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

U.S. Citizenship and Immigration Services

H6

[redacted]

DATE: NOV 23 2011 Office: MOSCOW FILE: [redacted]

IN RE: [redacted]

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

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,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Moscow, Russia. 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 Russia who was admitted into the United States as a J-1 exchange visitor visa holder on September 2, 1996. Her admission stamp indicates D/S (duration of status) admission validity. The Form IAP-66, Certificate of Eligibility for Exchange Visitor (J-1) Status (Form IAP-66), contained in the record indicates, however, that her J-1 status was valid from September 1, 1996 through May 31, 1998. The applicant remained in the U.S. through February 2, 2003, when she left pursuant to a grant of voluntary departure.

The applicant has been 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 readmission within 10 years of her removal from the U.S. The applicant has also been 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), for having been convicted of a crime involving moral turpitude. The applicant is the beneficiary of an approved Form I-140, Immigrant Petition for Alien Worker, and she is married to a U.S. citizen. She seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(h) of the Act, 8 U.S.C. §§1182(a)(9)(B)(v) and (h), respectively, in order to live in the United States with her U.S. citizen spouse.

In a decision dated March 18, 2009, the director concluded the applicant had established her U.S. citizen spouse would experience extreme hardship if he relocated to Russia to be with the applicant. However, the director found the applicant had failed to establish her husband would experience extreme hardship if her waiver application were denied and her husband remained in the United States. The waiver application was denied accordingly.

On appeal, the applicant's former counsel asserted that the director misapplied the guidelines set forth in *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999), and that the director gave insufficient weight to the hardship the applicant's husband would experience if he remains in the U.S., separated from the applicant and his stepdaughter. Specifically, former counsel asserted that the applicant's U.S. citizen husband will experience extreme emotional hardship if he remains in the U.S. without the applicant. To support the assertions made on appeal, former counsel submitted letters written by the applicant, her husband, and her in-laws. The record additionally contains psychological and psychiatric information about the applicant's husband, evidence relating to the bona fides of the applicant's marriage and to the couple's finances, and letters and evidence relating to the applicant's good character. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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.
>
> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

In the present matter, the applicant was admitted into the United States as a J1 exchange visitor on September 2, 1996. Her U.S. immigration admission stamp indicates D/S (duration of status) admission validity. However, the record also contains a Form IAP-66 reflecting the applicant's J-1 status was valid from September 1, 1996 through May 31, 1998.

The U.S. Department of State, Foreign Affairs Manual (FAM) provides that:

> In general, an alien who was admitted to the United States on a nonimmigrant visa and who remained beyond the period of authorized stay, even by one day, is subject to INA 222(g). When an alien is subject to INA 222(g), the nonimmigrant visa becomes automatically void, and the alien may not be admitted to the United States unless he or she obtains, or has already obtained, another visa in the country of his or her nationality.

See U.S. Dep't of State, Foreign Affairs Manual, Vol. 9, Section 41.112 N7.3-1.

With regard to Duration of Status admission, the FAM provides that:

> Nonimmigrants who were admitted D/S are subject to INA 222(g) only when there is a formal finding of a status violation by the DHS or by an immigration judge, resulting in the termination of the period of authorized stay.

Id. at Section 41.112 N7.9-2.

The FAM provides further:

> Because J-1 exchange visitors (and their dependents) are now routinely admitted for duration of status, they will not be subject to INA 222(g) in any event, unless DHS or an immigration judge finds a status violation. . . .

Id. at Section 41.112 N7.6-1(b).[1]

Similarly, U.S. Citizenship and Immigration Services (the Service) policy provides that nonimmigrants admitted to the United States for duration of status do not begin accruing unlawful presence until the date the Service finds a status violation while adjudicating a request for another immigration benefit, or on the date an immigration judge finds a status violation in the course of proceedings. *See* USCIS Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate; Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate; Pearl Chang, Acting Chief, Office of Policy and Strategy, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act,* dated May 6, 2009.

In the present matter, the applicant was brought to the attention of the Service based on her criminal history. The record contains no evidence that the Service made a previous unlawful status finding against the applicant while adjudicating a request for another immigration benefit. The record also fails to demonstrate that an immigration judge made a J-1 status violation finding in the applicant's case. Although the applicant was placed into removal proceedings on January 29, 2001, she left the U.S. pursuant to a grant of voluntary departure on February 2, 2003. Because neither the Service nor an immigration judge made a J-1 status violation determination against the applicant prior to her timely departure from the country, the applicant did not accrue unlawful presence in the U.S. for section 212(a)(9)(B)(i)(II) of the Act purposes. The applicant is therefore not inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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

> (2) Criminal and related grounds.-
>
> > (A) Conviction of certain crimes.-
> >
> > > (i) In general.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
> > >
> > > > (I) a crime involving moral turpitude (other than a purely political offense or an attempt or conspiracy to commit such a crime) . . . is inadmissible.

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[1] When seeking admission into the United States, the exchange visitor must present his/her Certificate of Eligibility for Exchange Visitor (J-1) Status form and the J-1 visa to the Customs and Border Protection (CBP) officer. If the exchange visitor is admitted, the CBP officer will endorse and return the form to the individual. See U.S. Dep't of State, FAM, Vol. 9, Section 41.62 N3.6 (Processing of Form DS-2019, Certificate of Eligibilityfor Exchange Visitor (J-1) Status, at Port of Entry (POE)). (CT:VISA-1571; 10-04-2010). It is noted that the FAM interchangeably references Form DS-2019 and Form IAP-66 for this section.

The conviction record reflects that on January 30, 2001, the applicant was convicted of the offense of Conspiracy to Commit Bribery of Public Official and Fraud and Misuse of Immigration Document, in violation of 18 U.S.C. § 371.

18 U.S.C. § 371 states in pertinent part:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

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 *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. Finally, in all such inquiries, the burden is on the alien to establish "clearly and beyond doubt" that he is "not inadmissible." *Id.* at 709 (citing *Kirong v. Mukasey*, 529 F.3d 800 (8th Cir. 2008))

In the present case the conviction judgment contained in the record reflects the applicant was convicted of the offense of Conspiracy to Commit Bribery of Public Official and Fraud and Misuse of Immigration Document, in violation of 18 U.S.C. § 371. Bribery of a person in authority has been found to be a crime involving moral turpitude. *Okabe v. INS*, 671 F.2d 863 (5th Cir. 1982); *Matter of V-*, 4 I&N Dec. 100 (BIA 1950). Furthermore, where the underlying, substantive offense is a crime involving moral turpitude, conspiracy to commit such an offense is also a crime involving moral turpitude. *Matter of Short,* 20 I&N Dec. 136 (BIA 1989).

Accordingly, we affirm that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude.

Section 212(h) of the Act provides for the granting of a waiver of inadmissibility based on certain criminal grounds, and provides, in pertinent part, that:

> The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> . . . .
>
> (1) (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 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 . . . .

The applicant must also show that a waiver should be granted as a matter of discretion, with favorable factors outweighing the unfavorable factors in his case.

The record reflects that the applicant married a U.S. citizen on December 27, 2003. The applicant's spouse is a qualifying relative for section 212(h)(1)(B) of the Act, waiver of

inadmissibility purposes. Birth certificate evidence shows that the applicant has a daughter, born September 14, 1990. Because the qualifying relationship occurred before the applicant's stepdaughter turned 18, the applicant's stepdaughter is a qualifying relative for section 212(h) of the Act, waiver of inadmissibility purposes.[2]

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,* 22 I&N Dec. 560, 565 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 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 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.*

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

[2] It is noted the applicant did not claim her daughter would suffer extreme hardship if the waiver application is denied.

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 the present matter, the Field Office Director, Moscow determined the applicant had established her U.S. citizen husband would experience extreme hardship if he relocated to Russia to be with the applicant, and we see no reason to disturb that finding. We review whether the applicant established that her U.S. citizen husband would experience extreme hardship if he remains in the United States, and, if so, whether discretion should be exercised in the applicant's favor.

The applicant asserts through counsel, that her husband will experience extreme emotional hardship if she is denied admission into the United States. Counsel additionally asserts that discretion should be exercised in the present matter. In support of these assertions, the record contains letters written by the applicant, her husband and her in-laws discussing, amongst other things, the husband's history of alcoholism from the age of twelve. The letters indicate that the applicant's husband has attended Alcoholics Anonymous (AA) meetings and been a sober alcoholic since 1995. He is active in his AA group, and most of his friends and social activities are associated with the group. He met the applicant around 2001, through friends and through the applicant's involvement with an organization closely associated with AA. The letters indicate the applicant's husband attends fewer AA meetings now that he is separated from his wife, and that he is experiencing feelings of isolation, loneliness, and depression as a result. A May 4, 2006 letter from psychiatrist, [redacted] reflects the applicant's husband was evaluated by him in December 2003 and in May 2006. Psychiatric disorder evaluation testing was done, and the psychiatrist discussed the applicant's husband's 1995 hospitalization and treatment for depression. [redacted] letter states the applicant's husband is an "anxious man prone to depression with a history of alcohol abuse" and the letter indicates that his marriage to the applicant has been a positive influence in his life, "strengthening his resolve both vocationally and to maintain his [AA] treatment." A May 4, 2009, Affidavit from psychologist [redacted] reflects she interviewed the applicant for purposes of the applicant's Form I-601 application. She states the applicant was, "clearly depressed as evidenced by psychomotor retardation, sad affect, and tearfulness throughout the session..." She states further that each depressive episode increases the probability of future depressive episodes, that the applicant's husband is currently experiencing intense distress, and that she expects his psychological state to continue to deteriorate based on the family's separation. [redacted] indicates that the applicant's husband meets diagnostic criteria of Major Depressive

Disorder, single episode, severe without psychotic features – DSM-IV 296.23, and she concludes the applicant's past psychiatric history combined with his family history and the nature of his relationship with his wife make separation from her more disruptive for him than for the average individual.

The AAO notes that in nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship" Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(h) of the Act, be above and beyond the normal, expected hardship involved in such cases.

Upon review, the AAO finds that the evidence in the record establishes the emotional hardship the applicant's husband would experience if he remained in the U.S., separated from the applicant, when considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The record demonstrates the applicant's husband has suffered from alcoholism since he was 12 years old. He has been sober since 1995, however, the evidence reflects that he relies heavily on support from his friends and network in AA, and since 2001, on the applicant. Psychological and psychiatric evidence indicates the applicant's husband has been hospitalized for depression in the past, that he is prone to suffering from depression, and that living separately from his wife and stepdaughter has resulted in symptoms of major depression, as well as in an increased risk of future episodes of depression and possible relapse into alcoholism. These factors, when considered in the aggregate, establish that the hardship the applicant's husband would suffer if he remains in the U.S., separated from the applicant, goes beyond the common results of inadmissibility, and rises to the level of extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien 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) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 s/he is excluded and/or deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family,

friends and responsible community representatives). *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996). The AAO must:

> [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 January 30, 2001, conviction for Conspiracy to Commit Bribery of Public Official & Fraud & Misuse of Immigration Document, a crime involving moral turpitude, and her failure to depart after the completion of the program associated with her J-1 visa.

The favorable factors in this case are evidence of the applicant's relationship with her husband and the extreme hardship he would face if she is denied admission into the United States. Favorable factors additionally include affidavits from friends and family members attesting to the applicant's good moral character, as well as Assistant U.S. Attorney statements indicating that the applicant cooperated with authorities from the time of her arrest, and that her cooperation and willingness to testify against co-defendants provided substantial assistance to the U.S. government. The Assistant U.S. Attorney expressed no objection to a sentence of probation rather than incarceration in the applicant's case, and the record reflects the applicant was sentenced to probation, and the minimum fine in her case. The record contains a letter from the applicant's probation officer stating the applicant successfully complied with all terms of her probation without incident, and the probation officer rated the applicant's prognosis for success in the community and in the United States as excellent. The record additionally reflects that, rather than ordering her removed, an immigration judge granted the applicant voluntary departure, and the applicant complied with her voluntary departure conditions. The applicant completed a Masters and Doctorate degree in Health Care Administration, and evidence of awards and certificates that she received are contained in the record, as is evidence that she volunteered as a tutor for Houston, Texas literacy efforts, and at the HIV/AIDS Education and Services department of the American Red Cross. The record additionally contains a declaration by the applicant in which she recognizes that she made a serious mistake, and she expresses deep regret for her past actions. The applicant states that she tried to correct her mistake by cooperating with U.S. authorities, and she states that she learned her lesson the hard way, through consequences that impacted her family, friends, and employment.

In *Matter of Mendez-Moralez,* 21 I&N Dec. 301, the BIA held that taking responsibility and showing remorse for one's criminal behavior constitutes some evidence of rehabilitation, and that:

> [E]vidence of rehabilitation in some cases may constitute the factor that raises the significance of the alien's equities in total so as to be sufficient to counterbalance the adverse factors in the case and warrant a favorable exercise of discretion.

The AAO finds that although the crime and immigration violation committed by the applicant are very serious in nature and cannot be condoned, there is evidence of rehabilitation in the present case and, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to her U.S. citizen spouse as required under section 212(h) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met her burden of proving eligibility for a waiver of her ground of inadmissibility pursuant to section 212(h) of the Act. Accordingly, the Form I-601 appeal will be sustained.

ORDER: The appeal is sustained. The application is approved.