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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

#6

FILE: [REDACTED] Office: SAN SALVADOR Date: **DEC 23 2010**
EL SALVADOR

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Salvador, El Salvador and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States under 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 admission within ten years of his last departure. The applicant is married to a U.S. citizen and has two U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his family.

The Field Office Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative. He denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 17, 2009.

On appeal, counsel states that the applicant has successfully demonstrated that his inadmissibility will result in extreme hardship to his spouse, his children and his spouse's grandmother. *Counsel's brief*, dated December 15, 2009.

In support of the waiver, the record includes, but is not limited to, counsel's brief; statements from the applicant, his spouse, his older son and his spouse's grandmother; letters of support from former employers of the applicant, the priest of the applicant's former church in the United States and his priest in El Salvador; letters from the applicant's spouse's employer; a letter from the applicant's current employer; a letter concerning the psychological state of the applicant's spouse and older son; medical statements for the applicant's older son and his spouse's grandmother; school records for the applicant's older son; a statement from the teacher of the applicant's younger son; bank statements for the applicant and his spouse; billing statements; tax returns for 2006 and 2007; earnings statements and W-2 forms for the applicant's spouse; and country conditions materials concerning El Salvador. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(9)(B) states 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.

The record reflects that the applicant entered the United States without inspection in May 1995 and remained until October 18, 2008 when he departed for an immigrant visa interview at the U.S. embassy in San Salvador. Based on this history, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until October 18, 2008, the date of his departure from the United States. As he accrued unlawful presence in excess of one year and is seeking admission within ten years of his 2008 departure, the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Accordingly, in this proceeding, hardship to the applicant or his children will 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 United States Citizenship and Immigration Services (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 (BIA) 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 BIA 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 BIA 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 BIA 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 BIA 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) [REDACTED] 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 BIA 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

In support of the applicant’s claim that his family would suffer extreme hardship if they joined him in El Salvador, counsel asserts that the applicant’s spouse has no relatives in El Salvador and that neither she, nor the applicant’s children speak Spanish. He further states that, if the applicant’s

spouse relocated to El Salvador, she would have to move there with her elderly and ill grandmother who lives with her and for whom she provides care. Counsel also contends that it has been very difficult for the applicant to find employment in El Salvador and that he will not be able to support his family on the salary he currently earns. Criminal gang activity in El Salvador, counsel states, will also place the applicant's family at risk as they will be targeted for extortion or kidnapping. Counsel also notes that as the applicant's children do not speak Spanish will have to "re-learn their schooling," which will take considerable time.

In an undated statement submitted for the record, the applicant's spouse states that she does not speak Spanish and that although she has vocational training, she would have to learn Spanish before she would be able to obtain employment in El Salvador. She also notes that her children do not speak Spanish and that relocation would mean a delay in their education as they would have to restart school. She states that she and the applicant would not be able to afford a private bilingual school in El Salvador. The applicant's spouse also contends that her older son suffers from severe asthma and must remain in the United States.

While the AAO acknowledges counsel's claim that the applicant's spouse is responsible for the care and support of her grandmother who lives with her, we do not find the record to provide sufficient evidence to demonstrate that this is the case. The 2006 and 2007 tax returns in the record indicate that the applicant's and his spouse's only dependents are their children and no other documentation has been submitted to demonstrate that the applicant's spouse is supplementing her grandmother's income. Moreover, in the October 14, 2008 statement written by the applicant's spouse's grandmother, she states that the applicant helps her with her yard work and around the house, making it appear that she, at least at the time of her statement, was residing separately from the applicant and her granddaughter. Accordingly, the AAO does not find the record to establish that the applicant's spouse's grandmother is dependent on her for her care or financial support.

The record does, however, contain documentation of the medical conditions of the applicant's son and his spouse's grandmother. In a statement, dated December 1, 2009, [REDACTED] reports that the applicant's older son has moderate to severe asthma that requires him to take daily medication. [REDACTED] also states that even with medication, the applicant's older son is prone to acute asthmatic episodes and requires prompt treatment to avoid hospitalization. [REDACTED] further asserts that the applicant's older son requires close monitoring. A December 7, 2009 medical statement from [REDACTED] indicates that the applicant's grandmother is being treated for back pain, osteoporosis and hypertension, and that it would be beneficial if she had a caregiver at home.

The AAO also notes that the record contains a June 8, 2009 Congressional Research Service (CRS) report entitled "El Salvador: Political, Economic and Social Conditions and U.S. Relations," that addresses political and economic developments in the country since the end of its civil war in 1992. While we find the CRS report to provide an account of recent Salvadoran history, its general overview does not establish that the applicant's spouse would be at risk if she relocated to El Salvador with the applicant. We do observe, however, that El Salvador is one of the countries whose nationals are eligible for Temporary Protected Status (TPS) in the United States. The current

designation extends TPS coverage to Salvadoran citizens until March 9, 2012, based on the substantial temporary disruption of living conditions in El Salvador that resulted from the multiple earthquakes that ravaged the country in 2001 and which continue to prevent El Salvador from accommodating the return of its nationals.

Having reviewed the evidence of record, the AAO specifically notes the applicant's spouse's inability to read, write or speak Spanish; the resulting impediments to her ability to obtain employment or adjust to Salvadoran culture; the difficulties created by relocating to a Spanish-speaking country with two children who also do not speak Spanish, one of whom has a chronic and potentially severe medical condition; and the conditions in El Salvador that have resulted in its continued designation as a TPS country. When these factors and the hardships normally created by relocation are considered in the aggregate, the AAO finds that the applicant's spouse would experience extreme hardship if she and their children joined the applicant in El Salvador.

Counsel also contends that the applicant's spouse and children have been suffering as a result of their separation from the applicant. He asserts that in the applicant's absence, his spouse is solely responsible for their two children and her grandmother, who requires a daily caregiver. Counsel states that the applicant's spouse earns \$29,000 annually and does not have the financial ability to pay for childcare or any close relatives who could assist her with her parental responsibilities. The applicant, counsel states, had the main role in the household prior to his departure, caring for both his children and his spouse's grandmother. Counsel also asserts that the applicant's unauthorized employment as a gardener resulted in an additional \$1,200 in monthly income for the family.

Counsel states that the applicant's family is also suffering emotionally in his absence. The applicant's spouse, counsel asserts, has been diagnosed with Major Depression and has been taking medication to help her sleep and minimize her depressive symptoms. Counsel asserts that the applicant's spouse visited a psychiatrist once, but was not able to continue with treatment as a result of her financial situation. Counsel also states that separation from the applicant has resulted in depression and behavioral problems for the applicant's older son who also suffers from severe asthma. He further asserts that the applicant's younger son is exhibiting some depressive symptoms.

In a May 6, 2010 statement, the applicant's spouse asserts that since the applicant has been gone she has been suffering from depression. She states that taking care of two children and her disabled grandmother has resulted in extreme financial hardship for her and that she may have to go on welfare. She also states that her childcare responsibilities, which take her away from work, have meant less money in her paychecks and that she has had to move out of the house the family was renting because she was unable to afford the rent and pay for childcare for her children. The applicant's spouse also reports that she owes money to the IRS and to creditors, and that her credit has been ruined because of her inability to pay her bills. The applicant's spouse also indicates that her older son has been seeing a psychologist because of behavioral problems at school, that he is unable to focus or to sleep at night, and that he is depressed.

In support of these claims, the record contains a March 22, 2010 letter from registered but unlicensed psychologist [REDACTED] who reports that the applicant's

absence has resulted in a severe decline in the functioning of his family. [REDACTED] states that she has met weekly with the applicant's spouse and older son since December 2009. The referral for treatment, [REDACTED] reports, resulted from the decline in the older son's academic and behavioral functioning, including multiple suspensions for defiance, fighting and skipping school. As of the date of her letter, [REDACTED] indicates that the applicant's older son has had encounters with the police, become defiant at home, shows signs of clinical depression, and will be required to repeat the sixth grade. She states that "[the applicant's older son] appears to be headed down a path marked with increasing dysfunction in multiple domains essential to proper development." The record also contains a School Progress Report for the applicant's older son, dated December 8, 2009, which provides evidence of declining grades and uncompleted homework. A handwritten note on the report states the following regarding the applicant's older son: "[Name of applicant's son] has not been paying attention in class. At times, he has refused to do his classwork. His many absences, trips to the nurse and days cutting school have also impacted his grades. [Name of applicant's son] has turned in very little homework and has seemed distracted all year." A November 23, 2009 letter from the kindergarten teacher for the applicant's younger son reports that he tries to "participate in all [learning time] activities but usually gets sad or frustrated because his family is not all together." She states that his sadness has recently resulted in him not doing his work.

The AAO notes that [REDACTED] indicates that the applicant's spouse also informed her that the chronic stress associated with her family situation has taken a physical and emotional toll on her and that she is being seen by a psychiatrist for depression and is discussing a stress-related health condition with her primary care physician. The record, however, contains no medical statements or reports that demonstrate the applicant's spouse has seen a psychiatrist or that she is seeing a physician for any health problem. Neither does it establish that she has been prescribed any medication, as claimed by counsel. However, the record does include a December 10, 2009 letter from [REDACTED] the applicant's spouse's place of employment. [REDACTED] indicates that the applicant's spouse has been employed by the office for seven years, but that she was placed on probation earlier in the year because of the difficulties she has had in maintaining her job performance in the applicant's absence. [REDACTED] states that the applicant's spouse has had to seek medical attention as a result of the stress she has been under in the applicant's absence and that her doctor placed her on medical leave for a time based on this stress as she was on the verge of a nervous breakdown. The Clinical Manager also reports that the applicant's spouse has used up all of her "personal days off" and that she no longer gets paid when she is out of the office because she or one of her children is ill.

The record includes a 2007 tax return that establishes the applicant's spouse's annual income as approximately \$29,000, as well as a rental agreement, a 2008 letter establishing preschool charges for the applicant's younger son, billing statements and a 2008 IRS monthly payment statement to establish the applicant's spouse's financial obligations. The AAO notes, however, that the applicant's spouse, in her May 6, 2010 letter, indicates that she is no longer renting the residence indicated in the rental agreement and there is no information in the record regarding her current housing costs. We also observe that the applicant's younger son is now seven years old and no longer attends preschool. Further, the billing statements in the record, with one exception, do not indicate that the applicant's spouse is not making regular payments on her bills. The AAO also

notes, as previously discussed, that the record does not establish that the applicant's spouse is providing financial support to her grandmother, although it does demonstrate that the applicant and his spouse are paying off a tax debt to the IRS at the rate of \$100 a month. Based on this limited documentation, the AAO cannot find that the applicant's spouse's \$29,000 salary, an income substantially above the federal poverty line of \$18,310 for a family of three, is insufficient to support her and her sons.

Although the AAO does not find the record to demonstrate that the applicant's spouse is experiencing financial hardship in the applicant's absence, we do acknowledge the evidence submitted to establish that the emotional impact of separation on the applicant's spouse and children. While the applicant's children, as previously discussed, are not qualifying relatives for the purposes of this proceeding, the AAO notes their emotional and behavioral problems, particularly those of the applicant's spouse's older son, and the difficulties such problems present for a single parent. The AAO also acknowledges the complicating factor of the applicant's older son's chronic asthma and his vulnerability to acute asthma attacks. Further, the AAO finds the statement provided by the applicant's spouse's place of employment to be persuasive in establishing that her separation from the applicant has resulted in significant emotional suffering and has, potentially, jeopardized her employment. When the specific hardships being experienced by the applicant's spouse are combined with those normally created by the separation of a family, the AAO finds that the applicant has established that his spouse would experience extreme hardship if his waiver application is denied and she remains in the United States.

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether 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 . . . 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, 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 mitigating factors include the applicant’s U.S. citizen spouse and children; the extreme hardship to his spouse if his waiver application is denied; his older son’s asthmatic condition; the emotional hardships being experienced by his sons, including his older son’s increasingly serious behavioral problems; his successful completion of Driving Under-the Influence Programs following his DUI convictions in 1999 and 2004; and the regard in which he is held by two of his former employers, the priest at the church he previously attended in the United States, and the priest at the church he currently attends in El Salvador, as documented by their respective statements in the record.

The adverse factors in the present case are the applicant’s unlawful presence for which he now seeks a waiver, as well as his unlawful residence in the United States prior to April 1, 1997; his unauthorized employment while in the United States; his conviction in California for Fighting, Noise, Offensive Words under California Penal Code (Calif. Penal Code) § 415 in 1997; his convictions for Hit and Run: Property Damage under California Vehicle Code (Calif. Vehicle Code) § 20002 in 1998 and 1999; and his convictions for Driving Under the Influence (DUI) Alcohol/Drugs under Calif. Vehicle Code §23152 in 1999 and 2004.

On appeal, counsel contends that the applicant has been rehabilitated as he has complied with the sentences given him for his offenses. Counsel also asserts that the Field Office Director failed to consider the age of the applicant at the time he committed his crimes or the “nature of the crimes (DUI).” The AAO acknowledges that the applicant appears to have complied with the conditions imposed on him as a result of his convictions, that all his offenses, with the exception of his 2004 DUI, took place more than ten years ago and that a Salvadoran criminal records check does not indicate that he has been arrested for or convicted of any crimes while in El Salvador. We also observe, however, that the applicant has four convictions for DUI and DUI-related offenses, the most recent of which occurred in 2004 when he was 26 years old and had already completed his first Driving Under-the-Influence Program. The number and nature of these offenses are strong negative factors in this matter. Nevertheless, in balancing the above factors, we find the positive to outweigh the negative, such that a favorable exercise of the Secretary’s discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.