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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W. MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H6

[redacted]

FILE: [redacted] Office: LONDON, ENGLAND Date: JUL 0 6 2011

IN RE: Applicant: [redacted]

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

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, London, England, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Finland 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 under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having been convicted of committing crimes involving moral turpitude.

The applicant sought a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(h). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, the applicant contends that the submitted letter conveys that his spouse suffers from seasonal affective disorder, and substantiates his wife's extreme hardship.

We will first address the finding of inadmissibility for unlawful presence.

Inadmissibility for unlawful presence is found under section 212(a)(9)(B) of the Act. That section provides, in part:

> (B) Aliens Unlawfully Present
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or
> > >
> > > (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.
>
> . . . .

U.S. Citizenship and Immigration Services (USCIS) records convey that the applicant was admitted to the United States on May 4, 1994 as a nonimmigrant B-2 visitor with authorization to remain in the United States for no more than six months. On January 4, 2001, a Notice to Appear and a Warrant for Arrest was personally served on the applicant. On February 2, 2001, a Notice of Hearing in Removal Proceedings was issued by mail to the applicant for a hearing before an

immigration judge on February 13, 2001. On February 13, 2001, a Notice of Hearing in Removal Proceedings was personally served on the applicant for a master hearing on February 27, 2001. On February 26, 2001, an immigration judge administratively closed the applicant's case and placed the applicant under the custody of the U.S. Marshall for extradition to Finland. In August 2001 the applicant was extradited to Finland.

The applicant began to accrue unlawful presence from April 1, 1997, the date on which the unlawful presence provisions went into effect, until August 2001, and his extradition to Finland triggered the ten-year bar, rendering him inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The waiver for unlawful presence is found under section 212(a)(9)(B)(v) of the Act. That section provides that:

> (v) Waiver. – The Attorney General [now Secretary, 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 waiver under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

The applicant was also found inadmissible for having committed crimes involving moral turpitude.

The record reflects that in Finland on November 9, 2001, the applicant was convicted of four counts of serious fraud. The applicant was sentenced to imprisonment for one year and six months, which was reduced by nine months and four days under chapter 3, section 11 of the Finnish Penal Code. The applicant was also ordered to pay for the damages caused through fraud.

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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules

> of morality and the duties owed between man and man, either one's fellow man or society in general....
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

In 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.

The applicant did not provide the statutory provisions of serious fraud. However, USCIS records show that the criminal complaints filed against the applicant state, in part, the following:

> Complainant: [redacted] company registered in Karkola, Finland on the 23.01.1981.

Suspect: , acting as a representative of [.], address Florida USA.

who worked for , bought remoulded tires, for which he had paid the purchase price of FIM 77,271.40 in advance through a bank to .] on the 04.12.1996.

did not deliver the tires, but had told using different excuses that there were problems in the deal.

Approximately two weeks before lodged the complaint on the 30.05.1997, telephone and fax had been closed, and he could not be contacted after that.

. . .

Complainant: . . . a Finnish Citizen, managing director . . .

a company registered in Finland on the 03.10.1990.

Suspect for the offense:

made a contract dated 28.11.1996 with on a 1990 Chevrolet G 30 Diesel Van.

The price of the car was fixed at FIM 77,000, a sum of FIM 52,750 was agreed to be paid immediately and a sum of FIM 19,000 after the van would have arrived in Finland. It was promised that the van would be delivered within 6-7 weeks from the order and the payment.

In a fax sent by he requested to pay the advance payment to the account of with .

On request, paid a sum of FIM 58,000, which signed for by a fax.

neither delivered the agreed van to nor returned the purchase price paid in advance.

ordered tyres and wheels for lorries, tubes and a pump repair set for the company As an advance payment a sum of FIM 32,168 was agreed for the tyres and wheels and FIM 5,927.40 for the tubes.

has thus paid a sum of FIM 38,095.40 to [.] account through . . .

> Besides, bought three high pressure pumps at
>
> According to the sales contract of 12.02.1997, would pay in advance a sum of FIM 25,000 for two pumps on the 13.02.1997, a sum of FIM 24,000 on the 20/02.1997 and a sum of FIM 24,000 on the 04.03.1997.
>
> paid the price of the third pump, FIM 36,500 as a single payment on the 25.03.1997.
>
> has paid a total sum of FIM 151,975.40 for the above-mentioned equipment.
>
> The company did not receive any of the ordered goods. has presented various excuses why the goods were not delivered.
>
> contacted last on the 04.05.1997, but afterwards no contact could be made with him.

. . .

In *Matter of Flores*, 17 I&N Dec. 225, 228 (BIA 1980), the Board stated that fraud can be inherent in an offense, and that it is not necessary for the statute to expressly require intent to defraud as an element of the crime. Furthermore, in *Matter of Serna*, 20 I&N Dec. 579, 583-84 (BIA 1992), the Board states that intent to defraud involves moral turpitude.

The above-mentioned document indicates that criminal complaints were filed against the applicant because he received full purchase price and advance payments from customers for orders they never received, and was unwilling to perform the contracted obligations or return their money. In view of the applicant's repeatedly engaging in this practice and his customers having to file criminal complaints against him, we find that the applicant's conduct inherently involved an intent to defraud and thus involved moral turpitude.

The applicant states in the waiver application that he was sentenced to prison for four separate serious fraud offenses. The applicant asserts that he bought products (used truck tires and machines) from two different suppliers in the United States. The applicant conveys that he received down payments from four customers in Finland. He states that "I paid down payments to suppliers and never received products or return of the payment. I was 100 [percent] responsible for those transactions to my clients."

However, the Board held in *In Re Max Alejandro Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996), that collateral attacks on a conviction do not operate to negate the finality of the conviction unless and until the conviction is overturned. (citations omitted). A collateral attack on a judgment of conviction cannot be entertained "unless the judgment is void on its face," and "it is improper to go behind the judicial record to determine the guilt or innocence of an alien." *Id.*

In sum, we find that the applicant's offenses involve moral turpitude, rendering him inadmissible under section 212(a)(2)(A) of the Act.

The applicant was also arrested for criminal offenses in Florida. The record contains an arrest warrant issued by the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, on December 5, 2000, charging the applicant with organized scheme to defraud in violation of section 817.034 of the Florida Statutes, and selling or offering for sale counterfeit goods in violation of Fla. Stat. § 831.03.

Fla. Stat. § 817.034 states that a "[s]cheme to defraud means a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act."

In *Jordan v. De George*, 341 U.S. 223 (1951), the U.S. Supreme Court stated that "[t]he phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct." Thus, the criminal offense under Fla. Stat. § 817.034 involves moral turpitude.

For forged or counterfeit goods, Fla. Stat. § 831.03 provides:

> (3) "Forged or counterfeit trademark or service mark" refers to a mark:
>
> (a)That is applied to or used in connection with any goods, services, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging or any other components of any type or nature that are designed, marketed, or otherwise intended to be used on or in connection with any goods or services;
>
> (b)That is identical with or an imitation of a mark registered for those goods or services on the principal register in the United States Patent and Trademark Office or the trademark register for the State of Florida or any other state, or protected by the Amateur Sports Act of 1978, 36 U.S.C. s. 380, whether or not the offender knew such mark was so registered or protected;
>
> (c)The use of which is unauthorized by the owner of the registered mark; and
>
> (d)The application or use of which is either likely to cause confusion, to cause mistake, or to deceive or is otherwise intended to be used on or in connection with the goods or services for which the mark is registered.
>
> An otherwise legitimate mark is deemed counterfeit for purposes of this definition if, by altering the nature of any item to which it is affixed, the altered item bearing the otherwise legitimate mark is likely, in the course of commerce, to cause confusion, to cause mistake, or to deceive.
>
> . . .

Fla. Stat. § 831.03 convicts for applying a forged or counterfeit trademark or service mark that is identical with or an imitation of a registered mark, and the use of which is either likely to cause confusion, to cause mistake, or to deceive a purchaser.

The Board held in *In re Kochlani*, 24 I&N Dec. 128, the offense of trafficking in counterfeit goods or services under 18 U.S.C. § 2320 qualifies as a crime involving moral turpitude under the immigration laws regardless of whether the purchaser of the merchandise was confused or deceived as to the authenticity of the goods. 24 I&N Dec. 128, 130-132.

We therefore find that in view of *Kochlani* the conduct prohibited under Fla. Stat. § 831.03, applying a forged or counterfeit trademark or service mark that is identical with or an imitation of a registered mark, and the use of which is either likely to cause confusion, to cause mistake, or to deceive a purchaser, involves moral turpitude.

The AAO notes that the applicant did not meet his burden of submitting the available documents that comprise the record of conviction, and show that he was never convicted of these offenses in Florida or that the record of conviction fails to establish that his convictions were based on conduct involving moral turpitude. To the extent such documents are unavailable, this fact must be established pursuant to the requirements in 8 C.F.R. § 103.2(b)(2). Accordingly, the applicant has not shown that he was not convicted of crimes involving moral turpitude under sections 817.034, 831.03, 831.01, and 817.02 of the Florida Statutes.

Finally, the record indicates that the applicant was arrested in Florida on September 30, 1999, for fraud, insufficient funds check, issuance of check of $150.00 dollars or over, and was convicted of forgery, and fraud – impersonation on January 4, 2000.

Fla. Stat. § 831.01 pertains to forgery, and it states:

> Whoever falsely makes, alters, forges or counterfeits a public record, or a certificate, return or attestation of any clerk or register of a court, public register, notary public, town clerk or any public officer, in relation to a matter wherein such certificate, return or attestation may be received as a legal proof; or a charter, deed, will, testament, bond, or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange or promissory note, or an order, acquittance, or discharge for money or other property, or an acceptance of a bill of exchange or promissory note for the payment of money, or any receipt for money, goods or other property, or any passage ticket, pass or other evidence of transportation issued by a common carrier, with intent to injure or defraud any person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Forgery is a crime involving moral turpitude. *See Matter of Seda*, 17 I&N Dec. 550 (BIA 1980).

Though the AAO does not know the provision under which the applicant was convicted for fraud - impersonation, we note that obtaining property by false impersonation is under Fla. Stat. § 817.02. That statute states:

> Whoever falsely personates or represents another, and in such assumed character receives any property intended to be delivered to the party so personated, with intent to convert the same to his or her own use, shall be punished as if he or she had been convicted of larceny.

Fla. Stat. § 817.02 punishes a person for falsely impersonating or representing a person with the intent to convert the impersonated person's property for one's own use. Inasmuch as fraud is inherent in the statute under which the applicant was convicted, the AAO finds that the applicant's offense involves moral turpitude, rendering him inadmissible under section 212(a)(2)(A) of the Act.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

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

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common

rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In rendering this decision, the AAO will consider all of the evidence in the record such as letters, birth certificates, school records, and other documentation.

The applicant's wife states in her letter dated February 10, 2010 that she has lived away from the United States for more than eight years ago. She avers that though it was pleasant living abroad, it is increasingly difficult being away from her home country and family in Florida. She states that she rarely sees her husband's extended family members and misses her great grandparents, grandparents, aunts, uncles, and cousins in the United States. She indicates that her father has serious health problems and her mother needs her moral support, and that her children are growing up without a close knit family.

Furthermore, the applicant's wife conveys that she has seasonal affective disorder (SAD) and every year her disorder worsens. She states that last autumn she became depressed and anxious despite using bright lights and exercising, and made an emergency trip to Florida with her two children and stayed there for five weeks, leaving her husband in Finland during the holidays. The applicant's wife conveys that it is very difficult traveling with her children, who are five and two years old.

Moreover, the applicant's wife states that it has been difficult for her to learn the Finnish language, which makes it "seemingly impossible for me to get a job here." The applicant's wife conveys that she has not been accepted to any English-speaking degree programs in Finland, so she has not been able to return to college to finish a bachelor's degree. The applicants' wife avers that she enrolled in the University at the University of and attended some lectures, but could not understand enough Finnish to follow the studies, so she withdrew. She contends that she reached a dead end in Finland and needs to return to the United States to study and work. She expresses concern about how her family and marriage if her husband cannot return to the United States. letter dated August 5, 2010 conveys that the applicant's wife has lived in Finland for seven years, and has suffered from depression and anxiety during the dark season, ranging from November to February-March. indicates that in the first years the applicant's wife's symptoms were not strong, but after the winter 2008-2009 the applicants' wife contacted a psychiatrist for help. states that last winter was even worse, and the applicant's wife spent five weeks in Florida. indicates that the applicant's wife had panic attacks, anxiety, and depression during the last dark season, and was easily irritated and had difficulty taking care of her children. further states that the applicant's wife discussed taking medication for her disorder. Finally, states that based on the interview with the applicants' wife, last year's medical report, and findings, the applicant's wife's SAD was severe the last two years.

The record contains a letter by confirming the applicant's wife's application to a degree programme in international business in Finland. The applicant's wife states the letter proves her application to a degree program conducted in English. She states that she deleted the e-mail informing her that she was not accepted into the program. Also, the record contains confirmation dated February 4, 2010 that the applicant's wife withdrew from an University course due to her lack of understanding of the Finnish language.

The asserted hardships are enduring SAD, difficulty learning the Finnish language, not being able to find a job and complete a college degree, and separation from family members in the United States. The applicant's wife's assertion that she has SAD is consistent with diagnosis of severe SAD and the disorder's interference with the applicant's wife's daily life. In view of the applicant's wife's disorder and its effect on her life during the dark season, we find that the applicant has demonstrated extreme hardship to his wife.

We note that the applicant has not made any claim of hardship to his wife if she lived in the United States without him.

Regardless of any finding of extreme hardship, we deny the waiver application in the exercise of discretion based on the adverse factors in the case, which are the number, nature and seriousness of the applicant's crimes, and the applicant's violations of immigration laws. *See Matter of Mendez-*

Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The applicant was extradited to Finland due to criminal complaints lodged against him, and was convicted of four serious fraud offenses in November 2001. While living illegally in the United States, the applicant was convicted of forgery, and fraud–impersonation in Florida in January 2000, and was arrested and charged in Florida with organized scheme to defraud, and selling or offering for sale counterfeit goods in December 2000. The AAO finds that the applicant's offenses entail dishonest dealing, bad faith tactics, and deliberate deception of the public.

Moreover, the applicant has violated the United States' immigration laws. The applicant gained admission to the United States on a tourist visa in May 1994, and overstayed his admission, remaining in the United States until 2001. Furthermore, the applicant engaged in unauthorized employment, which was the selling of counterfeit goods to the public. The applicant abused the privilege afforded by a tourist visa.

Thus, when we consider and balance the adverse factors in this case, the applicant's numerous serious crimes and immigration violations with the favorable factors such as the applicant's close relationship with his wife and children, we find that the adverse factors clearly outweigh the favorable factors. Therefore, we find that the grant of relief in the exercise of discretion is not warranted in this case.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.