

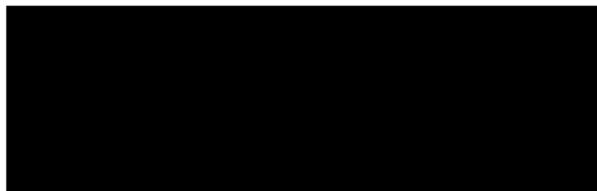
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Office: NEWARK

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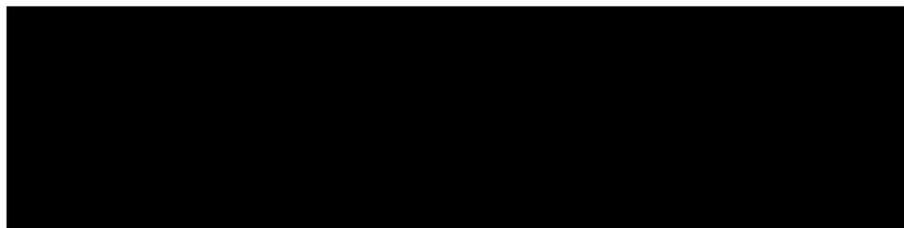
OCT 01 2010

IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved. The matter will be returned to the field office director for continued processing.

The applicant, a native and citizen of the Philippines, was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for having attempted to procure numerous immigration benefits, including employment authorization and permanent residency, by fraud or willful misrepresentation. Specifically, in July 1995, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), claiming eligibility for an immigrant visa based on marriage to a U.S. citizen. A fraudulent marriage certificate and a fraudulent U.S. birth certificate were submitted with the underlying Form I-130, Petition for Alien Relative (Form I-130). Both the Form I-130 and Form I-485 were ultimately denied, in August 1996, as the marriage certificate and the birth certificate submitted with the Form I-130 had been vetted and found to be fraudulent. It was later determined that the applicant had never been married to the individual who petitioned for the applicant on the Form I-130, and who was referenced as the applicant's spouse in the Form I-485 application.¹ The applicant is applying for a waiver of inadmissibility pursuant to section 212(i) of the

¹ The record indicates that the applicant has previously asserted that he did not intend to defraud the government and that the applicant was unaware that an application for permanent residency based on marriage to a U.S. citizen had been filed on his behalf. As stated by the applicant:

Sometime in July 1995, I met [REDACTED] while I was residing in Elmhurst, New York. [REDACTED] was known in the neighborhood as a person who helped aliens find employment opportunities where the employer would sponsor the alien for a green card....

I sought his assistance and he promised to obtain for me a work authorization by submitting my passport, birth certificate and fingerprints to the USCIS.... In return for his services, he requested me to advance a \$6000.00 fee. Believing that he was helping me obtain legal documentation, I agreed to have him help me. At that point, he asked me to sign some forms and the rest would be his responsibility....

Affidavit of [REDACTED] dated May 21, 2008.

The Department of State Foreign Affairs Manual states, in pertinent part, that in order to find an alien ineligible under section 212(a)(6)(C)(i) of the Act, it must be determined that:

- (1) There has been a misrepresentation made by the applicant;
- (2) The misrepresentation was willfully made; and
- (3) The fact misrepresented is material; or
- (4) The alien uses fraud to procure a visa or other documentation to receive a benefit....

Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his lawful permanent resident spouse and U.S. citizen children, born in 1998 and 2001.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 7, 2008

In support of the appeal, counsel submits a brief, dated May 30, 2008, and referenced exhibits. In addition, counsel submitted supplemental documentation in support of the instant appeal in July 2009 and August 2010. The entire record was reviewed and considered in rendering this decision.

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.

DOS Foreign Affairs Manual, § 40.63 N2. Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, it has not been established, by a preponderance of the evidence, that the applicant did not attempt to obtain immigration benefits by fraud or misrepresentation. As the record indicates, the applicant signed his name, under penalty of perjury, on numerous forms, including the Form I-485 and the Form 325A, Biographic Information, which contained fraudulent information regarding his marriage to a U.S. citizen. The applicant had the duty and the responsibility to review the forms prior to submission. As such, the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

Although counsel asserts that the applicant was assisted by an "unscrupulous immigration notario," the AAO can only consider complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

Moreover, the AAO notes that in the AAO decision provided by counsel in his supplemental brief, dated August 6, 2010, is not a precedent decision and therefore, the AAO is under no obligation to follow its findings. Further, in the submitted case, the applicant had not signed his name on the above-referenced forms; he only signed the Form I-765, Employment Authorization Document which did not contain fraudulent information regarding marriage to a U.S. citizen. As such, the AAO decision provided by counsel in support of the instant appeal is clearly distinguishable from the case at hand.

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 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...

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant, their children and/or extended family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident 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-Morales*, 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 applicant’s lawful permanent resident spouse contends that she will suffer extreme hardship if her spouse is unable to reside in the United States. She asserts that she will suffer emotional hardship due to the long and close relationship she has with her spouse, and due to the hardships she will face as she will become sole caregiver to two young children while maintaining full-time employment, without her husband’s daily support. In addition, she references the hardship her U.S. citizen children will experience due to long-term separation from their father, thereby causing her extreme hardship. Furthermore, the applicant’s spouse contends that she and her spouse have been gainfully employed and both of their salaries are integral in providing the financial means necessary to cover the family’s expenses but without the applicant’s presence in the United States, the applicant’s spouse will experience financial hardship. *Affidavit of* [REDACTED] dated March 3, 2008.

In support, counsel has submitted medical documentation for the applicant’s spouse and children, confirming their medical conditions, including diabetes mellitus and asthma respectively, and the medications prescribed to them. Moreover, a psychological evaluation has been submitted, establishing the applicant’s spouse’s depression and anxiety and further noting that both the applicant’s spouse and children will suffer emotionally and psychologically were the applicant to

relocate abroad due to his inadmissibility. *Psychological Evaluation from [REDACTED] Clinical Psychological*, dated May 11, 2004. In addition, documentation has been provided establishing the critical financial contributions made by the applicant to the household, and further confirming that without his income, the applicant's spouse may suffer financial hardship. *See Forms W-2, Wage and Tax Statements, for 2007*. Finally, a letter has been provided from the applicant's and his spouse's pastor, further supporting the assertion that the applicant's spouse needs her husband. *Letter from [REDACTED] dated May 10, 2008.*

Based on a totality of the circumstances, the AAO concludes that were the applicant unable to reside in the United States, the applicant's spouse would suffer extreme hardship. The applicant's spouse needs the support that the applicant provides on a day to day basis. A prolonged separation at this time would cause hardship beyond that normally expected of one facing the removal of a spouse.

Extreme hardship to a qualifying relative must be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. To begin, the applicant's lawful permanent resident spouse asserts that she would suffer emotional hardship due to long-term separation from her family, including her elderly mother, brother and extended family members, her friends, her church, her community and her employment. The record establishes that the applicant's spouse has been residing in the United States for twenty-two years and has worked as a Registered Nurse, currently for St. Joseph's Regional Medical Center earning in excess of \$84,000 per year, since 1992. *Letter from [REDACTED] dated May 12, 2008.* In addition, the applicant's spouse contends that were she to relocate abroad, she would lose the medical insurance that she has through her employer, and she and her children would suffer due to substandard medical care. The applicant's spouse further asserts that she would not be able to relocate to the Philippines as she would not be able to find gainful employment to maintain her standard of living. Finally, the applicant's spouse references the problematic country conditions in the Philippines. *Supra* at 1-3.

In support, evidence of the applicant's spouse's long-term gainful employment in the United States has been submitted. In addition, evidence of the applicant and her spouse's financial obligations, including a mortgage, has been submitted. Moreover, medical documentation has been provided establishing the applicant's spouse's and children's medical conditions. Furthermore, counsel has provided documentation regarding the problematic country conditions in the Philippines. Finally, the AAO notes the following from the U.S. Department of State, in pertinent part:

U.S. citizens contemplating travel to the Philippines should carefully consider the risks to their safety and security while there, including those risks due to terrorism.

Bombings have also occurred in both government and public facilities in Metro Manila which resulted in a number of deaths and injuries to bystanders.

Kidnap-for-ransom gangs operate in the Philippines and sometimes target foreigners as well as Filipino-Americans. The New People's Army (NPA),

a terrorist organization, operates in many rural areas of the Philippines, including in the northern island of Luzon. While it has not targeted foreigners in several years, the NPA could threaten U.S. citizens engaged in business or property management activities and often demands "revolutionary taxes."

U.S. citizens in the Philippines are advised to monitor local news broadcasts and consider the level of preventive security when visiting public places, especially when choosing hotels, restaurants, beaches, entertainment venues, and recreation sites.

Adequate medical care is available in major cities in the Philippines, but even the best hospitals may not meet the standards of medical care, sanitation, and facilities provided by hospitals and doctors in the United States. Medical care is limited in rural and more remote areas.

Serious medical problems requiring hospitalization and/or medical evacuation to the United States can cost several or even tens of thousands of dollars. Most hospitals will require a down payment of estimated fees in cash at the time of admission. In some cases, public and private hospitals have withheld lifesaving medicines and treatments for non-payment of bills. Hospitals also frequently refuse to discharge patients or release important medical documents until the bill has been paid in full.

Country Specific Information-Philippines, U.S. Department of State, dated May 11, 2010

Based on the applicant's spouse's extensive and long-term ties to the United States, including home ownership, the presence of her mother, brother and extended family member, gainful employment, and the problematic country conditions in the Philippines, including substandard medical care², high

² As noted by the U.S. Department of State, in pertinent part:

Adequate medical care is available in major cities in the Philippines, but even the best hospitals may not meet the standards of medical care, sanitation, and facilities provided by hospitals and doctors in the United States. Medical care is limited in rural and more remote areas.

Serious medical problems requiring hospitalization and/or medical evacuation to the United States can cost several or even tens of thousands of dollars. Most hospitals will require a down payment of estimated fees in cash at the time of admission. In some cases, public and private hospitals have withheld lifesaving medicines and treatments for non-payment of bills. Hospitals also frequently refuse to discharge patients or release important medical documents until the bill has been paid in full.

See Country Specific Information-Philippines, U.S. Department of State, dated May 11, 2010.

poverty and unemployment³, terrorist activity and crime, the AAO concludes that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to the Philippines to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his lawful permanent resident spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's lawful permanent resident spouse would suffer extreme hardship were she to relocate to the Philippines to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. 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 . . . 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).

³ As noted by the U.S. Department of State,

Annual GDP growth has averaged 4.3% under the Arroyo administration, but it will take a higher, sustained economic growth path--at least 7%-8% per year by most estimates--to make progress in poverty alleviation given the Philippines' annual population growth rate of 2.04%, one of the highest in Asia.... The food, fuel, and global financial shocks and severe typhoon-related damages of 2008-2009 are expected to have pushed more Filipinos into poverty. Drought brought by the El Nino weather phenomenon has reduced agricultural and hydroelectric production in late 2009 and early 2010.

See Matter of Mendez-Morales, 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 in this matter are the extreme hardship the applicant’s lawful permanent resident spouse and elderly mother-in-law and U.S. citizen children would face if the applicant were to relocate to the Philippines due to his inadmissibility, community ties, a support letter from the applicant’s pastor, charitable contributions, long-term gainful employment in the United States as a Licensed Practical Nurse, home ownership, payment of taxes, the apparent lack of a criminal record, enrollment in an Associate Degree in Nursing AAS (Nursing) program at Excelsior College, and the passage of more than fifteen years since the applicant’s fraud or willful misrepresentation when attempting to procure numerous immigration benefits, including employment authorization and permanent residency. The unfavorable factors in this matter are the applicant’s fraud or willful misrepresentation and periods of unauthorized presence and employment in the United States.

While the AAO does not condone the applicant’s actions, the AAO finds that the favorable factors outweigh the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.