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

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: DETROIT, MI Date: NOV 10 2010

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)

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.

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. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Detroit, Michigan. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Germany who was found to be inadmissible to the United States pursuant to 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 crimes involving moral turpitude. The applicant has a U.S. citizen spouse. The applicant seeks a waiver of inadmissibility in order to reside with his spouse in the United States.

The field office director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Field Office Director's Decision,* at 3, dated September 18, 2007.

On appeal, counsel asserts that the field office director abused his discretion by failing to consider the hardship factors in the aggregate, erred by applying the wrong legal standard and standard of proof, misstated and mischaracterized the nature of the applicant's criminal record, and acted arbitrarily and capriciously in analyzing and assessing the weight given to the applicant's crimes versus his positive equities; and that the decision is contrary to published AAO extreme hardship decisions. *Form I-290B*, at 2, received October 16, 2007.

The record includes, but is not limited to, counsel's briefs, the applicant's spouse's statements, the applicant's spouse's AA sponsor's statement, the applicant's spouse's parents' statement, the applicant's spouse's physician's statement, physician letters for the applicant's spouse's parents, adoption search documents relating to the applicant's spouse's daughter, a guardian appointment order, a real estate license registration search, the applicant's spouse's daughter's statement, a statement from a friend of the applicant's spouse, employer letters for the applicant's spouse, and articles of incorporation for the applicant's and his spouse's business. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was convicted of theft and serious predatory blackmail in Germany. *Orders Regarding the Execution of a Sentence*, dated September 4, 2002. The applicant states that he was an accessory after the fact to a bank robbery, and to car theft and blackmail, but he does not remember the exact charges or how they translate to English; and that he was incarcerated from January 1979 to October 1983. *Applicant's Form I-485 Addendum*, received August 25, 2006. The applicant's German divorce order reflects that he was in prison from January 1979 to October 1983. The record is not clear as to all of the crimes that the applicant was convicted of, the date he committed the crimes or the sentence he received for each crime. Counsel states that the German criminal records check in the record, which states that the applicant has no criminal record, is proof that his juvenile criminal records are not available. *Brief in Support of Appeal*, at 2, dated November 14, 2007. The AAO notes that the regulation at 8 C.F.R. § 103.2(b)(2)(ii) requires that when evidence such as a criminal record is not available, an applicant must submit a statement to that effect from the relevant authority. No such statement is found in the record.

The AAO finds that the applicant's conviction for blackmail is a conviction for a crime involving moral turpitude. *See Lehman v. Carson*, 353 U.S. 685 (1957). The AAO will not address the other crime(s) as the record fails to offer sufficient information regarding the nature of the charges. The record does not include evidence that the applicant would be eligible for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act or the exception under section 212(a)(2)(A)(ii)(I) of the Act. As such, 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(a)(2)(A) of the Act states in pertinent part, that:

> (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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that –
>
> (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
>
> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
>
> (iii) the alien has been rehabilitated; or
>
> (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 . . .

The AAO notes that the activity resulting in the applicant's conviction occurred more than 15 years ago. As such, he is eligible to apply for a waiver under sections 212(h)(1)(A) or 212(h)(1)(B) of the Act.

The AAO also finds that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having accrued more than a year of unlawful presence.[1] The record reflects that the applicant entered the United States under the Visa Waiver Program on December 31, 1998, his period of authorized stay expired on March 30, 1999 and he filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on August 25, 2006. On January 31, 2008, the applicant was removed from the United States. The AAO notes that the proper filing of an affirmative application for adjustment of status has been designated by the Attorney General (Secretary) as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum from Donald Neufeld, et al., 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. Therefore, the applicant accrued unlawful presence from March 31, 1999, the day after his authorized period of stay expired until August 25, 2006, the date he filed the Form I-485. He again began accruing unlawful presence on August 29, 2007, the day after his Form I-485 was denied, until his removal on January 31, 2008. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now the Secretary of 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

[1] The AAO notes that an application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the decision does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

> 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.

Based on the record before it, the applicant also appears to have entered the United States by fraud or the willful misrepresentation of a material fact when he was admitted under the Visa Waiver Program on December 31, 1998. The Visa Waiver Program is not available to an individual who has previously been arrested for or convicted of a crime involving moral turpitude. Those with criminal histories must obtain a visa to enter the United States. In that the applicant, by his own admission, had been convicted of several crimes prior to his December 31, 1998 entry, including at least one crime involving moral turpitude, his admission to the United States under the Visa Waiver Program appears to indicate that he failed to respond affirmatively to the question on the Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form, asking about prior arrests/convictions. Accordingly, the applicant may also be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, which states:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

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

In that the record establishes that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, the AAO will consider his eligibility for a waiver under the more restrictive extreme hardship requirement of section 212(a)(9)(B)(v) as we find that a consideration of his eligibility under the more generous standard found in section 212(h)(1)(A) of the Act would serve no purpose. The AAO notes that the applicant's eligibility for a waiver under section 212(a)(9)(B)(v) of the Act will also serve to waive his inadmissibility under section 212(h) of the Act, as well as any inadmissibility under section 212(a)(6)(C)(i).

A section 212(a)(9)(B)(v) waiver is dependent first upon a showing that the bar would impose an extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying

relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (BIA 1996).

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

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a

chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

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

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of*

Ige, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422. Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she relocates to Germany. Counsel states that the applicant's spouse is recovering from alcoholism, eating problems and depression, and attends Alcoholics Anonymous (AA) meetings two to three times a week. *Brief in Support of Appeal*, at 2-3. The applicant's spouse states that she has commitments in the United States that would greatly affect others and herself if she left, she is very close to her parents, her father had a stroke and is paralyzed on his right side, she visits her parents two to three times a week, and the thought that she may leave the country has upset them very much; she is very close to her daughter and sees her often, she is committed to her best friend and her best friend's daughter, her best friend's daughter is mentally challenged, and she promised them that she would be there for them; she is a real estate agent, she would lose her real estate license and part-time job with the awning company owned by her family, and she owns her own home with low house payments; she does not speak German and could not work in Germany; she goes to AA meetings two or three times a week, she has had the same sponsor for 20 years and she sponsors other women in the program; and she suffers from depression, has had the same doctor for many years, and it would be hard to start over with a new doctor. *Applicant's Spouse's Statement*, at 1-3, dated February 16, 2007. The record includes a January 31, 2007 letter from the applicant's spouse's AA sponsor. The record includes an undated real estate license registration search reflecting that the applicant's spouse is a real estate agent. The applicant's spouse's physician states that the applicant's spouse has been under her care since April 21, 1999, suffers from major depression with obsessive compulsive behavior, and her current medications are Prozac and Risperdal. *Statement from* [redacted], dated August 21, 2006.

The applicant's spouse's mother states that she sustained a serious fall and the applicant's spouse met her at the hospital, her spouse is paralyzed on the right side, and they frequently need the assistance of the applicant and their daughter. *Applicant's Spouse's Parents' Statement*, dated February 11, 2007. The record reflects that the applicant's spouse's father has multiple serious medical conditions (right side paralysis, dementia, depression, hypertension, renal and bladder C.A., O.A. and hypercholesterolemia) and depends completely on his family for emotional and medical support. *Letter from* [redacted] dated February 13, 2007. The record reflects that the applicant's spouse's mother frequently becomes ill and needs the help of her family, and she has

fallen several times and required the help of family in her recovery from fractures. *Second Letter from* [redacted], dated February 13, 2007. The medical problems of the applicant's spouse's mother include hypertension, orthostatic hypertension, syncope, ulcerative colitis, rib fractures, osteoarthritis and some mild depression which does better with family support. *Id.*

Counsel states that before her marriage to the applicant, the applicant's spouse had a daughter at the age of 18 and gave her up for adoption. *Brief in Support of Appeal*, at 4. The record includes documentation related to the applicant's spouse's adoption search for her daughter. The record reflects that the applicant's spouse is a standby guardian to an individual with a disability. *Order Appointing Guardian for Individual With a Developmental Disability*, at 1, dated October 19, 2004.

Based on the hardship factors presented, the AAO finds that extreme hardship has been established in the event that the applicant's spouse relocates to Germany.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse will be deprived of the emotional support that helps her handle her depression, the assistance provided by the applicant in caring for her parents and help with her daily activities. *Brief in Support of Appeal*, at 17. The applicant's spouse's physician states that the applicant's spouse has been under her care since April 21, 1999, she suffers from major depression with obsessive compulsive behavior, her current medications are Prozac and Risperdal, and her condition is markedly stable since her marriage in 2002. *Letter from* [redacted] The applicant's spouse states that her parents are in their mid-seventies, they are not in the best of health, it is important that she and the applicant are close to them as they need assistance, and the applicant has been a big help through this trying time for her and her family. *Applicant's Spouse's First Statement*, undated.

The applicant's spouse's mother states that the she sustained a serious fall and the applicant's spouse met her at the hospital, her spouse is paralyzed on the right side, and they frequently need the assistance of the applicant and his spouse. *Applicant's Spouse's Parents' Statement.* The applicant's spouse's parents' medical problems have been previously discussed. The applicant's spouse's daughter details the positive changes that the applicant has made in her mother's life and the assistance that he provides to the family. *Applicant's Spouse's Daughter's Statement*, dated February 3, 2007.

Based on the hardship factors presented, the AAO finds that extreme hardship has been established in the event that the applicant's spouse remains in the United States without the applicant.

The AAO does not, however, find 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)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying

> circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors include the presence of the applicant's U.S. citizen spouse, the extreme hardship to his spouse as a result of the denial of his waiver application, the absence of any convictions (other than driving without a license) for more than 30 years and statements regarding the applicant's good character.

The main adverse factors in the present case are the applicant's unlawful presence in the United States, his use of the Visa Waiver Program even though previously convicted of a crime involving moral turpitude, his removal from the United States and his criminal record, which includes a conviction for serious predatory blackmail. Even though it has been more than 30 years since the actions that led to the applicant's criminal convictions, the AAO notes that he has failed to fully document his criminal history or, in the alternative, to establish that such evidence is unavailable to him. In the absence of such information, the AAO is unable to favorably exercise the Attorney General's (now Secretary of Homeland Security's) discretion.

As the AAO finds that a favorable exercise of discretion is not warranted in this case, the appeal will be dismissed.

ORDER: The appeal is dismissed.