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



U.S. Citizenship
and Immigration
Services

[REDACTED]

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DATE: APR 13 2011 OFFICE: [REDACTED] FILE: [REDACTED]

IN RE: [REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, [REDACTED] and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of [REDACTED] 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 having sought a benefit under the Act through fraud or willful misrepresentation. He is the spouse of a U.S. citizen, the son of a lawful permanent resident, the stepfather of a U.S. citizen and the father of a U.S. citizen. The applicant seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated July 22, 2010.

On appeal, counsel asserts that United States Citizenship and Immigration Services (USCIS) failed to provide the applicant the opportunity to rebut the derogatory information it relied upon to find him inadmissible to the United States. Counsel further contends that the applicant did not willfully misrepresent material facts in obtaining admission to the United States and, alternately, that USCIS did not consider the hardship claims made by the applicant individually or seriously. *Form I-290B, Notice of Appeal or Motion*, dated August 18, 2010; *Counsel's brief*, dated August 18, 2010.

The record of proceeding includes, but is not limited to, the following evidence: counsel's brief; statements from the applicant, his spouse, his mother and his brother; medical statements and records relating to the applicant's mother, spouse and brother; country conditions information concerning [REDACTED] printouts of online articles on depression; documentation relating to the applicant's and his spouse's financial obligations; a [REDACTED]-language statement relating to the applicant's political activities in [REDACTED] and tax returns and W-2 forms for the applicant and his spouse. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

In her decision, the Field Office Director observed that in seeking a R-1 or religious worker visa, the applicant had stated on the Form DS-156, Nonimmigrant Visa Application, that he would be attending [REDACTED] at [REDACTED] while staying with the [REDACTED]. She found, however, that the [REDACTED] address provided for the [REDACTED] and [REDACTED] was the address of the [REDACTED].

applicant's brother. The Field Office Director also noted that at the time the applicant filed the DS-156 and stated he was single, he was still married to his first spouse. The Field Office Director further noted that at the time the applicant had applied for admission to the United States, he had again stated to an immigration officer that he was entering the United States to study at [REDACTED] at [REDACTED]. The Field Office Director found these misrepresentations to bar the applicant's admission to the United States under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel asserts that absent the DS-156 visa application, there is nothing to support a finding of willful and knowing misrepresentation and that the applicant has not been allowed to review this document, as required by the regulation at 8 C.F.R. § 103.2(b)(16)(i). The AAO notes, however, that the regulation at 8 C.F.R. § 103.2(b)(16)(i) only requires USCIS, prior to issuing an adverse decision, to inform an applicant of derogatory evidence and provide him or her with an opportunity to rebut that evidence if the information is unknown to the applicant. In the present matter, the AAO does not find that the derogatory evidence referenced by the Field Office Director was unknown to the applicant as the evidence she relied on was found in the visa application he submitted to obtain his R-1 visa. Accordingly, counsel's assertion that the Field Office Director was required to provide the applicant with the opportunity to review the DS-156 prior to the issuance of her decision is not persuasive.

Counsel also contends that any misrepresentations on the DS-156 were not willful and knowing on the part of the applicant as the documentation he presented to obtain his R-1 visa was prepared by his church. She also states that after the applicant's entry to the United States in R-1 status, he remained true to his admission status by furthering his religious studies. Therefore, counsel asserts, the Field Office Director's finding of a section 212(a)(6)(C)(i) inadmissibility is in error.

In the present case, the record reflects that on October 31, 2005, the applicant submitted a DS-156 to the U.S. embassy in [REDACTED] seeking an R-1 visa to study at the [REDACTED] at [REDACTED] (Question 33 on the DS-156).

At that time, he indicated that he was employed by the [REDACTED] as a religious administrator (Questions 20 and 21). The applicant also checked that he was "Single (Never Married)" in responding to the question seeking information on his marital status (Question 17).

While counsel asserts that the applicant's church completed the DS-156 for him, the AAO notes that the DS-156 reflects that the applicant was specifically asked if another individual had prepared the form on his behalf and that he responded in the negative (Question 39). However, even if the applicant had indicated on the DS-156 that someone else had completed it for him, this fact would not insulate him from responsibility in this matter. The applicant signed the form attesting that all of the information provided was true and correct to the best of his knowledge and belief (Question 41), and submitted it to the U.S. embassy. Accordingly, he is found to have willfully provided the information on the DS-156 and the AAO now turns to a consideration of whether the DS-156 contains material misrepresentations under the Act.

The record reflects that the applicant misrepresented his marital status at the time he sought R-1 admission to the United States. Counsel asserts, however, that the applicant believed he was already divorced from his first spouse at the time he submitted the DS-156 and that he, therefore, did not believe he was married. The AAO acknowledges that the applicant may have believed himself to be divorced at the time of his consular interview as the record indicates that his marriage to his prior spouse formally ended on November 2, 2005, just two days after his submission of the DS-156. However, the applicant's belief that his first marriage had already ended does not explain why he checked "Single (Never Married)" to describe his marital status on the DS-156, when he could have selected "Divorced." The AAO notes that no evidence in the record demonstrates whether the applicant's status as a married or divorced person would have affected his eligibility for the priesthood in the [REDACTED].

The record also indicates that the applicant misrepresented his employment at the time he submitted the DS-156. Based on the information provided by the Form G-325A, Biographic Information, which was signed by the applicant and submitted with his adjustment application, he was not employed at the [REDACTED] at the time he applied for the R-1 visa. Instead, the Form G-325A reports that the applicant worked as a graphic designer from January 1994 until his November 2005 departure for the United States. Nothing in the record indicates that the applicant was ever employed by any religious organization in [REDACTED].

The record further establishes that the [REDACTED] address the applicant provided for [REDACTED] on the DS-156 is his brother's. While the applicant acknowledges that the [REDACTED] address provided on the DS-156 is not a church, he explains in a March 20, 2009 affidavit contained in the record that wherever he goes his location "adopts the religious name" and since he was going to reside at [REDACTED] his Superior indicated that the [REDACTED] was located there. The applicant's explanation is not, however, supported by any other evidence, e.g., a statement from the [REDACTED] and [REDACTED] of the [REDACTED], found in the record.

The AAO notes that a misrepresentation is generally material for immigration purposes only if by it the alien receives a benefit for which he or she would not otherwise be eligible. *See Kungys v. United States*, 485 US 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) and *Matter of S- and B-C-* 9 I&N Dec. 436 (BIA 1950; AG 1961).¹

¹ On appeal, counsel contends that willful misrepresentation requires an intent to deceive and cites to *Matter of G-G-*, 7 I&N Dec. 161, 165-165 (BIA 1956). However, *Matter of G-G-* held that fraud consists of "false representations of a material fact made with knowledge of its falsity and with intent to deceive." *See Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). In the immigration context, a finding of fraud requires that an individual "know the falsity of his or her statement, intend to deceive the Government official, and succeed in this deception." *In re Tijam*, 22 I&N Dec. 408, 424-25 (BIA 1998). Willful misrepresentation does not require an intent to deceive, only the knowledge that the representation is false. *See Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009)(citing to *Witter v. I.N.S.*, 113 F.3d 549, 554 (5th

The Supreme Court in *Kungys*, found that the test of whether concealments or misrepresentations were material was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service's (now USCIS) decisions. *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (AG 1961).

Based on our review of the record, the AAO concludes that the applicant's misrepresentations concealed facts that, if known to the consular officer who interviewed him, would have led to further inquiry into his intent in seeking entry to the United States and would likely have resulted in the refusal of his R-1 visa. By claiming to have never been married, the applicant cut off inquiries into the impact of his prior marriage and/or divorce on his eligibility for the priesthood in the [REDACTED] and, therefore, his eligibility for an R-1 visa. By claiming employment in a religious institution at the time he sought an R-1 visa, the applicant also avoided the consular officer's exploration of his stated intent to seek religious education in the United States in light of his long-term employment as a graphic designer. Moreover, by designating his brother's address as that of the [REDACTED] the applicant precluded a line of questioning in which the consular officer could have become aware that he was intending to live at a location that was geographically distant from the religious institution that he had indicated would provide him with training. As the applicant's misrepresentations of these facts closed off several lines of inquiry relevant to his admissibility and would likely have resulted in the refusal of his R-1 visa by the consular officer interviewing him, they are material misrepresentations and bar his admission to the United States under section 212(a)(6)(C)(i) of the Act.

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

Cir. 1997); see also *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995); *In re Tijam*, *supra*. "The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary." See *Mwongera*, *supra*.

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

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 lawful permanent resident mother and U.S. citizen spouse are the only qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 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 BIA 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 BIA 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 BIA 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 BIA 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 BIA 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 BIA 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

The record contains two statements from the applicant’s 67-year-old mother, one undated and the other dated August 10, 2010, in which she asserts that she suffers from Type II Diabetes, Hypertension and stress, and that she also has serious problems with her hearing. In her August 10, 2010 statement, the applicant’s mother contends that returning to Nicaragua would not be an option for her, in part because of her health problems. In support of these assertions, the record provides an August 16, 2010 medical statement from [REDACTED] who reports that the applicant’s mother has been his patient since November 20, 2009 and that she has been diagnosed with Type II Diabetes, Hypertension and Dyslipidimia. [REDACTED] notes that he sees the applicant’s mother on a monthly basis because of the serious nature of her health problems.

The AAO also notes that [REDACTED] is designated for Temporary Protected Status (TPS), which allows citizens of that nation to defer their departure from the United States due to the significant

infrastructure damage [REDACTED] suffered during Hurricane [REDACTED] On May 5, 2010, [REDACTED] TPS status was extended until January 5, 2012.

When the applicant's mother's age, her health problems, the conditions in [REDACTED] that have resulted in its continued designation as a TPS country and the normal hardships created by relocation are considered in the aggregate, the AAO finds that the applicant's mother would experience extreme hardship if she returned to [REDACTED]

On appeal, counsel asserts that the applicant's mother would experience hardship in the applicant's absence as he is a great help to her. Counsel contends that the applicant's mother depends on the applicant to a much greater degree than her other son as her other son is disabled.

As just discussed, the record establishes that the applicant's mother suffers from Type II Diabetes, Hypertension and Dyslipidimia. Statements provided by the applicant's mother also include her assertion that she cannot take public transportation because of hearing problems and her inability to speak English. She states that the applicant is her main support and that he takes her shopping, picks up her medicine and takes her to do her errands.

In his August 16, 2010 statement, [REDACTED] reports that the applicant is his mother's caretaker and that he has brought her to all her medical appointments. [REDACTED] further states that the applicant interprets for his mother at her medical appointments because she does not speak English and that the applicant's presence is required for his mother's well-being.

The record also contains a sworn statement from the applicant's brother who asserts that he has been permanently disabled since January 25, 2010 as a result of a work-related injury and that he also suffers from Type II Diabetes, which has caused him to lose vision in his left eye. In support of the statement provided by the applicant's brother, the record contains a January 25, 2010 medical evaluation from [REDACTED] which reports that the applicant's brother was injured in an accident that took place on January 21, 2008 and, as a result, is unable to carry more than five pounds, lift more than ten pounds, walk on unlevel terrain without a cane, climb or descend stairs without a cane, bend or twist, or work with machinery as he is taking opiate analgesic medications. The report indicates that the applicant's brother's condition is permanent and that he has difficulty communicating in English regarding his medical conditions.

Having considered the record of evidence, the AAO takes note of the applicant's mother's age, her medical conditions requiring consistent monitoring, her current dependence on the applicant for assistance in obtaining her medical care and the inability of her other son to provide this assistance as a result of his own medical problems and limited ability to understand English, particularly in medical situations. When these specific hardship factors and the hardships normally created by the separation of a family are considered in the aggregate, the AAO finds the applicant to have established that his lawful permanent resident mother would experience extreme hardship if his waiver application is denied and she remains in the United States.

In that the AAO has found the record to establish that the applicant's mother will suffer extreme hardship as a result of his inadmissibility, we find no need to consider the applicant's hardship claim with regard to his spouse. Accordingly, the AAO now turns to a consideration of the applicant's eligibility for a favorable exercise of discretion under the Act.

In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-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 adverse factors in the present case are the applicant's misrepresentations made in support of his 2005 R-1 visa application for which he now seeks a waiver; his failure to depart the United States when his R-1 visa expired on November 10, 2007; and his unlawful employment in the United States following his 2005 R-1 admission until September 25, 2008, when he was authorized employment based on his application for adjustment of status. The mitigating factors in the present case are the applicant's U.S. citizen spouse and children; his lawful permanent resident mother and his U.S. citizen brother; the extreme hardship to his mother if he were to be denied a waiver of inadmissibility; the general hardship that his spouse and children would experience; his spouse's recent surgery; his brother's medical disability; his payment of taxes beginning in 2005; and the absence of a criminal record.

The AAO finds that the misrepresentations committed by the applicant were serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the mitigating factors in the

present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal will be sustained.