



U.S. Citizenship
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FILE:



Office: NEWARK, NEW JERSEY

Date: **SEP 07 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,

Tariq Syed
for

Petry 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 record reflects that the applicant is a native and citizen of Guyana who 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 seeking to procure admission to the United States by fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and the father of two United States citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen wife and children.

The Field Office Director found 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 Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 11, 2008.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) erred “in stating that [the applicant] willfully misrepresented a material fact” and “in stating that the [applicant’s wife] will not suffer more than the usual emotional hardships that result from the deportation of a spouse.” *Form I-290B*, dated March 13, 2008.

The record includes, but is not limited to, counsel’s appeal brief; statements from the applicant and his wife; medical documents for the applicant’s wife and daughter; letters of support for the applicant and his wife; wage and tax documents, a lease agreement, and household bills; health insurance documents; articles on mental health and thyroid problems; newspaper articles and reports on Guyana; and 2004 and 2007 country conditions reports on Guyana. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in the discretion of the [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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

In the present case, the record indicates that on April 4, 2004, the applicant sought to procure admission to the United States by presenting a Guyanese passport and Resident Alien Card (Form I-551) in another individual's name. On February 21, 2007, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On October 12, 2007, the applicant filed a Form I-601. On February 11, 2008, the Field Office Director denied the applicant's Form I-601, finding the applicant had attempted to procure immigration benefits by misrepresenting material facts and had failed to demonstrate extreme hardship to his qualifying relative.

Based on the record, the Field Office Director found that on April 4, 2004, the applicant attempted to enter the United States with a Guyanese passport and Form I-551 in another individual's name. Additionally, the Field Office Director found that the applicant misrepresented himself in his Form I-485, by answering "no" to questions 9 and 10. The Field Office Director determined that by presenting the Guyanese passport and Form I-551 in another individual's name, and answering "no" to questions 9 and 10 on his Form I-485, the applicant had misrepresented material facts in order to gain admission into the United States and was inadmissible under section 212(a)(6)(C)(i) of the Act.

In a brief dated February 9, 2009, counsel states that the applicant did not commit fraud on his Form I-485 because "the agency that assisted [the applicant] in filling out the papers made a few mistakes." In a letter dated February 27, 2007, Sian Lam claims that a "typographic error" was made in the applicant's Form I-485. However, the AAO notes that the applicant also misrepresented himself when he presented a Guyanese passport and Form I-551 in someone else's name. Counsel claims "that the only reason [the applicant] possessed someone else's passport was in consonant with the fact that he was escaping from getting killed in Guyana." Counsel states that "[a]t the time [the applicant] entered at the airport, the Inspection officer asked [the applicant]: 'What is your purpose in entering the United States today?', to which question [the applicant] responded: 'I will be killed if I return to Guyana, I seek asylum in the United States.'" Counsel claims that "[o]nce the passport was presented, [the applicant] then proceeded to truthfully answer any and all questions that the Inspection Officer posed to him during his airport interview." Moreover, counsel claims that the applicant "made a timely retraction of any fraudulent act by virtue of his truthful answers to all of the questions posed to him by the INS Inspection Officer immediately thereafter." The AAO notes that when the applicant presented himself at primary inspection at the Miami International Airport, he did not immediately state he was seeking asylum, instead he presented the Guyanese passport and Form I-551 in someone else's name, in an attempt to enter the United States. It was only after the applicant was placed in secondary inspection that he admitted his true name, date of birth, and place of birth, and stated he would be killed if he returned to Guyana. *See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated April 5, 2004.

The AAO acknowledges that the applicant may have fled Guyana for racial and political opinion persecution; however, the AAO finds that the applicant willfully misrepresented a material fact when he entered the United States by presenting a Guyanese passport and Form I-551 in someone else's name. The AAO notes that when a misrepresentation is committed it must be material. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). According to the Department of State's Foreign Affairs Manual and the Board of Immigration Appeals (Board), a misrepresentation is material if either: (1) The alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility and that might well have resulted in a proper determination that he be excluded. *9 FAM 40.63 N61*; *see also Matter of S- and B-C*, *supra*. The applicant's failure to reveal his actual identity at the time of admission meets these two requirements.

Additionally, the AAO finds that the record fails to establish that the applicant made a timely retraction. The AAO acknowledges that a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground of ineligibility. *9 FAM 40.63 N4.6*. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* The AAO notes that the applicant's first opportunity to make a retraction was when he initially met the primary inspections officer. In the present case, the applicant did not admit to his true name, date of birth, and place of birth until he was placed in secondary inspection. *See Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, supra*. As the applicant did not retract his misrepresentation at his first opportunity to do so, his retraction was not timely. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in attempting to procure admission to the United States by presenting a passport and Form I-551 in some else's name.¹

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 or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 the United States Citizenship and Immigration Service (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

¹ As such, no purpose would be served in addressing whether the applicant misrepresented himself on his Form I-485.

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 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.

In a statement dated January 12, 2009, the applicant states his wife and child cannot join him in Guyana, because his wife needs medical treatment and they would be targets for kidnappers. In an undated statement, the applicant's wife states she has resided in the United States since she was 18 years old. The AAO acknowledges that the applicant's wife has resided in the United States for many years and would experience hardship upon relocation. However, it also notes that she is a native of Guyana who spent her childhood years in Guyana, and it has not been established that she has no family ties to Guyana.

Counsel states the applicant's wife helps her mother, and if the applicant's wife "has to go down to Guyana, no one will be around to help care of her mother." In a statement June 29, 2007, the applicant's wife states she helps care for her mother and younger sister, and without her assistance, they "would suffer." In an undated letter, [REDACTED] the applicant's sister-in-law, states the applicant's wife drops her off and picks her up from school, helps her with her homework, does laundry and food shopping on the weekends, cooks dinner for her and their mother, and she "is like a mother to [her]." The AAO notes that other than these statements, there is no documentation submitted establishing that the applicant's mother-in-law requires care or any other type of assistance from the applicant's wife. The applicant's wife claims that her mother suffers from knee pain. The AAO notes that no medical documentation has been submitted establishing that the applicant's mother-in-law is suffering from any medical conditions. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant states his wife "helps her other family members financially with the little money she does get." The AAO notes that the record fails to establish that the applicant's wife provides financial support to her family and/or that she cannot financially assist her family from outside the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra*.

The applicant's wife states her daughter is suffering from asthma and takes daily medication. In an undated statement, the applicant's wife states her daughter only allows the applicant to give her the medications. The AAO notes that the record establishes that the applicant's daughter is suffering from bronchial asthma. However, there is no evidence in the record that she cannot receive medical treatment in Guyana or has to remain in the United States for treatment. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra*. The applicant's wife states she wants her children to be raised in the United States where they can "have a good education, the best medical facilities and accomplish all they dream." The AAO acknowledges that the applicant's children may suffer some hardship in relocating to Guyana.

In a letter dated November 9, 2007, [REDACTED] states the applicant's wife has a thyroid problem and he indicated that she needed a thyroid supplement. In a letter dated November 16, 2007 [REDACTED] states he is treating the applicant's wife for hypothyroidism and depression. In a statement dated November 24, 2007, the applicant's wife states she has "made inquiries regarding the availability of

treatment in Guyana for [her] condition, and [has] been advised that Guyana is not medically sophisticated enough to guarantee [her] well-being.” In a letter dated November 16, 2007 [REDACTED] Budhu, who is located in Guyana, states the applicant’s wife “is suffering from primary hypo-thyroidism secondary to an auto-immune disorder.” [REDACTED] indicates that the applicant’s wife “needs to consult with an endocrinologist who is not available in Guyana.” The AAO notes that [REDACTED] conclusion that there are no endocrinologists in Guyana is speculative and the record fails to include any documentation that would support [REDACTED] assertion that the applicant’s wife could not get treatment for her thyroid problem in Guyana. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. *See Matter of Soffici, supra.* Additionally, the AAO notes that the applicant submitted a document from <http://www.thyroid-info.com/> stating that there are no thyroid doctors in Guyana; however, when the AAO went on the same website, there was a thyroid doctor listed for Guyana. However, the AAO acknowledges that since there is only one thyroid doctor listed in Guyana, it may be difficult for the applicant’s wife to receive treatment. Counsel states the applicant’s wife’s hypothyroid condition “demands specialized follow up care,” “necessitating special medication and radiation therapy.” In a statement dated January 8, 2009, the applicant’s wife states her “hypothyroid condition still persists” and she is “supposed to follow up with [her] doctor” “in order to continue with medication and radiation therapy.” The AAO notes the applicant’s wife’s concerns for her medical condition. Counsel states that even though the applicant’s wife “does in fact require the services of an endocrinologist for treatment of her thyroid problems,” “she will of course go without treatment should she be required to follow [the applicant] down to that country.” The AAO acknowledges the additional burdens that the applicant’s wife’s illness and need for medical treatment would create for the applicant and his wife upon relocation.

The applicant states “that it would be an absolute travesty for [him] to be sent back to Guyana right now” because it is very dangerous. He claims that “the Guyanese government will imprison [him] simply because [he] [has] been deported from the United States.” The applicant’s wife states the applicant’s “life will be in danger back in Guyana because of him fearing for his life.” The AAO notes the applicant’s wife’s concerns for the applicant’s safety in Guyana. The applicant states his wife and child cannot join him in Guyana, because they would be targets for kidnappers. The AAO notes that counsel submitted various articles on crime in Guyana. However, these articles do not establish that United States citizens are specifically targeted for kidnapping in Guyana and/or that the applicant’s family would be subjected to any kind of violence. The AAO notes, however, the general safety issues in the articles submitted by counsel. The record also includes a copy of the section on Guyana from the Department of State’s Country Reports on Human Rights Practices – 2007.

Based on the applicant’s spouse’s severe medical issues, their daughter’s medical condition, general safety issues in Guyana, her close family ties in the United States, and the emotional hardship of being separated from her family, the AAO finds that the applicant’s wife would suffer extreme hardship if she were to relocate to Guyana to be with the applicant.

Regarding the hardship the applicant’s wife would suffer if she were to remain in the United States without the applicant, counsel claims that she will suffer both financial and emotional hardships if the applicant is removed to Guyana. The applicant’s wife states she is depressed and seeing a psychiatrist.

The AAO notes that the record establishes that the applicant's wife is taking medication for her depression and seeing a therapist. *See letter from* [REDACTED] [REDACTED] dated June 18, 2010. Counsel states that after the birth of her first child, the applicant's wife suffered post-partum depression. In a letter dated December 15, 2008, [REDACTED] [REDACTED] diagnosed the applicant's wife with "severe post partum depression, which places her and her newborn at risk." The AAO notes that the record establishes that the applicant's wife is again suffering post-partum depression after the birth of her second child. *See letter from* [REDACTED] [REDACTED] dated April 18, 2010. Counsel states the applicant's wife needs the applicant "at her side on a daily basis" so that she "could continue taking her medication and obtain further treatment for her post-partum depression." Additionally, the AAO notes that [REDACTED] [REDACTED] was treating the applicant's wife for depression 2007. Counsel claims that "her condition was apparently so egregious that the attending physician did not initially want to let [the applicant's wife] out of the facility until a promise was made to return there in due course."

The applicant's wife states she is going through financial difficulties. She also states she "desperately need[s] help with [their] bills" and the applicant is the only person who can help her. In a statement dated January 9, 2009, the applicant's father-in-law states he cannot give anything to his daughter. Counsel states the applicant's wife "is able to meet her financial obligations only with [the applicant's] assistance." The applicant claims that because of the "new baby daughter at home, [his] wife can only work part-time and now [they] have to come up with the extra money required to pay a babysitter." The applicant's wife states she works 30 hours a week as a bank teller and the applicant works two jobs. She states that she will have to travel back and forth to Guyana, and her "weekly income can't support [herself] and two children basic essential needs much less paying air fares to travel to Guyana." The applicant states his wife needs "[him] to work and help support the family."

The AAO notes that based on the applicant's wife's severe medical and psychological conditions, it is unlikely that she will be able to financially support herself in the applicant's absence. Additionally, the AAO acknowledges that the applicant's wife will require the applicant's assistance when undergoing medical testing and treatments for her medical condition. Further, when adding the applicant's wife's severe medical and psychological issues to the normal hardships that would be experienced by any single parent assuming all the responsibilities of a household, the AAO finds the record to establish that the applicant's wife would face extreme hardship if she remained in the United States in his absence.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's prior misrepresentation for which he now seeks a waiver and his period of unauthorized stay. The favorable and mitigating factors are the applicant's United States citizen wife and children, the extreme hardship to his wife if he were refused admission, and the absence of a criminal record.

While the AAO does not condone his actions, the applicant has established that the favorable factors in his application outweigh the adverse factors. In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The application is approved.