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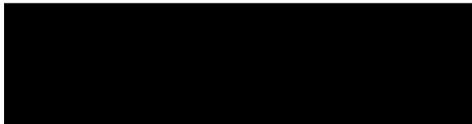
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090



**U.S. Citizenship
and Immigration
Services**

#5



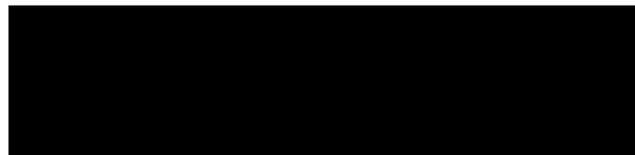
DATE: DEC 09 2011 OFFICE: RENO, NEVADA

FILE: [REDACTED]

IN RE: Applicant: [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:



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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Philippines 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 procured a visa for admission to the United States through fraud or misrepresentation. The applicant has parents who are lawful permanent residents and is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. Through counsel, the applicant does not contest this finding of inadmissibility. Rather, she 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 her parents, husband, and their children.

The Field Office Director concluded that the applicant 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. *See Decision of Field Office Director, Reno, Nevada*, dated August 25, 2009.

On appeal, counsel asserts that the United States Citizenship and Immigration Services (USCIS) abused its discretion in failing to consider the total hardships and their cumulative effect on the applicant's qualifying relatives; USCIS drew conclusions that were based on misrepresentations and misapplications of facts and law; and a favorable exercise of discretion is warranted in finding extreme hardship in the present case. *See Form I-290B, Notice of Appeal or Motion*, dated September 20, 2009.

The record includes, but is not limited to: briefs from counsel; biographic documents; letters of support from the applicant's parents, spouse, and church; medical documents concerning the applicant's parents and spouse; financial documents including bills; country conditions information; police records; previous appellate decisions; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The "representations must be believed and acted upon by the party deceived to the advantage of the deceiver." *Id.*

A misrepresentation is generally material only if the alien received a benefit for which she 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 1960, AG 1961). A misrepresentation made in connection with an application for admission to the United States is material either if the alien is excludable on the true facts or if 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 she be excluded. *See Matter of S- and B-C-*, *supra*, at 448-449.

The record establishes that the applicant obtained a nonimmigrant B-2 Visa on March 6, 2003, to visit her sister in California. On the Nonimmigrant Visa Application (Form DS-156), the applicant indicated that she was married to "[REDACTED]". She further indicated that her spouse was not in the U.S. and was not a lawful permanent resident or U.S. citizen. In fact, at the time of the applicant's visa application, she was not married to "[REDACTED]". Further, at the time of application, "[REDACTED]" was living in the United States and was a U.S. citizen. In addition, the applicant indicated on Form DS-156 that she was going to remain in the United States for a period of three weeks and that she would reside at her sister's address while in the United States. The applicant was admitted into the United States with B-2 status on May 5, 2003; valid until November 4, 2003. The applicant has remained in the United States to date and did not reside at her sister's address upon admission. Also, the applicant terminated her employment in the Philippines on July 1, 2003.

The record further establishes that on November 8, 2003, the applicant married "[REDACTED]", the individual whom she indicated on her visa application was already her husband. The spouse is a naturalized U.S. citizen as of September 17, 2002. On August 6, 2008, the applicant and her spouse filed concurrently an Application to Register Permanent Residence or Adjust Status (Form I-485) and Petition for Alien Relative (Form I-130). The AAO finds that the applicant made misrepresentations regarding her marital status and the purpose of her visit to the United States. The AAO further finds that these misrepresentations shut off a line of inquiry which was relevant to the applicant's eligibility for a B-2 nonimmigrant visa and may well have resulted in a proper determination that she be excluded. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation.

Section 212(i) of the Act provides in pertinent part:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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

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

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

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and*

Mei Tsui Lin, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's parents and spouse are the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's parents and spouse.

Counsel contends that the applicant's parents and spouse will suffer extreme emotional, medical, and financial hardship upon separation from the applicant because the parents are elderly with numerous medical conditions; the spouse has hypertension and would endure emotional distress and loss of companionship; and the applicant, as a registered nurse, is the breadwinner of the family. *I-290B Brief in Support of Appeal*, dated October 19, 2009. In support of the emotional hardship that the parents will endure, counsel submitted a statement from the parents, in which they discuss their mental state, indicating: they are stressed, scared, and have trouble sleeping because the applicant is their only child without legal status in the United States; they are in their twilight years and their happiness is based in being with their children; and they endure emotional pain imagining the isolation that the applicant will feel upon separation from her family. See *Letter of Support from* [REDACTED] dated January 3, 2008.

And, in support of the medical hardship that they will endure, the applicant's parents discuss their current medical conditions and their need for the applicant's assistance with their daily activities and the monitoring of their diet and prognoses. *Id.* Counsel also submitted medical letters from the parents' treating physician, in which he indicates the applicant's father is an 85-year-old, wheelchair-bound individual who suffered a stroke, resulting in paralysis of his left side and is currently suffering from hypertension, cataracts, and hypercholesterolemia and needs total assistance with his daily activities and continued management of his health to prevent an additional stroke; and the applicant's mother is a 79-year-old individual who is currently suffering from hypertension, generalized peripheral neuropathy, hypercholesterolemia, and cataracts and needs assistance with her daily activities and continued management of her health to prevent blindness. See *Letters of Support from* [REDACTED] M.D. with the [REDACTED] [REDACTED] dated February 26, 2009; see also *Medical Certificate issued by*

██████████ M.D., dated February 21, 2009; *Clinical Abstract, medical records, and laboratory results issued by the ██████████*, dated September 1999; *Internet Article describing "Peripheral Neuropathy"; State of California Benefits Identification Cards.*

Further, in support of the financial hardship that they will endure, the applicant's parents indicate the applicant provides them with a monthly allowance for their medical and personal needs. *See Letter of Support from ██████████ supra.* Also, their treating physician indicates that the applicant provides them some financial assistance, taking into consideration their respective ages and current medical conditions. *See Letters of Support from ██████████ ██████████, M.D. with the ██████████ supra.*

In support of the emotional hardship that the applicant's spouse will endure because of separation from the applicant, counsel submitted a statement from the spouse, in which he indicates that the applicant is his best friend and confidante; she provides emotional support to their children; their separation will result in a divorce because she keeps their family together; and he is emotionally disturbed and suffering from anxiety, mood swings, and sleepless nights. *See Letter of Support from ██████████*, dated January 27, 2008. Counsel also references a psychological evaluation concerning the spouse's mental health. *See I-290B Brief in Support of Appeal, supra.*

And, in support of the medical hardship that he will endure, the applicant's spouse indicates he suffers from a family history of hypertension and will be unable to travel to visit the applicant because of his health problems and that he needs the applicant in the United States to monitor his medical condition, medications, and dietary needs. *See Letter of Support from ██████████ supra.* Counsel also submitted a medical prescription indicating the spouse is taking medication for high blood pressure. *See Prescription issued by the ██████████*, dated on or about January 17, 2008.

Further, in support of the financial hardship that he will endure, the applicant's spouse indicates that he is working two jobs to support the household and its monthly expenditures of real estate mortgages and taxes totaling approximately \$2996.00; credit card payments totaling \$700.00; automobile loan and insurance payments totaling approximately \$1219.67; and school expenses for his and the applicant's daughter totaling \$200.00. *See Letter of Support from ██████████ supra; see also Employment Letter issued by ██████████ for ██████████* dated November 15, 2007; *Employment Letter issued by ██████████ Human Resources Manager for the ██████████* dated November 26, 2007; *Chase Mortgage Loan Statement*, dated January 12, 2009; *Specialized Loan Servicing Statement*, dated January 12, 2009; *Capital One Statement*, dated January 16, 2008; *Chase Visa Statement*, due January 27, 2008; *Citi Cards Statement*, due January 29, 2008; *Bank of America Statement*, due January 30, 2008; *Ford Credit Statement*, dated February 8, 2008; *Allstate Automobile Insurance Bill*, due February 10, 2009; *Shell Gas Statement*, due February 8, 2008; and *NV Energy Statement*, dated January 24, 2009. And, the spouse further indicates that without the applicant's income in the United States as the primary breadwinner, he will be bankrupt and a public charge in need of government assistance. *See Letter of Support from ██████████*

supra; see also Wage and Tax Statements 2007 and 2008 (Form W-2); U.S. Individual Income Tax Return 2007 (Form 1040); Internal Revenue Service Tax Return Transcripts 2004, 2005, and 2006; *Pay Stubs*, dated December 2007 – February 2008.

The AAO finds that the record is sufficient to establish that the applicant's elderly parents would endure extreme emotional, medical, and financial hardship due to the applicant's inadmissibility. Medical documentation has been provided that the applicant's parents have ongoing medical conditions that require the applicant's physical and emotional support as well as her expertise as a registered nurse. And, the record establishes that the applicant's salary as a registered nurse is used in part to finance the parents' daily needs and medical care. Although the record is unclear concerning the physical, emotional, and financial support that the elderly parents' other children and family members may be able to provide in the applicant's absence, the record establishes that the applicant's presence is essential to their physical, emotional, and financial wellbeing.

Also, the AAO finds that the record is sufficient to establish that the applicant's spouse has suffered from hypertension and because of this condition and the emotional pain that the spouse has expressed, may experience some medical and emotional hardship in the applicant's absence from the United States. However, the record does not establish that the hardship that the spouse would experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record only contains a general statement on a medical prescription that the spouse has high blood pressure and does not include any evidence from the spouse's treating medical professional that the applicant's presence is necessary to assist the spouse with his physical condition and any related hardships.

However, the AAO finds that the record is sufficient to establish that the applicant's spouse would endure significant financial hardship due to the applicant's inadmissibility. The financial documentation indicates that the applicant is the primary financial provider for her household and that the spouse's financial contribution is *de minimis*. Also, as noted, the record includes evidence of significant financial obligations. The AAO recognizes that the applicant's spouse will endure financial hardship as a result of separation from the applicant.

The record reflects that the cumulative effect of the medical hardship that the applicant's parents would experience due to the applicant's inadmissibility, when considered with the financial and emotional hardship that they would experience, rises to the level of extreme. The AAO further finds that the financial hardship that the applicant's spouse would experience as a result of separation, when considered with the medical and emotional hardship and other hardships normally associated with separation from a loved one, also rises to the level of extreme. The AAO thus concludes that were the applicant's parents and spouse to remain in the United States without the applicant due to her inadmissibility, the applicant's parents and spouse would suffer extreme hardship.

Additionally, counsel asserts that the applicant's parents will endure extreme hardship if they were to relocate to the Philippines because they will not receive necessary, long-term, comparable medical care outside the United States, and they will jeopardize their lawful permanent residence

status if they were to remain outside the United States for a lengthy period of time. *See I-290B Brief in Support of Appeal, supra.* In support of her assertions, counsel submitted a Travel Warning issued by the United States Department of State. Counsel also submitted a statement from the applicant's parents, in which they indicate they have strong family and community ties in the United States that they would be forced to abandon; they divested themselves of all property and accounts in the Philippines when they decided to come to the United States as lawful permanent residents; the economic conditions in the Philippines will make it difficult for the applicant to find gainful employment to financially support them; and the social conditions in the Philippines will make it difficult for them to receive the necessary medical care and public assistance required of individuals with serious medical conditions. *See Letter of Support from [REDACTED] supra.*

Counsel also asserts that the applicant's spouse will endure extreme hardship if he relocates to the Philippines because the spouse is concerned for his physical safety there. *See I-290B Brief in Support of Appeal, supra.* In support of her assertion, counsel submitted the U.S. Department of State Travel Warning and various Internet articles. Counsel also submitted the applicant's spouse's statement, in which he expresses concern for his personal safety because of terrorist activities in the Philippines as well as his concerns that he will have to sever familial and community ties; he will be unemployable because the mandatory retirement age is 60 years; and he will not receive proper medical care if he were to relocate to the Philippines. *See Letter of Support from [REDACTED], supra.*

The record is sufficient to establish that the applicant's elderly parents would suffer extreme hardship if they were to relocate to the Philippines because of their ongoing, serious medical concerns. The AAO notes that in the Travel Warning for the Philippines, the U.S. Department of State Bureau of Consular Affairs indicates adequate medical care is available in major cities in the Philippines, but the standards of medical care do not meet those provided by the medical community in the United States. The Travel Warning further indicates individuals may be required to provide a cash down payment for the estimated fees at the time of admission into a hospital and that some hospitals have withheld lifesaving medicines and treatment and have refused to discharge patients when medical-related bills have not been paid. The applicant's parents have limited financial resources to cover their ongoing, necessary, medical care costs in the Philippines given their advanced age, they do not work, and they do not have any investments or accounts there any longer. Moreover, the parents' immediate relatives and extended family members also are in the United States as citizens and lawful permanent residents. As elderly individuals with ongoing, serious medical concerns, it would be difficult for the applicant's parents to travel back and forth from the Philippines to visit their children and extended family members in the United States.

However, the record is not sufficient to establish that the applicant's spouse would suffer extreme hardship if he were to relocate to the Philippines because of the applicant's inadmissibility. The record does not contain any evidence to support the general statement that the mandatory retirement age in the Philippines is 60 years, and therefore the spouse would be unable to find gainful employment there. And, the AAO notes that the Internet articles provided by counsel

concerning the current political and social conditions in the Philippines indicate that there are gang and terrorist-related activities and violence that target political members as well as community and human rights activists. The AAO acknowledges the spouse's subjective fears of the violence and terrorist-related activities in the Philippines; however, the country conditions information fails to show how the spouse would be directly impacted by the political and social conditions there. Additionally, the spouse may experience some hardship upon separation from his family members and community in the United States, but there is no evidence in the record to show that the spouse would be unable to travel back and forth from the Philippines to the United States.

The record reflects that the cumulative effect of the medical hardship, the lack of financial resources, and the separation from their family in the United States that the applicant's parents would experience upon relocating to the Philippines, rises to the level of extreme. The AAO thus concludes that were the applicant's parents and spouse to relocate to the Philippines due to the applicants' inadmissibility, the applicant's parents and spouse would suffer extreme hardship.

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

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

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

Matter of Mendez-Moralez at 300.

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

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

...

Id. at 301.

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

The favorable factors in this case include extreme hardship to the applicant's lawful permanent resident parents and U.S. citizen spouse as a result of the applicant's inadmissibility; a letter of support evidencing the applicant's contributions to her workplace and her good moral character; a letter of support from the applicant and her spouse's church; and no evidence of criminal convictions. *See Letter of Support from* [REDACTED] *dated February 5, 2008; see also Letter of Support from the* [REDACTED] *Reno Police Department Criminal History Requests*, dated February 6, 2008. The unfavorable factors include: the applicant's entry into the United States with a nonimmigrant visa when she intended to immigrate.

Although the applicant's violation of immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

The AAO notes that the Field Office Director denied the applicant's Form I-485, application to adjust status, solely on the basis of the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act. *Field Office Director's Decision*, dated May 25, 2005. Because the AAO finds that the applicant is eligible for a waiver of the ground of inadmissibility, there remains no basis, in the present record, for the denial of the adjustment application. Accordingly, the Field Office Director should reopen the adjustment application pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(i) and issue a new decision.

ORDER: The appeal is sustained. The waiver application is approved. The Field Office Director shall reopen the denial of the Form I-485 application and continue to process the adjustment application.