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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: ATHENS, GREECE Date:

MAR 22 2010

IN RE:

Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Syria 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 a crime involving moral turpitude; and under section 212(a)(9)(B)(i)(II), of 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. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), so as to immigrate to the United States. The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 14, 2007.

On appeal, counsel states that the applicant's ties to the United States are his wife and three U.S. citizen children and the nine years that he lived in the United States. Counsel maintains that the U.S. Department of State Country Reports on Human Rights Practices – 2006 for Syria indicates that it is very dangerous in Syria. Counsel asserts that the applicant was a business owner in the United States, that the financial condition of his wife and children has deteriorated since his removal in 2002, and that they have experienced extreme emotional distress and financial difficulties since the applicant's removal. He states that the applicant's wife and children can no longer visit him in Syria because it is too dangerous for U.S. citizens.

The AAO will first address the finding of inadmissibility. Section 212(a)(2)(A) of the Act states in pertinent part:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

....

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6

months (regardless of the extent to which the sentence was ultimately executed).

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 the recently decided *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation

omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The transcript of record from the First District Court of Suffolk County reflects that on November 6, 1998, the applicant pled guilty to trademark counterfeiting in violation of New York Penal Law § 165.71, and was ordered to pay a fine of \$1,000. New York Penal Law § 70.15 conveys that the maximum penalty for a class “A” misdemeanor is one year in jail.<sup>1</sup>

The statute under which the respondent was convicted provides that “[a] person is guilty of trademark counterfeiting in the third degree when, with the intent to deceive or defraud some other person or with the intent to evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods, he or she manufactures, distributes, sells, or offers for sale goods which bear a counterfeit trademark, or possesses a trademark knowing it to be counterfeit for the purposes of affixing it to any goods.” *See* N.Y. Penal Law § 165.71.

A person may be convicted under N.Y. Penal Law § 165.71 for manifesting either the “intent to deceive or defraud” or the “intent to evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods.” In *Matter of Kochlani*, 24 I&N Dec. 128, 130 (BIA 2007), the BIA states that crimes that have a specific intent to defraud as an element involve moral turpitude. Thus, trademark counterfeiting “with the intent to deceive or defraud” would involve moral turpitude. The question is whether the alternative “intent to evade a lawful restriction” would also involve moral turpitude. The BIA has found that crimes that are inherently fraudulent involve moral turpitude even though they do not have the statutory element of a specific intent to defraud. *Matter of Kochlani* at 131-132. (citations omitted). In *Kochlani*, the BIA held that violation of 18 U.S.C. § 2320 involves moral turpitude.<sup>2</sup> It based its holding on finding that the crime defined in 18 U.S.C. § 2320 is analogous to the offense of uttering or selling false or counterfeit papers relating to the registry of aliens under 18 U.S.C. § 1426(b), which offense the BIA held to involve moral turpitude. The BIA determined that

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<sup>1</sup> New York Penal Law § 70.15 provides:

Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year . . .

<sup>2</sup> 18 U.S.C. § 2320 provides:

(a) Offense.—

- (1) In general.--Whoever; intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services, or intentionally traffics or attempts to traffic in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive, shall, if an individual, be fined . . .

both crimes (1) involve traffic in counterfeit or fraudulent items or objects, (2) require proof of an intent to traffic and knowledge that the items or objects are counterfeit, and (3) result in significant societal harm. *Kochlani* at 131. With the New York statute under consideration here, however, the AAO cannot conclude that “the intent to evade a lawful restriction” on the sale, resale, offering for sale, or distribution of goods, by distributing, selling, or offering for sale goods which bear a counterfeit trademark is tantamount to the BIA’s requirement of “proof of an intent to traffic and knowledge that the items or objects are counterfeit.” Thus, we find that a conviction under N.Y. Penal Law § 165.71 for trademark counterfeiting does not categorically involve moral turpitude.

We need not engage in a second-stage inquiry to review the “record of conviction” to determine if the trademark counterfeit conviction was based on conduct involving moral turpitude because, even if the record of conviction shows that the applicant’s conduct involved moral turpitude, in view of the fact that this is the applicant’s only crime of moral turpitude, the crime fits the petty offense exception in section 212(a)(2)(A)(ii)(II) of the Act. The petty offense exception requires that the maximum penalty possible for the offense must not exceed imprisonment for one year, and the alien must not have been sentenced to a term of imprisonment in excess of 6 months, regardless of the extent to which the sentence was ultimately executed. The applicant was ordered to pay a fine and was not sentenced to any term of imprisonment. In New York, the maximum penalty possible for trademark counterfeiting, a Class A misdemeanor, is a term of imprisonment of one year. *See* New York Penal Law § 70.15. Thus, the applicant is not inadmissible under section 212(a)(2) of the Act for having been convicted of a crime involving moral turpitude as he qualifies for the petty offense exception.

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

(B) Aliens Unlawfully Present

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien’s departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant was granted permission to enter the United States on January 24, 1993, as a non-immigrant alien in transit with a C-1 visa, and remain until January 26, 1993. On October 18, 1993, the legacy Immigration and Naturalization Service (legacy INS) arrested the applicant for: failing to leave the country by the date specified in the C1 visa, remaining in the United States without authorization, and engaging in unauthorized employment. On the day of his arrest, the applicant was served with an Order to Show Cause and Notice of Hearing. On March 18, 1994, the applicant filed an asylum application. On June 29, 1994, the immigration judge ordered that the applicant be granted voluntary departure on or before February 28, 1995 with an alternate order of deportation to Syria. His application for asylum/withholding of deportation was withdrawn. On February 20, 1996, a warrant of deportation was issued. On August 13, 1996, the applicant's spouse filed a Form I-130, Immediate Relative Petition on behalf of the applicant and the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status. The Form I-310 was approved on May 15, 1996. On September 9, 1996, the applicant filed a Motion to Reopen deportation proceedings, which motion was denied on February 4, 1997. On August 17, 1998, the applicant filed a Joint Motion to Reopen deportation proceedings, which motion was denied on December 16, 2002. The Form I-485 was denied on November 26, 2002. The applicant was removed from the United States on December 16, 2002.

The unlawful presence provisions went into effect on April 1, 1997. However, an alien who is in the United States in unlawful status will not accrue unlawful presence if he or she has a properly filed application for adjustment of status that is pending. The accrual of unlawful presence is tolled until the application is denied. See Memorandum by Donald Neufeld, Acting Assoc. Director; Lori Scialabba, Assoc. Director, Refugee, Asylum and International Operations Directorate; and 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; Revision to and Re-designation of *Adjudicator's Field Manual (AFM)* Chapter 30.1(d) as Chapter 40.9 (AFM Update AD 08-03); AFM Update AD 08-03, May 6, 2009, page 33.

The record here shows that on August 13, 1996, the applicant's spouse filed the Form I-130 and the applicant filed the Form I-485. The Form I-130, which is the basis for the Form I-485, was approved on May 15, 1996. The applicant's Form I-485 was denied on November 26, 2002. The applicant was removed from the United States on December 16, 2002. Thus, the applicant did not accrue unlawfully present in the United States for one year or more, and is not inadmissible under section 212(a)(9)(B)(i)(I) of the Act. The director therefore erred in finding the applicant inadmissible under the ten-year bar of section 212(a)(9)(B)(i)(II) of the Act.

Although not addressed by the director, the AAO notes that the record reveals that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office 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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

The record reflects that the applicant was granted permission to enter the United States on January 24, 1993, as a nonimmigrant alien in transit with a C-1 visa and remain until January 26, 1993. The record of sworn statement, which the applicant refused to sign, indicates that he was questioned about how he obtained his C-1 visa issued on January 24, 1993. The immigration officer asked the applicant "why did you come to the U.S.?" In response, the applicant stated that he came to the United States because "I love to be in a free country. I was not happy in my country." On October 18, 1993, the legacy INS arrested the applicant for failing to leave the country by the date specified in the C1 visa, by remaining in the United States without authorization, and for engaging in unauthorized employment. He was served with an Order to Show Cause and Notice of Hearing. The AAO finds that the documents reflect that the applicant presented himself to immigration officers in the United States as a nonimmigrant alien in transit to another foreign country. The documents reflect further that the applicant did not intend to transit to another country, and that his plan was to remain in the United States. It is noted that the C1 visa allows for the temporary admission of an alien in "immediate and continuous transit" through the United States. 8 U.S.C. § 1101(a)(15)(C); 8 C.F.R. § 214.1(a)(1)(ii). Based on the record, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act for having willfully misrepresented the material fact of his true intention in coming to the United States, and his eligibility for admission into the United States in C-1 nonimmigrant status.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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.

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant.

Hardship to an applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Hardship to the applicant and to his children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. 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.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In rendering this decision, the AAO will consider all of the evidence in the record.

Extreme hardship to the applicant's qualifying relative must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins the applicant to live in Syria. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

With regard to remaining in the United States without the applicant, the applicant's spouse, [REDACTED], states in a letter on appeal the following. She and her three children have suffered emotionally, physically, and mentally due to separation from the applicant, and that during the summer they travel to Syria and spend two months with him. She has a business that her husband ran while she stayed at home and her business has declined because she now must work and take care of her children. The money used to travel to Syria was to have been for her children's education. Her husband has been unemployed in Syria for three years because there are no jobs in Syria. The letter by [REDACTED]'s father, dated April 14, 2006, conveys that he financially supports his daughter and three children, and that helps take care of the children. He states that he is 58 years old, is disabled, and that it is becoming more difficult helping with the children due to his age and disability. The undated letter by the applicant's daughter conveys that she and her two brothers miss

the applicant. Counsel cites to the U.S. Department of State Country Report, and claims that the applicant's wife and children can no longer visit the applicant because it is too dangerous for U.S. citizens in Syria.

Family separation must be considered in determining hardship. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States"). However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991).

While the AAO acknowledges that [REDACTED] will experience emotional hardship due to separation from her husband and her concern about the impact of separation on their children, we find that [REDACTED] has not fully demonstrated how her emotional hardship "is unusual or beyond that which is normally to be expected" from an applicant's bar to admission. [REDACTED] father conveys in his letter dated April 14, 2006, that he is financially supporting his grandchildren. Thus, [REDACTED] and her children are not experiencing financial hardship as they receive financial support from her father. Although counsel has submitted the U.S. Department of State Country Report he fails to specifically demonstrate how the report establishes that [REDACTED] and her children will be in danger if they visited the applicant in Syria. We note that [REDACTED] has averred that she and her children visit the applicant for two months every summer.

In considering all of the hardship factors in the aggregate, which factor is the emotional hardship of [REDACTED] due to separation from her husband and her concern about the effect of separation on her children, the AAO finds that the applicant fails to demonstrate that the applicant's spouse will experience extreme hardship if she remains in the United States without him. [REDACTED] has also asserted financial hardship and hardship in the form of not being able to visit the applicant in Syria. The record does not demonstrate that [REDACTED] and her children are experiencing financial hardship or that they are unable to visit the applicant in Syria. Although [REDACTED] is experiencing emotional hardship because of separation from her husband and due to concern about the impact of separation on her children, [REDACTED] has not established how her emotional hardship "is unusual or beyond that which is normally to be expected" from an applicant's bar to admission.

With regard to joining her husband to live in Syria, [REDACTED] indicates that for three years her husband has been unable to obtain employment in Syria because there are no jobs. No documentation has been provided to corroborate economic conditions in Syria and how they would specifically affect the applicant and his ability to obtain employment. As previously stated, counsel has not demonstrated how the U.S. Department of State Country Report establishes that [REDACTED] and her children would be in danger if they lived in Syria, especially because [REDACTED] has declared that she and her children visit the applicant for two months every summer.

█ asserts hardship of her husband being unable to obtain employment in Syria due to its economy and of living in danger in Syria. However, there is no corroborating documentation showing that the applicant is unable to obtain employment in Syria. Furthermore, counsel has not demonstrated how the U.S. Department of State Country Report establishes that the applicant's wife and children would be at risk if they lived in Syria. When all of the alleged hardship factors are considered collectively, they fail to demonstrate extreme hardship to █ if she joins the applicant to live in Syria.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

Because the applicant is statutorily ineligible for relief, no purpose is served in discussing whether he merits a waiver as a matter of discretion.

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

**ORDER:** The appeal is dismissed.