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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: AUG 13 2014 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Applicant: [redacted]

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of the West Bank who was found inadmissible 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 been convicted of crimes involving moral turpitude, and under section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), for having been convicted of multiple crimes for which the aggregate sentences to confinement were 5 years or more. The applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse and child.

The Director concluded that while the applicant established that extreme hardship would be imposed on a qualifying relative, the applicant failed to establish that the waiver should be granted as a matter of discretion, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Director,* dated November 15, 2013.

On appeal, counsel contends that the waiver application should be granted as a matter of discretion, and submits additional evidence in support of that contention.

The record includes, but is not limited to: briefs filed by the applicant's counsel in support of the Form I-601 and Notice of Appeal or Motion, statements by the applicant and the applicant's spouse, a psychological evaluation of the applicant's spouse, letters of reference, country conditions information on Israel and the West Bank, and the applicant's criminal records. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states, 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 –
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> (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-
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> (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
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> (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 assessing whether a conviction is a crime involving moral turpitude, the adjudicator must first "determine what law, or portion of law, was violated." *Matter of Esfandiary*, 16 I&N Dec. 659, 660 (BIA 1979). The adjudicator engages in a categorical inquiry, considering the "inherent nature of the crime as defined by statute and interpreted by the courts," not the underlying facts of the criminal offense. *Matter of Short,* 20 I&N Dec. 136, 137 (BIA 1989); *see also Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009) (citing *Taylor v. United States,* 495 U.S. 575, 599-600 (1990)). If the statute "defines a crime in which turpitude necessarily inheres, then the conviction is for a crime involving moral turpitude." *Matter of Short*, *supra*, at 137.

Where the statute includes some offenses involving moral turpitude and some which do not – where there is a *realistic probability* that the statute would be applied to conduct not involving moral turpitude – the adjudicator looks to the record of conviction to determine the offense for which the applicant was convicted. *See Matter of Guevara Alfaro*, 25 I&N Dec. 417, 421 (citing *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689-90, 696-99 (A.G. 2008)); *see also Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability, as opposed to a theoretical possibility, exists where there is an actual prior case, possibly the applicant's own case, in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. *Matter of Silva-Trevino*, *supra*, at 708. The record of conviction is a narrow, specific set of documents which includes the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Matter of Louissant*, *supra,* at 757; *see also Shepard v. U.S.,* 544 U.S. 13, 16 (2005) (finding that the record of conviction is limited to the "charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.")

If review of the record of conviction is inconclusive, an adjudicator may consider "probative evidence beyond the record of conviction" to resolve whether the offense constitutes a crime involving moral turpitude. *Matter of Guevara Alfaro, supra*, at 422 (citing *Matter of Silva-Trevino, supra*, at 690, 699-704, 709). However, 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." *Matter of Silva-Trevino, supra,* at 703; *see also Matter of Ahortalejo-Guzman*, 25 I&N Dec. 465, 468 (BIA 2011) (An adjudicator may not "undermine plea agreements by going behind a conviction to use sources outside the record of conviction to determine that an alien was convicted of a more serious turpitudinous offense.").

The criminal records translated from Hebrew to English in the record reflect that on May 11, 2009, the applicant was convicted in the Magistrates Court of Jerusalem, Israel, for the crimes of theft under § 384 of the Israel Penal Law, forgery to get benefits under § 418 of the Israel Penal Law, two counts of impersonation under § 441 of the Israel Penal Law, and illegal presence under article 12(1) of the Entry into Israel Law of 1952. The indictment indicates that the applicant was charged with stealing an identification card that belonged to an Israeli resident and altering the document to include his photograph for the purpose of obtaining benefits, including entering Israel. The applicant was convicted of the charges in the indictment and sentenced to a prison term of eight months as well as receiving suspended sentences of six months and 60 days that would be served if convicted of the same charges within 3 years of his release from prison.

On January 27, 2010, the applicant was convicted in the Magistrates Court of Jerusalem, Israel for the crimes of using a forged document under § 420 and § 418 of the Israel Penal Law, impersonation under §441 of the Israel Penal Law, and illegal presence under article 12(1) of the Entry into Israel Law of 1952. The indictment indicates the applicant presented a forged identification card belonging to an Israeli resident at a checkpoint in an attempt to enter Israel. The applicant was fined or sentenced to 60 days in prison in lieu of the fine and the conditions of his previous suspended sentence were extended by a period of one year.

Israel Penal Law 5737-1977, Chapter Eleven: Offenses Against Property, provides, in pertinent part:

> Definition of theft
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> 383. (a) A person commits theft if he –
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> > (1) takes and carries away a thing capable of being stolen, without the owner's consent, fraudulently and without the claim of a right in good faith, intending when he takes it to deprive its owner of it permanently. . . .
>
> Penalty for theft
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> 384. A person who commits theft is liable to three years imprisonment, and that if no other penalty is set for the theft because of its circumstances or because of the nature of the stolen object.

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].") The BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). We find that the applicant's conviction under § 383 of Chapter Eleven of the Israel Penal Law is a crime involving moral turpitude, as it requires intent to permanently deprive its owner of the property.

Israel Penal Law 5737-1977, §414 provides, in pertinent part:

> 414. In this Article –
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> . . . .
>
> "forgery" –
> (1) making a document which purports to be what it is not, and which is liable to mislead;
> (2) altering a document – including the addition or deletion of a particular – with intent to deceive, or made without lawful authority and purporting to have been made with lawful authority;
> (3) signing a document in the name of a certain person without lawful authority, or with a fictitious name in a manner to be thought to have been signed by a particular person;

Israel Penal Law 5737-1977, §420 provides:

> If a person submits or issues a forged document or uses it in some other manner in the knowledge that it is forged, then he shall be treated like the person who forged it.

Israel Penal Law 5737-1977, §418 provides:

> If a person forges a document, then he is liable to one year imprisonment; if a person forges a document with intent to obtain anything by it, then he is liable to three years imprisonment; if the offense is committed under aggravating circumstances, then he is liable to five years imprisonment.

Forgery has been held to be a crime involving moral turpitude. *See Matter of Seda,* 17 I&N Dec. 550 (BIA 1980). Crimes involving fraud or the intent to defraud have long been held to constitute crimes involving moral turpitude. *Jordan v. De George,* 341 U.S. 223, 232 (1951); *see also Matter of Mclean*, 12 I. & N. Dec. 551, 552 (BIA 1967). We note that the Board of Immigration Appeals (BIA) has also determined that even where fraud is not specifically proscribed in a statute, it may be "so inextricably woven into the statute as to clearly be an ingredient of the crime." *Matter of Flores*,

17 I&N Dec. 225, 228 (BIA 1980) (holding that the respondent's conviction for uttering or selling false or counterfeit paper relating to registry of aliens was a crime involving moral turpitude although intent to defraud was not an element of the crime); *see also, Matter of Kochlani,* 24 I&N Dec. 128, 130-131 (BIA 2007) (indicating that where an act requires proof that a defendant willfully or knowingly committed an act, that act, even though committed without a specific intent to defraud is inherently fraudulent); *Matter of Tejwani,* 24 I&N Dec. 97, 98 (BIA 2007)(finding a conviction for money laundering to be categorically a crime involving moral turpitude as conviction required proof that the respondent knew that the monetary instruments involved were the products of criminal conduct and that his handling of these instruments was intended it to conceal or disguise their criminal origins). Based on the reasoning offered in the preceding case law, we conclude that the offenses of forgery to get benefits and using a forged document under sections 418 and 420 of the Israel Penal Law are crimes involving moral turpitude. The applicant was convicted based on an indictment charging him with stealing and altering an identification card that belonged to an Israeli resident for the purpose of obtaining benefits, including entering Israel, and another charging him with presenting a forged identification card belonging to an Israeli resident at a checkpoint in an attempt to enter Israel. In that the applicant's convictions under sections 418 and 420 of the Israel Penal Law required a finding of willful or deliberate deception for an unlawful purpose, the applicant's offenses are categorically crime involving moral turpitude.

A foreign conviction can be the basis for a finding of inadmissibility only where the conviction is "for conduct which is deemed criminal by United States standards." *Matter of Ramirez-Rivero*, 18 I&N Dec. 135, 137 (BIA 1981) (citing *Matter of McNaughton*, 16 I&N Dec. 569, 572 (BIA 1978)). However, a foreign conviction need not conform to U.S. Constitutional guarantees in order to be a conviction for immigration purposes. *Matter of Gutierrez*, 14 I&N Dec. 457, 458 (BIA 1973); *Matter of M--*, 9 I&N Dec. 132, 138 (BIA 1960).

The applicant indicates that he was working in the State of Israel without authorization and with false documents as he was attempting to support his family. Counsel states that the crimes that the applicant committed cannot be justified and that he freely admits his mistakes. Counsel further states that while the applicant concedes his actions reflect poor judgment and behavior, they are not violent or heinous crimes, but rather are a by-product of extraordinary political and economic circumstances.

The applicant's convictions for theft and forgery render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Consequently, we need not determine whether the applicant's crimes of impersonation and illegal presence in Israel involve moral turpitude.

We note that the applicant does not qualify for either exception under section 212(a)(2)(A)(ii) of the Act because he was convicted of more than one crime involving moral turpitude. We further note that the applicant was sentenced to eight months imprisonment in addition to suspended sentences of six months and 120 days in the aggregate. The applicant was found inadmissible under section 212(a)(2)(B) of the Act for multiple criminal convictions for which the aggregate sentences to confinement were five years or more, but the aggregate sentences imposed in this matter, including suspended sentences, were approximately 18 months, and the applicant is therefore not inadmissible under section 212(a)(2)(B) of the Act.

As a person found to be inadmissible under section 212(a)(2)(A) of the Act, the applicant is eligible to apply for a waiver under section 212(h) of the Act.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) … 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 established to the satisfaction of the [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.

Section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. The applicant's U.S. citizen spouse and child are qualifying relatives in this case.[1] Hardship the alien experiences upon removal is irrelevant to section 212(h) waiver proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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,

[1] The record indicates that on July 2, 2014, counsel informed USCIS that the applicant's spouse is four months pregnant.

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

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

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.[2]

The record indicates that the Director found that the applicant has established that his qualifying relatives would suffer extreme hardship if the waiver is not granted. *See Decision of the Director,* dated November 15, 2013.

The applicant's spouse states that her mental health is deteriorating due to long separations from the applicant. The record includes a detailed psychological evaluation of the applicant's spouse, which indicates that she suffers from post-traumatic stress disorder related to a history of abuse, and that

[2] Although the applicant's U.S. citizen son is a qualifying relative, most of evidence in the record concerns hardship to the applicant's spouse. As such, this decision will address whether the applicant has established that his spouse would suffer extreme hardship if his waiver application is not approved.

she has been suffering from mental depression, nightmares, and anxiety attacks as a result of her separation from the applicant.

Counsel notes that the applicant's spouse is not economically independent. The applicant's spouse states that she resides with her father and she depends on her father, who owns a small business, for financial support. The applicant's spouse further states that her father has multiple sclerosis and is no longer able to work, and that she provides care for her father while her step-mother works in their store. The record further indicates that the applicant has an offer of employment in the United States which would enable him to provide support to his spouse and child.

The record establishes that if the waiver application were denied, the applicant's spouse would experience financial and emotional hardship as a result her separation from the applicant. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if she resides in the United States without the applicant.

In regard to relocation, the record indicates that the applicant's spouse was born in the United States, and has resided in the United States for the majority of her life. The applicant's spouse has strong family ties in the United States, including her parents and two siblings. Although the applicant's spouse travels to Palestine to be with the applicant, counsel states that she has been unable to find work in Palestine due to the terrible economic circumstances there.

Counsel further states that the area in which the applicant resides is under constant threat of violence and war. We note that the U.S. Department of State has recently updated its travel warning for Israel, the West Bank and Gaza as recently as July 21, 2014. The travel warning states that "[t]he Department of State recommends that U.S. citizens consider the deferral of non-essential travel to Israel and the West Bank and reaffirms the longstanding strong warning to U.S. citizens against any travel to the Gaza Strip," and includes specific warnings regarding travel to the West Bank:

> The Department of State urges U.S. citizens to exercise caution when traveling to the West Bank. Demonstrations and violent incidents can occur without warning, and vehicles are regularly targeted by rocks, Molotov cocktails, and gunfire on West Bank roads. U.S citizens have been killed in such attacks. There have also been an increasing number of violent incidents involving Israeli settlers and Palestinian villagers in the corridor stretching from Ramallah to Nablus, including attacks by Israeli settlers on Palestinian villages in which U.S. citizens have suffered injury or property damage, and attacks by Palestinians on settlements. U.S. citizens can be caught in the middle of potentially dangerous situations, and some U.S. citizens involved in political demonstrations in the West Bank have sustained serious injuries. The Department of State recommends that U.S. citizens, for their own safety, avoid all demonstrations. During periods of unrest, the Israeli Government may restrict access to the West Bank, and some areas may be placed under curfew. All persons in areas under curfew should remain indoors to avoid arrest or injury. Security conditions in the West Bank may hinder the ability of consular staff to offer timely assistance to U.S. citizens. *See Israel, the West Bank and Gaza Travel Warning, U.S. Department of State*, dated July 21, 2014.

The applicant's spouse's strong ties to the United States, the economic difficulties of residing in the West Bank, and her concern for her safety and the welfare and safety of her son are hardships she would face if she were to relocate to the West Bank. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if she relocated to the West Bank to reside with the applicant.

We find that the situation presented in this application rises to the level of extreme hardship. However, 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 he 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. (Citations omitted).

The favorable factors in this matter are the extreme hardships to his U.S. citizen spouse and hardships to their son if the waiver application is not approved, the applicant's offer of employment in the United States, the applicant's remorse for his criminal wrong-doing and his efforts to demonstrate rehabilitation, the apparent lack of any further criminal activities subsequent to his two convictions, a certificate of good conduct issued by the Palestinian authorities, and letters of reference.

The adverse factors in the present case are the applicant's criminal convictions for theft, forgery, impersonation, and illegal presence in Israel. We note that in the record of the applicant's conviction

of May 11, 2009, in accepting the guilty plea agreement, the prosecuting attorney stated that that the applicant was only 24 years old with no prior criminal record, and that the applicant's eight month prison sentence included two months in prison already served, with a stay of execution for the remaining six months. We further note that in the record of the applicant's second conviction of January 25, 2010, the judge stated (as worded in the translation from Hebrew to English):

> Despite the severity of the commission of crime, although there are provisions of imprisonment suspended on similar crimes, must take into account the age of the defendant, which came to Israel only for support of his family, which suffer from difficult economic situation, and where he was the eldest son of six children, saw himself as responsible for family, from the attorney I heard that, the defendant funded his brother's education of pharmacy in Russia, which is a large amount.

The judge subsequently extended the applicant's suspended sentence conditions from his previous conviction for a period of one additional year.

Counsel states that the applicant's criminal violations are the by-product of seeking work in a place where he wasn't authorized to work, and that while this does not justify the applicant's behavior, it does indicate the extenuating circumstances involved in that behavior.

The crimes committed by the applicant are serious in nature. However, the favorable factors in this matter outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.