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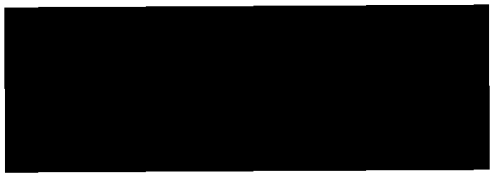
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services



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FILE: Office: MEXICO CITY, MEXICO Date: DEC 0 1 2010

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Michael Humphrey

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure a driver's license with false documents on February 25, 1997. The applicant is married to a U.S. citizen and has three U.S. citizen children. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated April 16, 2008, the acting district director found the applicant inadmissible for having been unlawfully present in the United States for more than one year and for misrepresenting his identity to obtain a driver's license. The acting district director then found that the applicant failed to establish extreme hardship to his U.S. citizen spouse as a result of his inadmissibility and denied the application accordingly.

In a statement on appeal, dated May 19, 2008, the applicant states that his spouse is HIV positive and is suffering great distress without the applicant in Puerto Rico to support her and help with their three daughters. He states that she is receiving care for her condition at a hospital in Puerto Rico and is receiving her medications for free through a federal government program. He states that if his family relocated to Mexico his spouse would not receive adequate care.

The AAO first turns to the finding of the acting district director that the applicant is inadmissible under 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

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

The record indicates that on February 25, 1997 the applicant was arrested for fraud in Osceola County, Florida. The AAO notes that United States Citizenship and Immigration Services' records show that the applicant was arrested for "fraud-impersonation", but does not indicate that the applicant was ever convicted of the charge. The only other documentation of the arrest in the record is consular officer notes stating that the applicant used false documentation in attempting to procure a driver's license. The applicant does not dispute these findings. However, the AAO finds that this arrest does not constitute a willful misrepresentation in an attempt to procure a benefit provided

under the Act. A driver's license is not a benefit provided for under the Act. Thus, the applicant is not inadmissible under 212(a)(6)(C)(i) of the Act.

Now the AAO turns to the applicant's inadmissibility under section 212(a)(9)(B) of the Act. The record indicates that the applicant entered the United States without inspection in 1994. The applicant remained in the United States until August 2004. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until August 2004 the date of his departure from the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of his August 2004 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) 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.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now the Secretary 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 Attorney General [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 AAO notes that the applicant has a criminal record which was not addressed by the acting district director. The record indicates that the applicant was arrested on September 17, 2003 in Orange County, Florida and charged with grand theft under Florida Statutes 812.014(2)(c)(1). On December 17, 2003 the applicant was convicted of the charge and sentenced to two days imprisonment and 18 months probation. A conviction under Florida Statutes 812.014(2)(c)(1) is a third degree felony punishable by a maximum of five years imprisonment

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

> (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.
>
> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-
>
> > (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
> >
> > (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 the recently decided *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral

turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007). A realistic probability exists where, at the time of the proceeding, an "actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, "the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude." 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the "record of conviction" to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this "does not mean that the parties would be free to present any and all evidence bearing on an alien's conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself." *Id.* at 703.

At the time of the applicant's conviction, Florida Statutes § 812.014(2)(c)(1) provided, in pertinent parts:

> (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
>
> > (a) Deprive the other person of a right to the property or a benefit from the property.
> >
> > (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.
>
> (2) . . .
>
> > (c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

(1) Valued at $300 or more, but less than $5,000. . . .

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

In the instant case, the record of conviction does not reflect whether the applicant was convicted for intending to deprive the owner of his or her property permanently or temporarily. However, in *In re Jurado-Delgado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the Board found that the violation of a Pennsylvania retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently. The reasoning in *Jurado-Delgado* is applicable to the applicant's case. The Criminal Complaint dated June 23, 2003 and the Charging Affidavit dated May 20, 2003 state that the applicant was involved in the theft of four appliances from Whirlpool. The AAO finds that it is reasonable to conclude from the circumstances and the items that were taken, that the applicant intended a permanent taking similar to the retail theft discussed in *Jurado-Delgado*. Thus, the AAO finds that the applicant's conviction for grand theft required the intent to permanently take another person's property and is thus a conviction for a crime involving moral turpitude. Therefore, the applicant is also inadmissible under section 212(a)(2)(A) of the Act.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse and/or parent of the applicant. A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse, parent and/or child of the applicant. Hardship the applicant experiences due to separation is not considered in section 212(a)(9)(B)(v) or section 212(h) waiver proceedings unless hardship to the applicant is shown to cause hardship to the applicant's qualifying relative. The AAO notes that the applicant has three U.S. citizen children that are qualifying relatives in section 212(h) waiver proceedings, but not in section 212(a)(9)(B)(v) waiver proceedings. Thus, the only hardship to be considered in the applicant's case are the hardships suffered by the applicant's spouse. 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in

the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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.*, *In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the

consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The record of hardship includes: a statement from the applicant, a statement from the applicant's spouse, medical documentation for the applicant's spouse, and a 2007 tax return from Puerto Rico.

In his statement dated May 19, 2008, the applicant states that when he initially applied for a waiver he and his wife had a difficult time discussing her health condition of being HIV positive. He states that at that time he did not think it was necessary to divulge information regarding his spouse's HIV infection. He states that his spouse is undergoing medical treatment at a local hospital and that she is receiving the medications she needs at no charge. The applicant states that because of his spouse's inability to adequately support herself and to care for their three daughters she is suffering great distress in his absence. He states that her condition will be aggravated if he is not allowed to reunite with his family or if his family relocates to Mexico. He states that in Mexico there is no certainty that his spouse would receive the care she needs for her HIV infection.

In her statement dated May 13, 2008, the applicant's spouse states that she did not know that she was HIV positive until she became pregnant with her first child and that neither her daughters or her husband are positive for the virus. She states that she did not discuss her health condition previously because she feared discrimination. She states that since the applicant's departure from Florida, she moved to Puerto Rico where her daughters attend school, she works part-time, and she receives welfare benefits. She states that she cannot relocate to Mexico because of the complications her medications cause her and the quantity of medications she must take daily. She also states that the applicant is the only person who can be there to support and care for her and her daughters in the event her condition worsens.

The AAO notes that a medical record from [redacted] dated March 3, 2006, indicates that the applicant's spouse is HIV positive. This document also shows that the applicant's spouse has pulmonary hypertension and states that her condition is delicate. The document states that in the past two years the applicant's spouse has had multiple hospitalizations due to "hemalinic" disorder and requires help with her daily activities. A discharge summary from a hospital in Puerto Rico, dated February 14, 2006, states that the applicant's spouse was hospitalized on February 6, 2006 for chest pains and palpitations. The summary also makes a discharge diagnosis of numerous medical conditions. The AAO is able to clearly identify a few of the conditions listed as anemia, pulmonary hypertension, HIV, and pneumonia. The record also shows a list of the prescriptions the applicant's spouse is required to take and a 2007 tax return showing that she earned $819 that year.

The AAO finds that given the applicant's spouse's very serious medical condition and the presence of three minor children in the family, the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility. The applicant has submitted evidence to show that his

spouse is HIV positive and that she has had complications with the illness. The record also shows that the applicant's spouse earns very little income. The AAO finds that the applicant has shown that his spouse would suffer extreme hardship as a result of separation because she is not only dealing with the daily struggles of HIV, she is also responsible for caring for three minor children with an inadequate income while managing her illness.

In addition, although the applicant has not submitted documentation to support his claims regarding health care in Mexico, the AAO finds that the applicant's spouse will suffer extreme hardship as a result of relocation. As stated in the applicant's spouse's medical records, the applicant's spouse's situation is delicate. The AAO finds that relocating would cause an interruption in the applicant's spouse's closely monitored medical care for a potentially fatal disease, which, given the unique circumstances of her combined medical conditions, would result in significant hardship. Upon relocation the applicant's spouse would also face the difficulties of relocating her three minor children and finding employment.

Potentially exacerbating the applicant's spouse's situation is the violence currently occurring in Mexico. The U.S. Department of State has issued a travel warning for Mexico, dated September 10, 2010 which states that since 2006, the Mexican government has engaged in an extensive effort to combat drug-trafficking organizations (DTOs). The warning states that Mexican DTOs have been engaged in a vicious struggle with each other for control of trafficking routes and that in order to prevent and combat violence, the government of Mexico has deployed military troops and federal police throughout the country. The warning states that DTOs have erected unauthorized checkpoints, and killed motorists who have not stopped at them and that DTOs have employed automatic weapons and grenades, sometimes impersonating police. The warning quotes published reports, which states that 22,700 people have been killed in narcotics-related violence in Mexico since 2006 including innocent bystanders. The warning goes on to state that although narcotics-related crime is a particular concern along Mexico's northern border, violence has occurred throughout the country, including in areas frequented by American tourists. The warning states that U.S. citizens traveling in Mexico should exercise caution in unfamiliar areas and be aware of their surroundings at all times and that bystanders have been injured or killed in violent attacks in cities across the country, demonstrating the heightened risk of violence in public places. The warning states further that in recent years, dozens of U.S. citizens living in Mexico have been kidnapped and most of their cases remain unsolved. Thus, in considering the applicant's spouse's medical condition, the presence of three minor children in the family, and the country conditions in Mexico, the AAO finds that the applicant's spouse would also suffer extreme hardship upon relocation.

The AAO has carefully considered the facts of this particular case and finds that the hardship suffered by the applicant's spouse rises to the level of extreme hardship. The AAO therefore concludes that the applicant has established that his spouse would suffer extreme hardship if his waiver of inadmissibility is denied.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of

equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether section 212(h)(1)(B) 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, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's unlawful presence in the United States and his criminal record.

The favorable factors in the present case are the extreme hardship to the applicant's U.S. citizen spouse if he were to be denied a waiver of inadmissibility; the applicant's three U.S. citizen children; the applicant's lack of a criminal record or offense since 2003; and, as indicated in a statement from the applicant's spouse, the support the applicant provides for his family.

The AAO finds that the immigration violation committed by the applicant and his criminal conviction are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.