessness, constant worry, fear, sadness, and physical and emotional fatigue. Dr. [REDACTED] concludes that if the applicant were actually deported, her husband's emerging depression would worsen resulting in further mental health difficulties. Thus, the AAO finds that the record evidence supports a finding that the applicant's husband is experiencing psychological difficulties as a result of the uncertainty surrounding his wife's immigration situation and the worries associated with the prospect of separation from the applicant and their children.

The applicant's husband reported to Dr. [REDACTED] that there are substantial and critical differences between life in the United States and in Mexico. The applicant's husband states that Mexico is beset by problems that could have serious consequences for the safety and livelihood of his family. Here, The AAO notes that on November 20, 2012, the United States Department of State updated its Travel Warning for United States citizens traveling to Mexico. The Travel Warning notes that since 2006, the Mexican government has engaged in an extensive effort to combat transnational criminal organizations (TCOs). The TCOs, meanwhile, have been engaged in a struggle to control drug

trafficking routes and other criminal activity. Bystanders, including U.S. citizens, have been injured or killed in violent incidents in various parts of the country, especially, though not exclusively in the northern border region, demonstrating the heightened risk of violence throughout Mexico. The Travel Warning indicates that during some of these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area.

The Travel Warning further indicates that TCOs, meanwhile, engage in a wide-range of criminal activities that can directly impact United States citizens, including kidnapping, armed car-jacking, and extortion that can directly impact United States citizens. According to the Travel Warning, the number of U.S. citizens reported to the Department of State as murdered under all circumstances in Mexico was 113 in 2011 and 32 in the first six months of 2012. Regarding the applicant's home state of [REDACTED] the Travel Warning indicates that U.S. citizens "should defer non-essential travel to all areas of the state of [REDACTED] north of the city of [REDACTED] as well as to the cities of [REDACTED] and [REDACTED]. The security situation north of Tepic and in these cities is unstable and travelers could encounter roadblocks or shootouts between rival criminals." Based on the increased violence in Mexico and the Travel Warning issued to U.S. citizens, the AAO notes the risks U.S. citizens face when traveling to certain areas in Mexico, including the area where the applicant currently resides. Therefore, the ability of the applicant's husband to visit the applicant in [REDACTED] Mexico is limited. Additionally, the AAO notes that the applicant's husband's assertions regarding the unsafe conditions in the area in which the applicant and their children would reside, and the emotional and psychological difficulties these unsafe conditions have caused him are corroborated by the information contained in the Travel Warning.

With regards to financial hardship upon separation, the applicant's spouse states that the family's financial stability will decrease as a consequence of separation. He asserts that the applicant financially contributes to the household as a full-time sales representative with [REDACTED] in California. He indicates that his wife has been employed for the past four years and, together with his salary, they are both responsible for their family's household expenses. The applicant's spouse further asserts that together, they are responsible for six children and their two incomes are required to survive. The applicant's spouse states that without the financial support of his wife, he would not be able to support his family as a sole provider. The applicant asserts, and the record evidence corroborates, that he is responsible for a \$400 monthly payment in child support and is responsible for her daughter [REDACTED]'s college and tuition expenses. He indicates that separation from the applicant would bring financial strain and hardship, as he would be unable to cover his monthly mortgage payment, utility bills, college costs, and child support payments without the financial contributions of the applicant. From the financial documentation submitted in support of the waiver application, it is noted that the applicant's husband's yearly salary is \$78,400. The record evidence further indicates that the applicant pays monthly mortgage payments of \$2,709, pays an average of \$154.25 each month on utility bills, pays \$400 a month in child support, and is responsible for the repayment of loans totaling \$47,011. Taken together, the record indicates that the applicant's husband has fixed monthly obligations of at least \$4,269.18. From the documents provided, the AAO acknowledges that the applicant's husband would face economic difficulties in the event of separation if he becomes the family's sole provider for the household.

Accordingly, when looking at the aforementioned factors in the aggregate, particularly the documented emotional difficulties associated with separation from the applicant and their children, the documented financial difficulties of the applicant's husband, the applicant's husband's emerging depression and anxiety disorders due to the prospect of separation, as well as the risks of travel to Mexico as documented by the Travel Warning, the AAO finds that the applicant has demonstrated extreme hardship to her husband if he were to remain in the United States without her.

With regard to relocation to Mexico, the AAO notes that the applicant's husband was born and raised in [REDACTED] California and the record indicates that his immediate family resides in the United States; thus, the record does not indicate he has family members residing in Mexico. The applicant's husband asserts that he does not speak Spanish and that Spanish is not spoken in their home. The AAO further notes that the applicant's husband may experience hardship in relocating to [REDACTED], Mexico. As previously noted, the United States Department of States has issued a Travel Warning advising of the risks of travel to [REDACTED] Mexico. The Travel Warning indicates that U.S. citizens "should defer non-essential travel to the state of [REDACTED]" as the security situation is unstable and travelers could encounter roadblocks or shootouts between rival criminals. Relocation to Mexico would thus require the applicant abandon his residence in the United States to move to a part of Mexico that has become unstable and unsafe due to gang-related violence. Further, Dr. [REDACTED] states in his psychological evaluation that relocation would exacerbate the applicant's husband's psychological difficulties, as the concern and nervousness regarding his family's well-being and safety would likely increase. Additionally, the record evidence indicates that, in the event of relocation, the applicant's husband would be responsible for at least a five member household. Relocation would result in the applicant likely losing his employment of 13 years with [REDACTED]. It would also present additional emotional and financial hardships related to the applicant's husband's joint custody agreement with his former spouse and his child support obligations. When looking at the aforementioned factors in the aggregate, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to relocate to Mexico.

The grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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-Moralez*, 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.

The adverse factors in the present case are the applicant's January 24, 2002 conviction for petty theft; her September 27, 1999 conviction for petty theft; her November 8, 2000 conviction for “writing a check”, and her fraudulent entry into the United States in 1995 and subsequent period of unlawful presence. The favorable factors in the present case are the extreme hardship to the applicant's spouse; the hardship to the applicant's children and stepchildren, her payment of taxes and employment in the United States, and the passage of over 10 years since her last criminal conviction.

Pursuant to *Matter of Mendez-Moralez*, the record evidence must demonstrate that the applicant is genuinely rehabilitated given the existence of a significant criminal record. Evidence of the applicant's rehabilitation includes her acceptance of responsibility for the crimes she committed. In a declaration dated April 9, 2000, the applicant admitted her involvement. She expressed remorse for her participation, stating that she “got caught up in the moment,” and that “she felt terrible after completing the crime of theft.” The applicant indicates in her declaration that she has made mistakes in the United States and that she understands the repercussions of being a defendant in a criminal case. The applicant indicates that her criminal convictions embarrass her, and that she knows she should be more careful. The applicant indicates that she “is terribly sorry about these mistakes.” She states that she now has a wonderful home that is full of joy, and asserts that she could not live with herself if her mistakes led to the destruction of their home. The record further reflects that the applicant has a history of stable employment as a sales representative.

In a declaration dated April 9, 2010, the applicant's husband indicates that the applicant is a dedicated mother who made some mistakes in the past. He indicates that her prior mistakes do not outweigh the benefits she brings to their family, as she motivates their children and her stepchildren, is a hard worker, and has fought to preserve their family together. The applicant's husband states in his declaration that the applicant has focused her energies towards their children, and the absence of any convictions in over 10 years supports this assertion. The 10 letters and declarations in the record from the applicant's family members and friends, including her siblings, further corroborate the assertions her husband made about the applicant. In a letter dated April 19, 2009, [REDACTED], a friend of the family, indicates that the applicant has always displayed a high level of responsibility with raising her children and working full-time to support her family. In a declaration dated April 11, 2009, [REDACTED] asserts that the applicant is the godmother for two of her children and states that the applicant is a “fighter, above all, for her children.” [REDACTED] indicates that as a single mother, the applicant focused on her children obtaining a good education and always managed to “get her children ahead.” These are all favorable indicators of efforts at rehabilitation which, when evaluated in the aggregate, demonstrate that the applicant has rehabilitated.

The AAO recognizes that it is favorably exercising discretion in a case presenting criminal conduct. However, the AAO finds that the applicant is sincere in her remorse for her crimes and has been rehabilitated. The applicant is now an active and productive member of her community. She has been married since 2008, and the evidence in the record indicates that the applicant takes care of and financially provides for her U.S. citizen children and family. She has long residence in the United States, with no convictions in over 10 years. Though the applicant was arrested in 2008, the record indicates that the District Attorney declined to prosecute, as it appears that the facts presented evidenced that the applicant committed no crime. Given these factors, coupled with the hardship that would be experienced by her U.S. citizen spouse and the general hardship to their children upon her removal, the AAO finds that the positive factors outweigh the negative factors in this case.

In proceedings for an application for a waiver of grounds of inadmissibility under sections 212(h) of the Act, the burden of proving eligibility rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.