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

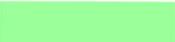


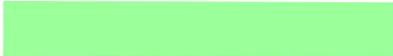
U.S. Citizenship  
and Immigration  
Services



DATE: OCT 10 2013

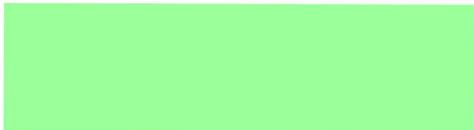
OFFICE: SANTO DOMINGO

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h); section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i); section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v); and Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,



Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Santo Domingo, Dominican Republic, denied the waiver application and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on appeal. This matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, the prior AAO decision is withdrawn, and the appeal is sustained.

The applicant is a native and citizen of Trinidad and Tobago. The applicant was found inadmissible to the United States pursuant to 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 and seeking readmission within 10 years of her last departure from the United States. The applicant was also found 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 committed a crime involving moral turpitude, and section 212(a)(6)(C), 8 U.S.C. § 1182(a)(6)(C), for having procured entry to the United States through fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the record established the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated December 12, 2011. The AAO also determined that the applicant had not demonstrated extreme hardship to a qualifying relative and dismissed the appeal accordingly. *See Decision of the AAO*, dated April 22, 2013.

In a motion to reopen and reconsider, counsel for the applicant asserts that the applicant has demonstrated extreme financial, emotional, and medical hardship to her spouse upon separation. Counsel further asserts that the applicant's spouse cannot relocate to Trinidad and Tobago based upon his extensive ties to the United States and the loss of his employment and benefits upon relocation.

In support of his motion to reopen and reconsider, the applicant submitted background country conditions information for Trinidad and Tobago, letters of support, letters from the applicant and applicant's spouse, medical documentation, and financial documentation. The entire record was reviewed and considered in rendering a decision on the motion.

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

(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 has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant was removed from the United States on September 29, 1998. The applicant subsequently entered the United States in February 2000 and was not granted a period of authorized stay.<sup>1</sup> The applicant was again removed from the United States to Trinidad on October 15, 2010. Accordingly, the applicant accrued over one year of unlawful presence in the United States and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

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

(I) a crime involving moral turpitude (other than a purely political offense) 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-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(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

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<sup>1</sup> The applicant states she entered the United States at the Calexico, California port of entry after presenting a New York drivers license.

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

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

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24

I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The applicant was convicted of false statement in an application for passport pursuant to 18 U.S.C. § 1542 on July 2, 1990 in the United States District Court for the Southern District of Florida. The Board of Immigration Appeals has determined that a conviction under 18 U.S.C. § 1542 constitutes a crime involving moral turpitude because fraud and materiality are elements essential to the establishment of the crime. *Matter of B-*, 7 I&N Dec. 342 (BIA 1956).

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

- (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:

- (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 immigrant 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 indictment against the applicant, to which she pled guilty on July 2, 1990, states that the applicant knowingly and willfully stated that she was born in St. Thomas, United States Virgin Islands in a passport application, with the intent to induce and secure a United States passport for her own use. In knowingly submitting this false information, the applicant made a false claim to U.S. citizenship.

As the applicant made a false claim to U.S. citizenship prior to September 30, 1996, she is also inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. It is noted that the applicant has not disputed her inadmissibility based upon any of these sections under which she has been found inadmissible to the United States.

A section 212(i) and 212(a)(9)(B)(v) waiver is dependent first upon a showing that the bar imposes extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered unless it causes hardship to a qualifying relative, in this case the applicant’s spouse. Once extreme hardship is established, it is but one favorable factor to

be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). As the applicant's waiver application under sections 212(i) and 212(a)(9)(B)(v) of the Act is the more restrictive of the waivers for which she is applying, her appeal will be adjudicated in accordance with this section.

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

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

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

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

States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant is a 55-year-old native and citizen of Trinidad and Tobago. The applicant's spouse is a 50-year-old native of Trinidad and Tobago and citizen of the United States. The applicant currently resides in Trinidad and Tobago and her spouse and child reside in Humble, Texas.

A previous psychological evaluation of the applicant's spouse states that he is suffering from adjustment disorder with mixed anxiety and depressed mood and includes a recommendation that the applicant's spouse continue with psychotherapy. The applicant's spouse submitted a letter asserting that he and his son have been unable to continue with the recommended counseling because he cannot afford it and it is not covered by insurance. The applicant's spouse's brother and sister submitted letters asserting that the applicant's spouse has become distressed since his separation from the applicant, worries about her safety in Trinidad, and is deeply affected by her absence. The applicant's spouse's employer also submitted a letter contending that he has spoken to the applicant's spouse about his work performance, which includes distraction and falling work production. The applicant's spouse's employer asserts that he understands the basis of the applicant's spouse's change in performance, but that he will be forced to write up the applicant's spouse if there is no improvement.

The record contains medical documentation stating that the applicant's spouse had developed chest pain, palpitations, severe headaches, and dizziness. The record also contains the results of an echocardiogram for the applicant's spouse based upon these symptoms, indicating mild mitral and tricuspid regurgitation. The applicant's spouse's physician states that prolonged overstress, low emotional state, and lack of timely medical attention usually causes or worsens these symptoms, but that further tests were needed for an accurate diagnosis. The applicant's spouse asserts that he has been unable to follow up for necessary medical tests with his physician because he is working long hours and visits the applicant in Trinidad whenever he has time off. The applicant's spouse contends that his medical symptoms have worsened and that the applicant used to help him with his medical appointments and follow up.

The applicant's spouse contends that he is experiencing financial hardship because he has to support two households, as the applicant is residing in Trinidad and Tobago, and he worries about the applicant. The applicant submitted a letter asserting that she is living with her parents in Trinidad. Counsel for the applicant contends that the applicant is paying rent to reside with her parents because they previously rented out the portion of the home she occupies. The record

contains evidence of money transfers from the applicant's spouse to the applicant. The applicant's spouse asserts that he is having a difficult time supporting himself, the applicant in Trinidad and Tobago, and their son. The applicant's spouse submitted documentation indicating that their son is attending the [REDACTED] reflecting a tuition payment. The record also contains a letter indicating that the applicant's spouse is two months past due on his mortgage payments to Bank of America. In the aggregate, there is sufficient evidence in the record to show that the applicant's spouse is suffering from a level of hardship due to separation from the applicant that is beyond the common results of inadmissibility or removal of a spouse.

The record reflects that the applicant's spouse is a native of Trinidad and Tobago who is currently employed as an airline technician in the United States. The applicant's spouse's sister asserts that the applicant's spouse has been residing in the United States for over 25 years. The applicant's spouse's employer states that the applicant's spouse has been employed with the company for over 13 years. Counsel for the applicant asserts that the applicant's spouse would leave behind his property, family members, and employment in the United States if he relocated to Trinidad and Tobago. The record contains evidence supporting the applicant's spouse's home ownership and employment in the United States, and the applicant's spouse's siblings have submitted letters of support. The applicant's spouse also asserts that his son is a native of the United States who would remain in the United States for college. The record contains a letter from the applicant's church indicating that she and her family members have been parishioners for years.

The record reflects that the applicant and her spouse both have parents residing in Trinidad and Tobago. Counsel for the applicant contends that the applicant's spouse cannot rely upon either of their parents for assistance in relocation. Counsel asserts that the applicant's parents' sole income consists of the rental income from a portion of their home and the applicant's spouse's parents rely on their children for financial support. Counsel also asserts that the applicant's spouse would lose the benefit of his medical insurance, as well as quality of care, if he relocated to Trinidad and Tobago. As noted, the applicant's spouse has been diagnosed with several medical conditions necessitating further testing. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, if he were to relocate to Trinidad and Tobago, would rise to the level of extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on her behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of*

*Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Moralez* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). .

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors include the extreme hardship the applicant's spouse would experience whether he remained in the United States, separated from the applicant, or accompanied the applicant to Trinidad and Tobago; the over 23 years that have passed since the applicant's sole criminal conviction; and letters of support evidencing the applicant's familial and religious ties to the community. The applicant resided in the United States for, in total, over 20 years, though her last removal from the United States was on October 15, 2010. The applicant has a U.S. citizen child who has resided in the United States since his birth and a U.S. citizen spouse who has resided in the United States for over 25 years. Medical letters from the applicant's spouse's doctors indicate that he has been suffering from adjustment disorder, chest pains, heart palpitations, and headaches, and dizziness, which can be worsened by stress or emotional state. Letters from the applicant's spouse's employer indicate that his work performance has deteriorated since separation from the applicant and late bill payments reflect the financial hardship of supporting two households.

The unfavorable factors in this matter include the applicant's procurement of entry into the United States through willful misrepresentation, conviction for a crime involving moral turpitude, and accrual of unlawful entry and presence in the United States.

Although the applicant's violations of immigration and criminal law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal of the applicant's Form I-601 denial will be sustained.

The AAO notes that the field office director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. The Form I-212 was denied solely based on the denial of the Form I-601. As the AAO has now found the applicant eligible for a waiver of inadmissibility, it will withdraw the field office director's decision on the Form I-212 and render a new decision.

Section 212(a)(9)(A) of the Act states:

Aliens previously removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

As noted above, the applicant was order removed by an immigration judge on June 12, 1998 and removed from the United States on September 29, 1998. The applicant subsequently entered the United States in February 2000 after presenting a New York driver's license at the port of entry. The applicant was again removed from the United States to Trinidad on October 15, 2010. As such, she is inadmissible under section 212(a)(9)(A)(ii) of the Act and must request permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has established that a favorable exercise of the Secretary's discretion is warranted.

**ORDER:** The motion is granted, the prior AAO decisions are withdrawn, and the appeal is sustained as to the applicant's Form I-601 and Form I-212 applications.