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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: SAN FRANCISCO, CA

Date: **SEP 10 2010**

IN RE:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

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

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. 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 Fiji who was found to be inadmissible to the United States pursuant to 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 admission into the United States by fraud or willful misrepresentation in July 1994. The applicant was also found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(2)(A)(i)(I), as an alien convicted of crimes involving moral turpitude. The applicant is married to a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated February 21, 2001, the district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated March 26, 2001, counsel states that the district director's decision regarding extreme hardship was in error and that he is submitting evidence which was not previously in the record and

The record indicates that in July 1994 the applicant declared himself to be a U.S. citizen at the El Paso, Texas port of entry in an attempt to gain admission to the United States.

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

Misrepresentation

(i) In general

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 chapter is inadmissible.

(ii) Falsely claiming citizenship

(I) In general

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any other Federal or State law is inadmissible.

Because section 212(a)(6)(C)(ii) of the Act only applies to false claims of citizenship on or after September 30, 1996, the applicant is eligible for a waiver under section 212(i) of the Act. See Memo. from Joseph R. Greene, Acting Assoc. Commr., Office of Programs, Immig. and Naturalization Serv., *Section 212(a)(6)(C)(ii) Relating to False Claims to U.S. Citizenship* 2-3 (Apr. 8, 1998).

The record also indicates that the applicant has a lengthy criminal record.

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

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

In August 1992 the applicant was convicted of receiving stolen property and was sentenced to three months in jail and two years probation.

In October 1992 the applicant was convicted of tampering with a vehicle and sentenced to 55 days in jail and one year probation.

On August 24, 1993 the applicant was arrested for battery and rape by force, but these charges were dismissed. On November 14, 1993 the applicant was arrested for assault and battery, but these charges were also dismissed.

On December 7 and 8, 1995 the applicant committed the acts which led to his conviction on November 15, 1996 for second degree burglary with the intent to commit theft under section 459/460(B) of the California Penal Code (C.P.C.) and vandalism under C.P.C. § 594(A)/(B)(2). He was sentenced to nine months in jail.

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, Cal. Penal Code § 459 provided, in pertinent part:

Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, trailer coach, as defined in Section 635 of the Vehicle Code, any house car, as defined in Section 362 of the Vehicle Code, inhabited camper, as defined in Section 243 of the Vehicle Code, vehicle as defined by the Vehicle Code when the doors of such vehicle are locked, aircraft as defined by the Harbors and Navigation Code, mine or any underground portion thereof, with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, “inhabited” means currently being used for dwelling purposes, whether occupied or not.

At the time of the applicant's conviction, Cal. Penal Code § 460 provided, in pertinent part:

1. Every burglary of an inhabited dwelling house or trailer coach as defined by the Vehicle Code, or the inhabited portion of any other building, is burglary of the first degree.
2. All other kinds of burglary are of the second degree.

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). For example, the BIA has held that burglary with intent to commit theft is a crime involving moral turpitude. *See Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982). The Ninth Circuit Court of Appeals, under which this case arises, has similarly held that burglary with the intent to commit theft is a crime involving moral turpitude. *See Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1020 (9th Cir. 2005) (“Because 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.”). Thus, as the record of conviction indicates that the applicant was convicted for burglary in the second degree with the intent to commit theft, the applicant's conviction is for a crime involving moral turpitude and the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.¹ As stated above the applicant is also inadmissible under 212(a)(6)(C)(i) of the Act.

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

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

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

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

....

¹ The AAO notes that as the applicant has been found inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his burglary conviction and this conviction does not qualify for an exception, we will not discuss whether his other convictions involved crimes involving moral turpitude.

(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

Sections 212(i) and 212(h) waivers of the bar to admission are dependent upon a showing that the bar imposes an extreme hardship on a qualifying family member. The qualifying family member in this case is the applicant's spouse. The AAO notes that in 212(h) waiver proceedings the applicant's children are also considered qualifying relatives, but in section 212(i) waiver proceedings they are not. As the applicant requires a waiver under both sections of law the AAO will analyze his case based on hardship to his U.S. citizen spouse. Hardship to the applicant and/or his children can be considered only insofar as it results in hardship to 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-Morales*, 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. ██████ 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: counsel’s brief; a psychological evaluation for the applicant’s spouse; a statement from the applicant; a statement from the applicant’s spouse; a statement from the applicant’s child; a statement from the applicant’s sister; statements from other family members; financial documentation; documentation regarding the applicant’s spouse’s schooling and the education of their children; documentation regarding the applicant’s business in the United States; and country condition information on Fiji.

In his brief dated June 29, 2009, counsel states that the applicant’s spouse will suffer extreme emotional hardship because she is suffering from dysthemic disorder, a form of depression, on account of the risk of separation from the applicant, on whom he states she is highly dependent. Counsel also states that the applicant will suffer extreme financial, logistical, and physical hardship given that the applicant and his spouse have two minor children who require both parents for their daily support and care and the applicant’s spouse relies on the applicant as she completes her education. Counsel states further that if the applicant’s spouse relocated to Fiji she will extreme

hardship because she will be moving with her two children to a country where they have no support structure, they do not speak the language, and where there is widespread and ongoing discrimination against persons like the applicant's family who are of Indian descent.

The psychological evaluation from a Dr. [REDACTED], dated December 15, 2008, states that the applicant's spouse suffers from dysthymic disorder which is a form of depression. Dr. [REDACTED] states that the applicant's spouse had an emotionally detached and unsupportive relationship with her father and then married the applicant, the first supportive male figure in her life, at nineteen years old. She states that the applicant's spouse's depression is moderate to severe and that imposed separation or relocation would have adverse psychological consequences for her.

The record includes U.S. Individual Income Tax Returns for 2005-2008 showing that the applicant and his spouse made over \$100,000 each year. The 2008 tax return shows that the applicant and his spouse made a total of \$176,710 that year with the applicant earning approximately \$116,000 and his spouse earning approximately \$60,000. Thus, the financial documentation indicates that the applicant earns approximately 65% of the household income.

In addition, in his declaration the applicant's spouse states that in 1998 he started a business with two colleagues called, "Precision 2000", which specializes in the manufacturing of semiconductor and biomedical equipment. In 2001, he states that they sold the business to [REDACTED] and was then hired as the executive manager. He states that in 2006 he and three other managers purchased the company and have expanded into China and Singapore. He states that his company employs 50 people in the United States and 150 worldwide. He states that in the next three years he hopes to expand in the Netherlands, Malaysia, and India, intending to take the company public in 2012. The applicant states further that he is the only partner in the company who handles the financial and overall management of the company. He states that he has to incur debts to expand the business and if the business were to fail he would continue to be responsible for the debts. The applicant states that in Fiji he could not make enough money to support his family because the economy is completely different. He also states that the San Francisco Bay area, where he currently lives, is a world center for biotechnology, while Fiji is not. He states that it would be impossible for him to manage his company and meet with clients from such a remote location as Fiji. The applicant also states that there is a prejudice against those of Indian descent in Fiji which would affect his ability to find employment and earn a sustainable wage.

In his statement the applicant also states that he could not have his children relocate to Fiji because of the hostility toward ethnic Indians in Fiji, because of the loss of educational opportunities, and because he would not want to take his children away from their grandparents. He states further that if the family were to separate his spouse would suffer immeasurable challenges as a single parent. He does not believe she would be able to handle the separation given that she has been with him since she was fifteen years old.

The AAO notes that the record contains a declaration from the applicant's spouse in support of the assertions made by counsel and the applicant.

The record also contains a record of the applicant's spouse's class enrollment at San Mateo Community College for Spring 2009 and a class schedule and academic transcript for Fall 2008.

In support of the assertions regarding the country conditions in Fiji and the treatment of ethnic Indians in Fiji counsel submits the 2008 U.S. Department of State Human Rights Report for Fiji. The report states that racial polarization runs along ethnic lines between Christian ethnic Fijians and Hindu Indo-Fijians. The report also states that tension between ethnic Fijians and Indo-Fijians has been a long standing problem with discriminatory policies being institutionalized, particularly involving the ownership of land. The report indicates that although an interim government has stated its opposition to discriminatory laws and practices favoring one race over another, the discriminatory laws and practices remain in place. The report cites to the Fijian constitution which promotes a policy of Fijian "paramountcy." The report also states that break-ins, vandalism, and arson predominantly directed at Hindu temples were common.

The AAO finds that the applicant's spouse will suffer extreme hardship as a result of relocation because she and her family will suffer institutionalized discrimination due to their Indian heritage. This hardship would be exacerbated by the presence of two minor children and the financial and familial ties they would be leaving behind in the United States.

Furthermore, the emotional and financial suffering that will be experienced by the applicant's spouse as a result of separation surpasses the hardship typically encountered in instances of separation because of her reliance on the applicant for emotional support since she was fifteen years old. In addition, the applicant's spouse would have to raise her two children on 35% of the income that the family relies on now. Moreover, the AAO notes that the applicant's spouse faces permanent separation from the applicant. The AAO has carefully considered the facts of this particular case and finds that the emotional and financial hardship that would be 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-Morales, 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 fraudulent entry into the United States and his criminal record.

The favorable factors in the present case are the applicant’s family ties to the United States; extreme hardship to his U.S. citizen spouse and hardship to his children if he were to be denied a waiver of inadmissibility; the applicant’s lack of a criminal record or offense since 1995; the passage of 16 years since the applicant’s fraudulent entry into the United States; the applicant’s ownership of a company employing 50 people in the United States; and, as indicated by affidavits from his family the applicant’s good moral character and attributes as a good father, husband, brother, and uncle.

The AAO finds that the immigration violations committed by the applicant and his criminal convictions 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.