U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 21764129

Date: SEPT. 6, 2022

Appeal of Nebraska Service Center Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied for an immigrant visa and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), based on a conviction for a crime involving moral turpitude (CIMT), and under section 212(i) of the Act, 8 U.S.C. § 1182(i), for a willful misrepresentation of a material fact. U.S. Citizenship and Immigration Services (USCIS) may grant a discretionary waiver under this provision if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Nebraska Field Office Director denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), to waive their inadmissibility. The Director concluded that although the Applicant did establish extreme hardship to their U.S. citizen spouse, the waiver application did not warrant a favorable exercise of agency discretion. On appeal, the Applicant submits a brief asserting their eligibility. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

## I. LAW

Any foreign national convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a CIMT (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible. Section 212(a)(2)(A) of the Act; 8 U.S.C. § 1182(a)(2)(A). Individuals found inadmissible under section 212(a)(2)(A) for a CIMT may seek a discretionary waiver of inadmissibility under section 212(h).

Also relevant, a foreign national who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). There is a discretionary waiver of this inadmissibility ground if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(i). If the foreign national demonstrates the

existence of the required hardship, then they must also show they merit a favorable exercise of discretion. *Id.*

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630–31 (BIA 1996) (finding factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the "common result of deportation" and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

Once the foreign national demonstrates the requisite extreme hardship, they must show that USCIS should favorably exercise its discretion and grant the waiver. Sections 212(h), (i) of the Act. The burden is on the foreign national to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez,* 21 I&N 296, 299 (BIA 1996).

## II. ANALYSIS

### A. Immigration History

On [redacted] 2001, the Applicant was convicted of extortion in Armenia and sentenced to a total of one year of imprisonment, which included time he had already served in incarceration. Armenian code nullified that conviction roughly one year after the Applicant was release from confinement, approximately in [redacted] 2002. The Applicant filed several visa applications with the U.S. Department of State (DOS) and responded in the negative to the question about being arrested or convicted. Following the Applicant's December 2012 consular interview, the officer determined he was inadmissible to the United States. The consular officer not only found him inadmissible due to his 2001 conviction being a CIMT under section 212(a)(2)(A)(i)(I), but also because he did not divulge that information on his visa application rendering him inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact.

After additional procedural steps, the Applicant filed this waiver application claiming extreme hardship to his spouse if he was denied admission to the United States. The Director issued a request for evidence notifying the Applicant that the crime of extortion is considered to be a "violent or dangerous crime," which required him to demonstrate his qualifying relative would experience the heightened standard of exceptional and extremely unusual hardship. After considering the Applicant's response to the request, the Director denied the waiver application making their own determination that he was inadmissible for being convicted of a CIMT and for misrepresenting a material fact on his visa application. The Director determined that even though the Applicant demonstrated his spouse would experience extreme hardship were he refused admission to the country, he did not meet the elevated standard of a showing of exceptional and extremely unusual hardship under the regulation at 8 C.F.R. § 212.7(d).

On appeal the Applicant poses the following questions indicating his belief that answering them will determine whether his case should result in a positive or negative outcome: (1) is USCIS required to verify the inadmissibility grounds specified by the DOS consular officer; (2) is he actually inadmissible under section 212(a)(2)(A)(i)(I) for committing a CIMT and section 212(a)(6)(C)(i) for misrepresenting a material fact; and (3) if he is inadmissible under those grounds, does he merit a favorable exercise of discretion under sections 212(h), (i) of the Act?

B. Verification of Inadmissibility Grounds Specified by the DOS Consular Officer

On this issue, the Applicant contends the Director merely accepted and did not make their own determination relating to each of the inadmissibility grounds. The Applicant also cites the *USCIS Policy Manual* indicating USCIS generally accepts another government agency's finding of inadmissibility unless it is erroneous. We don't view this issue as ripe because the Director made their own decision that both inadmissibility grounds applied to the Applicant's case and found no error in the consular officer's judgment.

As it relates to the CIMT issue, the Director noted the Applicant was convicted of extortion and extortion was a CIMT. Additionally, the Director stated: "You have been convicted of a crime involving moral turpitude that is also a violent and dangerous crime . . . ." And for the Applicant's misrepresentation of a material fact, the Director stated: "Our records reveal that you made a material misrepresentation to gain a benefit under the INA. Specifically, in your pending immigrant visa application, and in several prior non-immigrant visa applications, you failed to disclose your prior arrest and criminal conviction." There is no requirement for the Director to "address evidentiary minutiae or write any lengthy exegesis . . . ." *Parada-Orellana v. Garland*, 21 F.4th 887, 894 (5th Cir. 2022).

What is required is the previous trier of fact consider the issues raised and announce its decision in terms sufficient to enable an appellate body to perceive that it has heard and thought and not merely reacted. *Rodriguez-Jimenez v. Garland*, 20 F.4th 434, 439 (9th Cir. 2021) (quoting *Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010); *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1329 (11th Cir. 2021); *see also Osuchukwu v. INS*, 744 F.2d 1136, 1143 (5th Cir. 1984). We conclude the Director independently made their own determination on both relevant admissibility grounds.

C. Admissibility Under Section 212(a)(2)(A)(i)(I) for Committing a CIMT

Within the appeal, the Applicant claims he is not inadmissible, and the Director erred by utilizing an incorrect method to determine whether he is inadmissible for his CIMT conviction. The Director stated that "[i]n determining whether a crime is a violent or dangerous crime for purposes of the exercise of discretion under 212(h)(2) of the INA, USCIS is not limited to a categorical inquiry but may consider both the statutory elements and the nature of the actual offense." The Applicant appears to conflate the Director's admissibility determination with their analysis of whether his crime was considered violent or dangerous. We therefore do not agree with the Applicant that the Director used the wrong method to determine his admissibility relating to his CIMT conviction.

Turning to whether the extortion statute the Applicant was convicted of constitutes a CIMT conviction, he claims Armenian courts did not follow the elements required in their extortion statute. We begin

with the statute, which according to the translated materials, extortion in Armenia at the time of the Applicant's conviction was:

> The use of a threat to use violence against a person or his/her relatives or to publicize defamatory information about him/her or his/her relatives or to damage or destroy property together with a demand to surrender property or the rights to property (extortion) is punishable with imprisonment for the term of 2 to 4 years.

Article 94, Part 2 of the Criminal Code of Armenia. In support of his claim that Armenian courts did not actually apply the statutory elements, the Applicant provides a lengthy legal opinion from an Armenian judge with experience in this area. Nevertheless, we do not need to engage in surmising or postulating what method Armenian courts, in general, engaged in because the translation of the court document describing the Applicant's crime and conviction titled "Verdict in the Name of the Republic of Armenia" clearly describes the elements of the criminal activity of which it found the Applicant guilty. Within that document, the court included demanding money associated with threats of violence and threats to destroy property.

Moreover, in addition to the Board of Immigration Appeals (Board) case the Director cited to conclude that extortion is a CIMT (*Matter of F-*, 3 I&N Dec. 361 (BIA 1949)), other Board decisions have long determined extortion to be a CIMT. *See Matter of Vella*, 27 I&N Dec. 138, 139 (BIA 2017) (finding a foreign national convicted of conspiracy to commit extortion requires an inadmissibility waiver under section 212(h) of the Act; a statutory provision that waives CIMTs); *Vella v. Att'y Gen. of United States*, 742 F. App'x 623, 625–26 (3d Cir. 2018) *cert. denied*, 139 S. Ct. 1369 (2019); *Matter of A-*, 2 I&N Dec. 459, 464 (BIA 1946); *Matter of G-T-*, 4 I&N Dec. 446, 447 (BIA 1951); *Matter of C-*, 5 I&N Dec. 370, 376 (BIA 1953); *Matter of B-*, 6 I&N Dec. 98, 104 (BIA 1954).

Here, the applicant bears the burden of establishing his admissibility clearly and beyond doubt. *See Matter of Bett*, 26 I&N Dec. 437, 440 (BIA 2014) ("an applicant has the burden to show that [they are] clearly and beyond doubt entitled to be admitted to the United States and [are] not inadmissible under section 212(a) of the Act.") (citations omitted). As the Applicant does not advance any further arguments other than Armenian courts generally do not actually apply the statutory elements of extortion, his arguments on this issue are not persuasive that his conviction for extortion did not render him inadmissible under section 212(a)(2)(A)(i)(I) for committing a CIMT. The Applicant has not established his admissibility clearly and beyond doubt, and we conclude he is inadmissible under section 212(a)(2)(A)(i)(I).

D. Admissibility Under Section 212(a)(6)(C)(i) for Misrepresenting a Material Fact

The Applicant contends he did not willfully misrepresent a material fact by answering in the negative to the visa application question of whether he had "ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty, or other similar action?" The Applicant claims he answered truthfully and in line with Armenian custom and law, which means he did not willfully misrepresent a material fact. He further contends that even if we determine his misrepresentation was willful, it was not material because he was, and is, admissible on the true facts.

First, we address the requirements for one to be inadmissible under section 212(a)(6)(C)(i). The presence of all of the following elements demonstrates that a foreign national is inadmissible under the Act:

- The person procured, or sought to procure, a benefit under U.S. immigration laws;
- The person made a false representation;
- The false representation was willfully made;
- The false representation was material; and
- The false representation was made to a U.S. government official, generally an immigration or consular officer.

8 *USCIS Policy Manual* J.2(B), https://www.uscis.gov/policymanual. *See also Matter of Y-G-*, 20 I&N Dec. 794, 796 (BIA 1994); *Matter of Mensah*, 28 I&N Dec. 288, 293 (BIA 2021); *Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998). The first bullet above is not in contention because the Applicant sought to procure a benefit when he filed the visa application. And we agree with the Director that the Applicant was required to divulge his arrest and conviction for extortion based on the wording on the visa application. The Applicant was informed that even if his arrest and conviction were forgiven, set aside, or in this case nullified, he was required to share that information. Nevertheless, he elected not to share this relevant information with DOS, thereby making a false representation. This sufficiently addresses the second bullet.

Moving to the third bullet, the Applicant claims his false representation was not made willfully. He claims willfulness is absent from this scenario because he answered the visa application question truthfully and in line with Armenian custom and law. "The term 'willfully' should be interpreted as 'knowingly' as distinguished from accidentally, inadvertently, or in a good faith belief that the factual claims are true." 8 *USCIS Policy Manual*, *supra*, at J.3(D)(1) (citing *Matter of Healy and Goodchild,* 17 I&N Dec. 22 (BIA 1979)). The Board has more recently addressed the topic of willfulness stating:

> Misrepresentations are willful if they are "deliberately made with knowledge of their falsity." *Matter of S- and B-C-*, 9 I&N Dec. 436, 445 (BIA 1960; A.G. 1961); *see also Suite v. INS*, 594 F.2d 972, 973 (3d Cir. 1979) (per curiam) (stating that "knowledge of the falsity of a representation is sufficient to satisfy the scienter element" of willfulness, which "entail[s] voluntary and deliberate activity"); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975) (noting that, unlike fraud, a finding of willfulness does not require an "intent to deceive").

*Matter of Valdez*, 27 I&N Dec. 496, 498 (BIA 2018). Knowledge of the falseness of the provided information appears to be the commonality among each of these sources. That leaves us to question whether the Applicant was aware that his negative response to the arrest or conviction question on the visa application was misrepresenting the truth of the matter. Again, the question from the visa application stated:

> Have you ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty, or other similar action?

This question made it clear the Applicant should reply in the affirmative for *any offense or crime* that resulted in an arrest or in a conviction, regardless of whether he was in any way absolved of the charges or convictions. Because the question was clearly worded to include any and all arrests or convictions that had been forgiven, cleared, or erased, "or other similar action," it appears more likely than not the Applicant knowingly or willfully misrepresented the truth. This sufficiently establishes it is more likely than not the Applicant had knowledge that his response on the visa application was false, and this means his misrepresentations of the truth were "deliberately made with knowledge of their falsity." *See Valdez*, 27 I&N Dec. at 498.

Additionally, the Applicant was not presenting his response to the arrest or conviction question to Armenian authorities, so he has not established the relevance of the statement in the appeal brief that "he could truthfully answer that he had not been arrested or convicted as that was the case in Armenia—the country in which he had been convicted and the only legal system he had known." Here, the U.S. government authorities were inquiring about any arrest or conviction, even if it had essentially been wiped away locally in his home country. And he failed to adhere to the U.S. government's clearly expressed intent in the question on the visa application.

Furthermore, foreign pardons do not eliminate a conviction for immigration purposes. 12 *USCIS Policy Manual*, *supra*, F.2(C)(7) (citing to *Marino v. I.N.S.,* 537 F.2d 686, 691 (2d Cir.1976); *Mullen-Cofee v. INS* 976 F.2d 1375, 1379 (11th Cir.1992); *Matter of B-*, 7 I&N Dec. 166 (BIA 1956). *See also Matter of Pickering*, 23 I&N Dec. 621, 625 n.5 (BIA 2003); *Matter of M-,* 9 I&N Dec. 132, 134 (BIA 1960); *Matter of F-y G-*, 4 I&N Dec. 717, 718 (BIA 1952). *Matter of G-*, 5 I&N Dec. 129, 133 (BIA 1953). A "conviction remains valid for immigration purposes even where a foreign law essentially expunges or pardons the conviction . . . ." *Le v. Lynch*, 819 F.3d 98, 111 (5th Cir. 2016) (citing *Mullen-Cofee,* 976 F.2d at 1379).

Because we conclude it is more likely than not the Applicant knowingly provided false information in response to the arrest or conviction question on his visa application, he has not clearly and beyond doubt demonstrated his admissibility as it relates to willfulness. *See Bett*, 26 I&N Dec. at 440.

Turning to the fourth bullet, the U.S. Supreme Court has developed a test to determine whether a misrepresentation is material: A concealment or a misrepresentation is material if it has a natural tendency to influence, or was capable of influencing, the decisions of the decision-making body. *See Kungys v. United States*, 485 U.S. 759, 770 (1988); *see also Matter of O-R-E-*, 28 I&N Dec. 330, 339 n.7 (BIA 2021); *Matter of D-R-*, 27 I&N Dec. 105, 114 (BIA 2017). A misrepresentation is material if it led to the person gaining some advantage or benefit to which they may not have been entitled under the true facts.

> A misrepresentation has a natural tendency to influence the officer's decision to grant the immigration benefit if:
>
> - The person would be inadmissible on the true facts;[] or
> - The misrepresentation tends to cut off a line of inquiry, which is relevant to the applicant's eligibility and which might have resulted in a proper determination that he or she is inadmissible.[]

8 *USCIS Policy Manual*, *supra*, at J.3(E)(2) (citing *Fedorenko v. United States,* 449 U.S. 490 (1981); *S- and B-C-*, 9 I&N Dec. at 447–49, accord. *Matter of Bosuego,* 17 I&N Dec. 125 (BIA 1980). *See Matter of Ng,* 17 I&N Dec. 536 (BIA 1980)). The Applicant's negative response had a natural tendency to influence the consular officer's decision, he would be inadmissible based on the true facts, and the misrepresentation had the effect of cutting off a line of the consular officer's inquiry that was relevant to his eligibility. We therefore conclude his answer in the negative was a misrepresentation that was material.

Whether the Applicant made the material misrepresentation to a government official is also not in question. And as a result, the requirement contained in the fifth bullet listed above has been met. Further, we note the Applicant's appellate claims relating to his lack of intent to deceive the consular officer is more akin to an argument of why this conduct did not amount to fraud, which includes an intent to deceive element. *See Tijam,* 22 I&N Dec. at 424. However, that issue did not come into play within the Director's decision, and it is unnecessary that we address it here.

E. Discretion and the Heightened Standard for a Violent or a Dangerous Crime

Again, under both section 212(h) and (i) of the Act, after a foreign national demonstrates the requisite extreme hardship to a qualifying relative, they must show that USCIS should favorably exercise its discretion and approve the waiver application. We reiterate the Director concluded the Applicant demonstrated the standard of extreme hardship to his qualifying relative. This was sufficient to waive his misrepresentation inadmissibility ground as well as a standard-level CIMT conviction. However, the Director determined the extortion conviction caused an additional burden the Applicant was forced to satisfy under the regulation at 8 C.F.R. § 212.7(d), which states:

> The Attorney General, in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The Director concluded the Applicant did not establish "extraordinary circumstances" were present in his case. The Director noted the lack of circumstances "involving national security or foreign policy considerations." He was therefore only left with the opportunity to demonstrate that his refusal of admission to the United States "would result in exceptional and extremely unusual hardship" to a qualifying relative. The Director stated the following:

> [E]xceptional and extremely unusual hardship is hardship that must be substantially beyond the ordinary hardship that would be expected when a close family member

> leaves this country. *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001). Having weighed all the evidence, it cannot be concluded that the hardships asserted, individually and in the aggregate, rise to the level of exceptional and extremely unusual as to meet the heightened standard required under 8 C.F.R. § 212.7(d).

Upon consideration of the entire record, including the evidence submitted and arguments made on appeal—with the added comments below—we adopt and affirm the Director's decision as it relates to their full discretionary analysis, to include evaluating whether the Applicant's Armenian conviction was for a violent or dangerous crime under 8 C.F.R. § 212.7(d). *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623, 624 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS*, 87 F.3d 5, 7–8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

Because our determination of whether a crime is violent or dangerous is included within a broader discretionary determination, our analysis is not related to admissibility or eligibility requirements. Instead, it is circumstance-specific and we do not perform a categorical inquiry of the underlying criminal statute. Stated differently, we can consider the applicable criminal statute in addition to the facts and circumstances surrounding the crime to decide whether the criminal activity was violent or dangerous. *See Matter of Dominguez-Rodriguez*, 26 I&N Dec. 408, 413 n.9 (BIA 2014) (finding that triers of fact often must examine the facts underlying a conviction to determine whether the foreign national is subject to the heightened discretionary requirements under section 212(h) by virtue of having committed a "violent or dangerous crime" under 8 C.F.R. § 212.7(d)).

The Board in *Dominguez-Rodriguez* further found this type of fact-finding is often more straightforward and less burdensome to conduct than complex legal determinations regarding whether a crime is divisible or subject to the categorical or modified categorical approaches. *Id.* Consequently, we do not agree with the Applicant's allegation that the Director erred in their methodology of evaluating the discretionary portion of his case.

On appeal, the Applicant claims he is not subject to the heightened standard under 8 C.F.R. § 212.7(d) because his conviction was not for violent or dangerous criminal activity. In particular, the Applicant makes reference to circuit court and Board opinions. We note one opinion the Applicant cites was superseded by a subsequent opinion. Further, the Applicant references other cases and concludes because those cases only involved an injury to a victim, and because his criminal activity did not result in injuries to anyone, his criminal activity should not be considered to trigger the heightened standard under 8 C.F.R. § 212.7(d).

We do not agree that criminal activity should not be considered to be violent or dangerous under 8 C.F.R. § 212.7(d) simply because there is an absence of physical injury to those who were threatened. While a verbal and physical threat of a simple assault (e.g., an offender vocalizing and motioning to punch another person) may not trigger the heightened standard we discuss here, we would not consider a more serious threat to not be a violent or dangerous crime simply because the offender did not follow through with or execute the threat. The Applicant is correct that each case will be determined on a fact-based inquiry. However, we note here that except for the court document, the

Applicant has not offered any other materials—from the Armenian government or authorities—relating to his arrest or conviction for extortion.

When applying for a benefit, the burden of proof lies with an applicant. Therefore, in the context of demonstrating admissibility, or that discretion should be exercised in their favor, the burden rests with an applicant to show a conviction does not have any adverse effects on their eligibility. In line with that requirement is their responsibility to provide any documentation illustrating all the elements of the crime that they were convicted of under a statute of conviction that contained some disqualifying crimes (e.g., the indictment, jury instructions, or plea agreement and colloquy). *Pereida v. Wilkinson*, 141 S. Ct. 754, 763–64 (2021). The Applicant notes his difficulty in obtaining documentation so distant in the past. Still, the fact that a foreign national is not to blame for the ambiguity surrounding their criminal background does not relieve them of the obligation to prove eligibility for discretionary relief. *Pereida v. Barr*, 916 F.3d 1128, 1133 (8th Cir.), *cert. granted,* 140 S. Ct. 680 (2019), and *aff'd sub nom. Pereida v. Wilkinson*, 141 S. Ct. at 763 (finding whatever degree of ambiguity remains about the nature of a foreign national's criminal history, and whatever the reason for it, what remains stubbornly evident is they have not carried their burden of showing they are not ineligible for the benefit sought under the Act).

Considering further whether the Applicant's activities were violent or dangerous, his claim to the contrary is directly refuted by the documentation from the Armenian court. The translated document titled "Verdict in the Name of the Republic of Armenia" reflected the Applicant and two other individuals "had come to criminal agreement from [redacted] 2000 made threats of violence against the drivers of route [redacted] by threatening to destroy [the victims'] property and extorted from [the victims] 746[,]000 drams . . . . thus, they committed the crime specified under article 94, part two of the Criminal Code of Armenia." The court indicated in its decision that the Applicant was "guilty pursuant to article 94 part two of the Criminal Code of Armenia," and the court therefore found him guilty of extortion through "threats of violence . . . by threatening to destroy property and" unlawfully extorting money from others.

We further disagree with the Applicant's characterization that all of the victims recanted their testimony indicating he made threats against them. Although the Armenian court document reflects some of the victims recanted their testimony, it also indicates some did not. One victim subsequently stated no one had made threats of violence towards him, but another victim only stated "[n]o violence was committed against him even though he had given such testimony during the pretrial investigation." As the judge noted, no actual violence was committed against any of the victims. This is not a retraction of information that would clear the Applicant of criminal activity through threats as this victim did not retract a statement regarding the threats of violence. Two additional victims held to their statements that the Applicant and the other offenders were "wardens of the route," and they would not allow the victims to drive the route without payment.

Finally, the Applicant has not sufficiently explained why we should agree with his position that extortion is not a violent or dangerous crime when the use of violence is a direct element in the relevant Armenian statute and when the Armenian court determined he and two others conspired to make threats of violence to their victims. While the Applicant's criminal behavior may not be as clearly "violent or dangerous" as some of the activities within the cited cases in which victims were physically injured by criminal actions, he has not established the absence of harm to the victims means the

absence of a violent or dangerous crime. Therefore, the Applicant has not met his burden to demonstrate his admissibility clearly and beyond doubt in accordance with *Bett*, 26 I&N Dec. at 440.

Finally, the Applicant claims he has been rehabilitated and he has had no other incidents or problems with the law since his arrest in 2000 for the extortion. In support of that claim the Applicant provided criminal record clearances reflecting no further documented encounters with law enforcement. We note it is possible he had additional charges or convictions that were nullified in the same manner as the Applicant's extortion charges and conviction that did not appear on the clearance documents. Even if we accept that the Applicant had no further legal infractions with Armenian authorities, as we noted above, he made a willful attempt to conceal those adverse elements from the U.S. government on his visa application in March 2012. And as a result, we do not agree with his statement that he has had no other incidents or problems with the law since his arrest in 2000. We further disagree that the Applicant's extortion conviction is the only negative factor present in his case because his willful misrepresentation of a material fact on his visa applications is clearly a significant adverse factor.

The burden is on the Applicant to establish a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Morales,* 21 I&N 296, 299 (BIA 1996). The Applicant has not met that burden in this instance.

**ORDER:** The appeal is dismissed.