



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF V-O-

DATE: NOV. 3, 2015

APPEAL OF SAN FERNANDO VALLEY, CALIFORNIA FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Russia, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(h), 8 U.S.C. § 1182(h). The Director of the San Fernando Valley Field Office denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his U.S. citizen spouse. He filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his spouse.

In a decision dated November 24, 2014, the Director determined that the Applicant did not establish that extreme hardship would be imposed on his spouse if she remained in the United States, or if she relocated with the Applicant to Russia. The Form I-601 was denied accordingly.

On appeal, the Applicant does not contest that he has been convicted of crimes involving moral turpitude. He asserts, however, that the cumulative evidence in the record establishes that his spouse would experience extreme emotional, physical, and financial hardship if he is denied admission and she either remains in the United States, or relocates with him to Russia. The Applicant also asserts that the evidence demonstrates that he is rehabilitated and that a favorable exercise of discretion is merited in his case. In support of these assertions the record includes statements from the Applicant, his spouse, family members and friends, as well as medical and financial evidence, country conditions information, documentation establishing relationships and identity, and information pertaining to the Applicant's criminal record.¹ The entire record has been reviewed and considered in arriving at a decision on the appeal.

¹ The Applicant also cites to a non-precedent AAO decision and asks us to instruct the Director to withdraw the denial of his Form I-485, Application to Register Permanent Residence or Adjust Status, pending appellate review of his Form I-601. We note that unpublished AAO decisions have not been designated as precedents, and are thus not binding on the AAO or U.S. Citizenship and Immigration Services officers in their administration of the Act. 8 C.F.R. § 103.3(c). We note further that our jurisdiction is limited to that authority specifically granted through the regulation at 8 C.F.R.

Section 212(a)(2)(A) of the Act provides, 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.

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

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

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 assessing whether a conviction is for a crime involving moral turpitude, we must first “determine what law, or portion of law, was violated.” *Matter of Esfandiary*, 16 I&N Dec. 659, 660 (BIA 1979). We engage 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

§ 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments. We do not have jurisdiction over the Applicant’s Form I-485 in this case.

(b)(6)

Matter of V-O-

Taylor v. United States, 495 U.S. 575, 599-600 (1990)). This categorical inquiry focuses on whether moral turpitude necessarily inheres in the minimal conduct for which there is a realistic probability of prosecution under the statute. See *Short, supra*; *Moncrieffe v. Holder*, 133 S.Ct. 1678, 1684-1685 (2013); *Gonzales v. Duenas-Alvarez*, 127 S.Ct. 815, 822 (2007).

Where the statute does not contain a single, indivisible set of elements but rather encompasses multiple distinct criminal offenses, “some . . . which involve moral turpitude and some which do not,” we engage in a modified categorical inquiry. *Short, supra*, at 137-138. A criminal statute can be considered divisible “only if (1) it lists multiple discrete offenses as enumerated alternatives or defines a single offense by reference to disjunctive sets of ‘elements,’ more than one combination of which could support a conviction; and (2) at least one, but not all, of those listed offenses or combinations of disjunctive elements is a categorical match” to the relevant generic offense (i.e. an offense involving moral turpitude). *Matter of Chairez-Castrejon*, 26 I&N Dec. 349, 353 (BIA 2014) (citing *Descamps v. United States*, 133 S. Ct. 2276, 2283 (2013)).

For the purpose of determining whether such a statute is truly divisible, an offense’s elements are those facts about the crime which “[t]he Sixth Amendment contemplates that a jury—not a sentencing court—will find . . . unanimously and beyond a reasonable doubt.” *Chairez-Castrejon, supra*, at 353 (quoting *Descamps, supra*, at 2288). Absent a requirement for jury unanimity, the disjunctive language of the statute merely expresses alternative “means” of committing the crime, rather than alternative “elements,” and the statute therefore is not divisible. *Chairez-Castrejon, supra*, at 354. Consequently, a conviction under the statute would only be a crime of moral turpitude if moral turpitude necessarily inheres in each of the alternative means of committing the crime. *Id.*

If the statute is divisible, we then conduct a modified categorical inquiry by reviewing the record of conviction to determine which statutory phrase was the basis for the conviction. See *Short, supra*, at 137-38. 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. *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.”)

The record reflects that the Applicant has been convicted of the following offenses: on [REDACTED] 2012, the Applicant was convicted of petty theft, in violation of California Penal Code (Cal. Penal Code) § 484(a). On [REDACTED] 2010, the Applicant was convicted of burglary, in violation of Cal. Penal Code § 459. On [REDACTED] 2009, the Applicant was convicted of Petit Larceny, in violation of Virginia Code § 18.2-96.

The Board of Immigration Appeals (BIA) has maintained that the determinative factor in assessing whether burglary involves moral turpitude is whether the crime intended to be committed at the time of entry or prior to the breaking out involves moral turpitude. *Matter of M-*, 2 I&N Dec. 721, 723 (BIA 1946). See also *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1020 (9th Cir. 2005) (stating that “[b]ecause the underlying crime of theft or larceny is a crime of moral turpitude, unlawfully entering a

residence with intent to commit theft or larceny therein is likewise a crime involving moral turpitude.”); *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982) (holding that burglary with intent to commit theft is a crime involving moral turpitude).

The Ninth Circuit Court of Appeals held in *Rendon v. Holder* that Cal. Penal Code § 459 is an indivisible statute because a jury can convict a defendant under the statute without agreeing on whether the defendant had the intent to commit grand or petit larceny or a non-theft felony. 764 F.3d 1077 (9th Cir. 2014). The use of the modified categorical approach is thus not permissible for a conviction under this statute. Because intent to commit theft, a crime involving moral turpitude, is not an element of the offense, the Applicant’s burglary conviction under Calif. Penal Code § 459 does not render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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, “[i]t is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude . . .”). However, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973).

The Ninth Circuit Court of Appeals determined in *Castillo-Cruz v. Holder* that petty theft under Cal. Penal Code § 484 is a crime categorically involving moral turpitude. 581 F.3d 1154, 1160 (9th Cir. 2009). *See also, Matter of Pedroza*, 25 I&N Dec. 312, 315-16 (BIA 2010) (misdemeanor petty theft under section 484 of the Cal. Penal Code constitutes a crime involving moral turpitude.) The Applicant’s conviction for petty theft under Cal. Penal Code § 484(a) is therefore a crime involving moral turpitude.

The Virginia Code, in effect at the time of the Applicant’s conviction, defined the offense of Petit Larceny at § 18.2-96 by stating:

Any person who:

1. Commits larceny from the person of another of money or other thing of value of less than \$5, or
2. Commits simple larceny not from the person of another of goods and chattels of the value of less than \$200, except as provided in subdivision (iii) of § 18.2-95, shall be deemed guilty of petit larceny, which shall be punishable as a Class 1 misdemeanor.

The offense of larceny is not defined in the statute; however, the Virginia Supreme Court held in *Tarpley v. Commonwealth*, 261 Va. 251, 256 (2001); 542 S.E. 2d 761, 763-64 (2001) that, “[l]arceny, a common law crime, is the wrongful or fraudulent taking of another’s property without his permission and with the intent to deprive the owner of that property permanently.” (Citations omitted). Because petit larceny under Virginia Code § 18.2-96 requires an intention to permanently deprive the owner of property, it categorically involves moral turpitude.

(b)(6)

Matter of V-O-

The Applicant's convictions for petty theft and petit larceny are both crimes involving moral turpitude, and he is therefore inadmissible pursuant to section 212(a)(2)(A)(ii)(I) of the Act.²

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant. The record establishes that the Applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

² Pursuant to Cal. Penal Code § 1203.4, the Superior Courts in [redacted] ordered the finding of guilt in the Applicant's convictions for burglary and theft withdrawn, based on his successful completion of probation terms. We note that a dismissal under Cal. Penal Code § 1203.4 does not expunge the Applicant's convictions for immigration purposes. Under the current statutory definition of "conviction" provided at section 101(a)(48)(a) of the Act, no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

(b)(6)

Matter of V-O-

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 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.

The Applicant’s qualifying relative is his U.S. citizen spouse. To establish that his spouse would experience extreme hardship if he were denied admission and she remained in the United States, the Applicant submits affidavits, psychological and medical records, financial documentation, and country conditions information.

The Applicant states that although he is a Russian citizen, he and his spouse are ethnic Armenians. He states that conditions are dangerous for ethnic Armenians in Russia, and that his spouse would worry about his safety if he returned to Russia. He states that his spouse would also experience financial hardship if she remained in the United States, because he would be unable to support two households due to high unemployment in Russia. In addition, he states that his spouse would be unable to afford to visit him due to high airfare costs, and the length of time it takes to travel to Russia. The Applicant states that his spouse cries at night due to fears of their separation, and he indicates that she suffered a miscarriage due to the stress and uncertainty of their family’s future. In addition, he states that his spouse receives medical and psychological care in the United States, and she would be devastated if he were denied admission into the country.

The Applicant’s spouse states that she and the Applicant have lived together since their marriage in [REDACTED] 2010, her life has changed for the better with the Applicant, and that she and the Applicant want to have a family together. She states that the thought of a prolonged separation from the Applicant makes her anxious, she is constantly crying and feels depressed, she does not sleep or concentrate well, and she

(b)(6)

Matter of V-O-

has become less productive at work. The Applicant's spouse also indicates that she requires psychological treatment due to anxiety and depression. In addition, she states that the Applicant helps her financially, and that due to high unemployment in Russia and his ethnic Armenian background, he would be unable to find work or support two households. She indicates that she fears for the Applicant's safety in Russia due to anti-Armenian sentiments and violence, and because he has no one to return to and could become homeless. Further, the Applicant's spouse states that she would be unable to visit the Applicant in Russia, due to the high cost of airfare and the long travel time. She indicates that she would also be unable to call the Applicant often due to high phone costs and the time difference between the United States and Russia.

The Applicant's spouse's parents state that they are very close to their daughter and communicate with her daily, that she is happy with the Applicant, and that their daughter is nervous and distraught about her possible separation from the Applicant.

A May 23, 2012 letter from a licensed clinical psychologist states that the Applicant's spouse shows signs consistent with depression and anxiety due to her fear of being separated from the Applicant, and that she suffers from generalized anxiety disorder and depression. A June 11, 2015, medical report from the psychologist reflects that the Applicant's spouse has been a patient since May 2012, and that she continues to suffer from anxiety and depression due to fears of separation from her husband, her unwillingness to go with him due to emotional and health-related obligations to her parents, employment concerns, and concerns over conditions in Russia.

The record also contains medical evidence concerning the Applicant's spouse's [REDACTED]-year-old mother and [REDACTED]-year-old father, as well as evidence that the Applicant's spouse's parents receive supportive services and that the Applicant's spouse has received payment from the State of California for providing these services.

The Applicant's and his spouse's income tax return reflects that the Applicant's spouse earned a total income of \$24,402 in 2013, but the Applicant did not report any income. The record also contains evidence of auto insurance and airline flight and cost information.

Reports issued by the U.S. Department of State reflect the existence of societal violence and discrimination against minorities, as well as the existence of violent harassment of persons perceived to be from the Caucasus region. These reports also reflect the existence of anti-American sentiment in Russia.

Upon review, the cumulative evidence in the record is sufficient to establish that the Applicant's spouse would experience hardship beyond that normally experienced upon inadmissibility of a family member if she remains in the United States separated from the Applicant. The evidence demonstrates that the Applicant's spouse is being treated for anxiety and depression based on concerns that she may be separated from the Applicant and concerns about his wellbeing in Russia. Country conditions evidence corroborates her concerns for the Applicant's safety in Russia and her own safety if she visits him there. The evidence also reflects that the cost and amount of time involved in traveling to visit the Applicant in

Russia could cause the Applicant financial and employment-related hardship. Considered in the aggregate, the applicant has demonstrated that the cumulative effect of the hardships that the Applicant's spouse would experience if she remained in the United States without the Applicant rises to the level of extreme hardship.

The Applicant has also established that his spouse would experience extreme hardship if she relocated with him to Russia. In his declarations, the Applicant's spouse expresses fear that his spouse would be targeted by groups in Russia due to her U.S. citizenship and because she is ethnic Armenian. He also states that his spouse is very close to her parents, that her parents are not healthy, and that she takes care of her parents. The Applicant states that his spouse's parents are unable and unwilling to move to Russia due to their age, health, and medical insurance coverage in the United States. He also states that his spouse does not want to move to Russia, she has never lived there and does not speak the language well, her family, friends and job are in the United States, and she would be unable to afford medical treatment in Russia.

The Applicant's spouse also asserts that she would be unable to live in Russia because she is not Russian, does not speak Russian well, and is unfamiliar with the culture. She indicates further that she fears living in Russia due to hate and discrimination against Armenians and other nationalities from the Caucasus region. In addition, she states that U.S. citizens are treated poorly in Russia. The Applicant's spouse states that her elderly parents are in the United States and need her companionship, support, and care. She indicates that her brother cannot care for her parents because he has a physical disability and needs help himself. She states further that she receives a salary from the State of California to care for her parents, that she would lose that income if she moved to Russia, and that she would also lose her job of 16 years as a cashier at a car wash if she moved to Russia. The Applicant's spouse indicates that her family would be unable to visit her due to health concerns, high costs of travel, and dangerous conditions in Russia. In addition, she indicates that she would be unable to obtain medical insurance or treatment in Russia for her health and psychological issues.

As stated above, evidence in the record describes violence and discrimination against minorities in Russia, as well as harassment, at times violent, of persons perceived to be from the Caucasus region, and the existence of anti-American sentiment. Taken together, the evidence in the record is sufficient to establish that the Applicant's spouse would suffer emotional, financial, employment-related, and safety-related hardship beyond that normally experienced upon inadmissibility or removal if she relocated to Russia.

Nevertheless, the Applicant has failed to establish that he merits a waiver of inadmissibility as a matter of discretion. 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 section 212(h) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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

(b)(6)

Matter of V-O-

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 favorable factors in this case are the hardship the Applicant's U.S. citizen spouse would face if the Applicant is denied admission into the country. The Applicant also submits affidavits and letters to establish his good character.

The unfavorable factors in this case are the Applicant's convictions for theft and burglary. In addition, on [REDACTED] 2012, the Applicant was convicted of trespass (involving mail and identity theft), in violation of Cal. Penal Code § 602(n). The Applicant has also accrued unlawful presence in the United States. The record reflects that the Applicant was convicted of a theft crime within four months of entering the United States as a nonimmigrant visitor, on [REDACTED] 2008. He was subsequently convicted of three more crimes between 2010 and 2012.

The Applicant states on appeal that he regrets his past conduct, he takes full responsibility for his actions, he considers himself rehabilitated, and he will no longer violate the law. The Applicant provides no details about the circumstances of his criminal history, however, or how and why he considers himself to be rehabilitated. The Applicant's spouse states that she is aware of the Applicant's criminal record, the Applicant was young and careless when he committed his crimes, he is now more mature and thoughtful, and he knows he would hurt her if he is arrested or convicted again. The Applicant's spouse provides no details about the Applicant's rehabilitation. Moreover, the record reflects that the Applicant was over 32-years-old when he committed his first crime in the United States. The record also reflects that the Applicant committed crimes after he married his spouse in 2010 and after he was placed in removal proceedings in 2011.

The record also contains letters from the Applicant's spouse's parents and several friends indicating that the Applicant and his spouse are a loving couple and that the Applicant is a good person. The letters are general, however, and they do not discuss his rehabilitation or reflect that the individuals are aware of the Applicant's criminal history in the United States.

Upon review, the negative factors in this case outweigh the positive factors, such that a favorable exercise of discretion is not warranted.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

Matter of V-O-

ORDER: The appeal is dismissed.

Cite as *Matter of V-O-*, ID# 12791 (AAO Nov. 3, 2015)