



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

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

MATTER OF A-A-Z-

DATE: FEB. 11, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Lithuania, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) §§ 212(a)(9)(B)(v) and 212(h), 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(h). The Service Center Director, Nebraska Service Center, 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 Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude; and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure.

On February 11, 2015, the Director denied the Applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, finding that the Applicant had been convicted of a violent or dangerous crime and that he did not establish that the hardship to his qualifying relatives is exceptional and extremely unusual. The Director also found that the Applicant did not show extraordinary circumstances in his case.

On appeal, the Applicant asserts that the Director erred in using the heightened standard of hardship because that standard should apply only to crimes involving "egregious violence and repulsive violations of public norms." He alternatively asserts that his U.S. citizen spouse and children would endure exceptional and extremely unusual hardship if his application is denied and that the Director did not expressly find their hardship would be either extreme or exceptional and extremely unusual. The Applicant claims that he is also eligible for a waiver under section 212(h)(1)(A) of the Act, because 15 years have passed since the activities leading to his conviction and he has been rehabilitated.

The record includes but is not limited to: the Applicant's criminal records; briefs; identity and relationship documents; declarations from the Applicant, his relatives, and friends; medical records; psychological assessments of the Applicant, his spouse, and their sons; school records of the Applicant's sons, financial documents; photographs; and reports on conditions in Lithuania. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

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

....

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

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility:

The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The Applicant testified that he entered the United States without inspection in June 2000.¹ He remained in the United States until he returned to Lithuania on February 12, 2013. The Applicant was unlawfully present in the United States from his arrival until he returned to Lithuania. By departing he became inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for one year or more. The Applicant does not contest this finding of inadmissibility.

Section 212(a)(2)(A) of the Act provides, in relevant part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

¹ The record indicates that the Applicant entered without inspection in June 2000 on a Form I-213, Record of Deportable Alien, but on his Form I-601, the Applicant indicated he entered in August 2001. The difference in dates does not affect the finding of inadmissibility for his unlawful presence.

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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.

The Board of Immigration Appeals (the Board) stated in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992):

[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.

The record shows that the Applicant was convicted on [REDACTED] 2000, of rape, in violation of Article 118, clause 1 of the Criminal Code of Lithuania (1961) in the [REDACTED] District Court. He was sentenced to three years' imprisonment, which was reduced to two years. He did not serve his sentence before he entered the United States. On [REDACTED] 2013, the Applicant was also convicted and fined for violating Article 242 of the Lithuanian Criminal Code, for having been sentenced to imprisonment and evading serving his sentence. On [REDACTED] 2012, U.S. Immigration and Customs Enforcement officers apprehended the Applicant at his home because the Lithuanian government was seeking his extradition.²

At the time of his conviction, Article 118, clause 1, of the Criminal Code of the Republic of Lithuania (1961) provided:

Article 118: Rape

A person who has sexual intercourse with a person against his will by using physical violence or threatening or by taking advantage of the helpless state of the victim shall be punished by imprisonment for a term of three up to seven years.

The Applicant's petition to reclassify his crime, 12 years after his conviction, was granted. The Applicant submits evidence on appeal showing that the court reclassified the crime to a violation of Article 150, paragraph 1 of the Criminal Code of the Republic of Lithuania (2000).

² The extradition request was subsequently cancelled.

At the time of reclassification, Article 150, paragraph 1, provided:

A person who, against a person's will, satisfied his sexual desires through anal, oral or interfemoral intercourse by using physical violence or by threatening the immediate use thereof or by otherwise depriving the victim of a possibility of resistance or by taking advantage of the helpless state of the victim shall be punished by arrest or by imprisonment for a term of up to six years.

The Applicant was sentenced to imprisonment for 90 days.

In assessing whether a conviction is 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 conduct a categorical inquiry for that statutory offense, 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)). 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; Louissaint, supra; Moncrieffe v. Holder*, 133 S.Ct. 1678, 1684-1685 (2013); *Gonzales v. Duenas-Alvarez*, 127 S.Ct. 815, 822 (2007).

It is well established that the crime of rape, being one which inherently reflects moral depravity, involves moral turpitude. *Matter of B-*, 5 I&N Dec. 538, 539 (BIA 1953). Sexual assault also has been held to be a crime involving moral turpitude. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1966). The Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his conviction of a crime involving moral turpitude, sexual assault. He has not contested his inadmissibility.

The Applicant, however, asserts that the Director erroneously applied the heightened standard for cases involving violent or dangerous crimes. On appeal, the Applicant asserts only crimes involving the substantial use of force and the intent to use such force should be considered violent or dangerous crimes. He further asserts that he was convicted of sexual assault, not rape, and that “sexual assault in Lithuania does not require a ‘substantial use of force’ and ‘intent to use such force.’” The Applicant, however, does not provide legal authority to support his assertion that only crimes requiring a substantial use of force and intent to use such force should be considered violent or dangerous crimes.

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

The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if –

(1) (A) in the case of any immigrant it is established to the satisfaction of

the [Secretary] that --

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

....

- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the [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 . . .

- (2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Section 212(h)(1)(A) of the Act provides that the Secretary may, in his discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

More than 15 years have lapsed since the Applicant's activities that led to his conviction for a crime involving moral turpitude. The record reflects that the Applicant has family ties in the United States, including his U.S. citizen spouse and two children. The record contains letters from the Applicant's spouse and children demonstrating the strong family bond they have with the Applicant and their interest in keeping their family unified. We find that the record does not indicate that the Applicant's admission to the United States is contrary to the national welfare, safety, or security of the United States.

Addressing his rehabilitation, the Applicant asserts that he has had no other criminal convictions; however, he provides no evidence to support his assertion. The Applicant states that he has changed and is embarrassed and regrets his actions that led to his conviction. He states that it was an unfortunate circumstance. The Applicant submits a letter from a Lithuanian center for the disabled,

indicating he volunteers several times a month. The Applicant asserts that he is hard working and paid taxes while in the United States.

The record is insufficient to support the Applicant's contention that he has met the rehabilitation requirements for a waiver under section 212(h)(1)(A) of the Act. The Applicant submits a psychologist's report, dated November 4, 2014, stating that he has experienced an "internal rehabilitation in his behavior since the moment when he violated the law." The record contains evidence that the Applicant attends church, does volunteer work, and admitted his guilt, but the record is insufficient to establish that he has been rehabilitated. Specifically, the record reflects that the Applicant evaded serving his sentence in Lithuania and was convicted and fined for violating Article 242 of the Lithuanian Criminal Code in 2013.

Even if the Applicant had established that he has been rehabilitated, and eligible for a waiver, rehabilitation is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (*en banc*).

The Applicant is eligible to apply for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Act. A waiver under section 212(h) is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. However, a waiver under section 212(a)(9)(B)(v) cannot be based on extreme hardship to the Applicant's children. Because the Applicant requires a waiver under both sections, we will determine the Applicant's eligibility for a waiver under the more restrictive section 212(a)(9)(B)(v). Therefore, the Applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant's children will be considered only to the extent that it results in hardship to his spouse.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Id.* In most discretionary matters, the foreign national bears the burden of proving eligibility simply by showing 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). However, even if the Applicant were able to satisfy the requirements of section 212(h) of the Act, we cannot find, based on the facts of this particular case, that the Applicant merits a favorable exercise of discretion solely on the balancing of favorable and adverse factors. According to the Director, the Applicant's conviction indicates that he is subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

The discretionary standard for violent or dangerous crimes was first articulated by the Attorney General in *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002). The respondent in *Matter of Jean* was convicted of second-degree manslaughter in connection with the death of a 19 month-old child. The Attorney General noted:

It would not be a prudent exercise of the discretion afforded to me by this provision to

grant favorable adjustments of status to violent or dangerous individuals except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of status adjustment would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, such a showing might still be insufficient. From its inception, the United States has always been a nation of immigrants; it is one of our greatest strengths. But aliens arriving at our shores must understand that residency in the United States is a *privilege*, not a *right*. For those aliens, like the respondent, who engage in violent criminal acts during their stay here, this country will not offer its embrace.

23 I&N Dec. at 383-84.

The Department of Justice (DOJ), through its rule making authority, codified the discretionary standard for violent or dangerous crimes set forth in *Matter of Jean*. The regulation at 8 C.F.R. § 212.7(d) provides:

The [Secretary], in general, will not favorable exercise discretion under section 212(h)(2) of the Act to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The words “violent” and “dangerous” and the phrase “violent or dangerous crimes” are not further defined in the regulation, and we are aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, “crime of violence,” is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, *or* any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in 8 C.F.R. § 212.7(d). Thus, we find that the statutory terms “violent or dangerous crimes” and “crime of violence” are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependent on it having been found to

be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms “violent” and “dangerous.” The term “dangerous” is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms “violent” and “dangerous” in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual “case-by-case basis.” 67 Fed. Reg. at 78677-78.

Because the Applicant’s crime of sexual assault qualifies as a violent crime, the Applicant must show that “extraordinary circumstances” warrant approval of the waiver 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the Applicant’s admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security or other extraordinary equities, we will consider whether the Applicant has clearly demonstrated that the denial of his admission as an immigrant would result in exceptional or extremely unusual hardship to a qualifying relative. *Id.*

In discussing the lower “extreme hardship” standard, the Board has stated that the definition “is not . . . fixed and inflexible;” rather the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (*en banc*). Relevant factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 565-66. In addition, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States, and in the event that he or she accompanies the applicant to the home country. *See id.* at 565-68 (considering the hardships of family separation and relocation). In order to show “exceptional and extremely unusual hardship,” the applicant must show more than “extreme hardship.” *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001) (*en banc*) (holding in cancellation of removal case that the “standard requires a showing of hardship beyond that which has historically been required in suspension of deportation cases involving the ‘extreme hardship’ standard”). The hardship “must be substantially beyond the ordinary hardship that would be expected when a close family member leaves this country,” and is “limited to truly exceptional situations.” *Id.* (internal quotation marks omitted). However, the Applicant need not show that hardship would be unconscionable. *Id.* at 60.

The Applicant states that the denial of his waiver has caused his family financial, emotional, and medical hardships. The record reflects that the Applicant’s 40 year-old spouse has resided in the

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United States since 2001 and became a U.S. citizen in 2006. The Applicant and her spouse were married on [REDACTED] 2007, and have two sons, ages [REDACTED] and [REDACTED]

With respect to his financial hardship claim, the Applicant states that he and his spouse started a trucking company in 2006, his spouse took care of accounting, his father-in-law drove the truck, and he did everything else. He further states that since he returned to Lithuania, he continues to help his spouse through the Internet, but she is struggling with the business. According to the Applicant's Form 1040s, his average annual business income between 2006 and 2008 was \$6,690. No business income for the years 2009 and 2010 is apparent on the Forms 1040 he prepared for those years. According to their 2012 tax return, their company earned \$49,232 in ordinary business income, and he and his spouse collected wages from the company totaling \$18,374 that year. He submits invoices and evidence showing that their business has outstanding loans in the amount of approximately \$53,700 as of late 2013.

The Applicant also submits evidence that he and his spouse have accrued approximately \$37,000 and \$19,900 in credit-card debt, respectively. His spouse states that her father has accrued debt while attempting to financially assist them. The Applicant submits copies of his father-in-law's credit card bills totaling \$18,300. The Applicant's spouse also states that she works part-time for a home health agency, while running the business and attending school. The record also shows that the Applicant's spouse wires money to the Applicant.

The Applicant asserts that his absence has caused their business to do poorly. The Applicant's spouse states that her father went into debt to help their business. The record does not contain corroborating evidence to show that her father contributed funds to the business. Although the Applicant submits his father-in-law's credit-card bills, the cause of his indebtedness is not evident. Nonetheless, the record shows that the Applicant and his spouse are experiencing financial hardship, as their combined debt exceeds their income.

Regarding emotional hardship stemming from their separation, the Applicant's spouse describes the difficulties of being separated from the Applicant and raising their two children alone. A licensed professional counselor diagnosed the Applicant's spouse as having severe depression and anxiety. She reported symptoms of insomnia, loss of appetite with nausea, fatigue, depressed mood, headaches, chest pain, loss of concentration, nervousness, anhedonia, and feelings of hopelessness. The record shows that the Applicant's spouse received prescriptions for anti-anxiety medications and an antidepressant and that she suffers from hypothyroidism and severe chronic hives.

According to a psychological evaluation, the Applicant's spouse also is concerned about the effect of separation upon their children. The Applicant's spouse states that their eldest son is having difficulty in school. A letter from their son's teacher corroborates her claim. The record also shows that the eldest son suffers from high blood pressure. In addition, the Applicant's spouse states that their youngest son began wetting the bed shortly after the Applicant was detained by immigration officials and that he has a nut allergy.

The Applicant has shown that his spouse is experiencing emotional and psychological hardship as a result of separation from him and concern about the effect of his absence on their children, medical and physical hardship caused in part by the stress of separation, and financial debt coupled with a loss of reliable financial support. In view of the record, we find that considering all of the hardship factors in the aggregate, the Applicant has demonstrated that his spouse is experiencing extreme hardship as a result of their separation.

With regard to emotional hardship his spouse would experience upon relocation, the Applicant asserts that she has significant ties to the United States. The Applicant's spouse states that she and their children live with her parents and that she is very close to them. She states that after her father's heart attack in 2011, he takes medication daily. She further states that her mother also has health problems. The record includes a letter from a physician stating that the Applicant's mother-in-law has fibromyalgia, osteoarthritis, insomnia, and depression. The Applicant also submits a medical record indicating his father-in-law has coronary artery disease. The Applicant also states that Lithuania has a high suicide rate and submits a report he submits to corroborate this claim. In addition, the Applicant asserts that their younger son would experience medical hardship in Lithuania given his allergy, because food labeling laws do not exist there. The Applicant does not submit evidence addressing the quality and availability of health care in Lithuania.

Concerning financial hardship his spouse would experience upon relocation, the Applicant states that Lithuania has a high unemployment rate and that his spouse would face discrimination as a Belarusian. The Applicant submits a report stating that although the law prohibits discrimination against ethnic and national minorities, intolerance and societal discrimination persist. One report indicates that Lithuania has experienced a recent increase in immigration and that its integration policies are weak, suggesting that minorities are not readily assimilated into the Lithuanian economy and culture. The Applicant also claims that his spouse would be unable to work as a nurse in Lithuania, because she does not speak Lithuanian and lacks a Lithuanian education, which is required for individuals to work there. He further states that the unemployment rate in Lithuania is about 15 percent, the median monthly salary is about \$580, and the cost of rent and utilities exceeds the median salary. The Applicant submits no documentation regarding employment conditions in Lithuania. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Although the Applicant's spouse has lived in the United States for approximately 15 years and has strong family ties there, we find that the Applicant's evidence of the hardships caused by leaving the United States and relocating to Lithuania is limited concerning the financial impact of her relocation and the emotional hardship she would experience as a result of separation from her parents and the impact on their sons. Thus, the hardships outlined do not reflect a "truly exceptional situation" that would meet the exceptional and extremely unusual hardship standard. See *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 at 62.

However, even had we found that the Applicant's wife's hardship was exceptional and extremely unusual, as required by 8 C.F.R. § 212.7(d), we find that the gravity of the Applicant's offense would override the extraordinary circumstances in this case and that a favorable exercise of discretion is not warranted. In determining the gravity of an applicant's offense, we must not only look at the criminal act itself, but also engage in a traditional discretionary analysis and "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." *Matter of Mendez-Morales*, 21 I&N Dec. 296, 300 (BIA 1996)(citations omitted).

The favorable considerations include the Applicant's family ties to his spouse and two children, their hardship as a result of his inadmissibility, and his rehabilitative efforts. The unfavorable factors are the Applicant's immigration violations and criminal violations, including a 2013 conviction in Lithuania for evading his sentence. In addition to the recency of his last conviction, the record reflects that the Applicant's crime was particularly egregious, as it involved the use of force and intimidation and reflects a disregard for human dignity.

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 not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-A-Z-*, ID# 14166 (AAO Feb. 11, 2016)