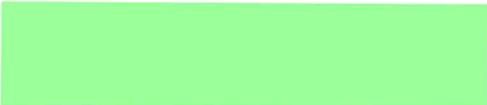
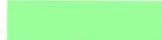


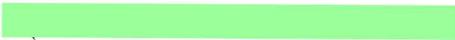


(b)(6)



DATE: **FEB 01 2013** OFFICE: MIAMI, FLORIDA

File: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal line extending to the right.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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**DISCUSSION:** The waiver application was denied by the Field Office Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Nicaragua who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i), for having been unlawfully present in the United States for one year or more, and seeking admission within 10 years of his last departure from the United States. The record also reflects that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission to the United States through willful misrepresentation. The record further reflects that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for having been ordered removed from the United States and seeking admission within the proscribed period. The applicant is the parent of a U.S. citizen daughter and children, and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his daughter. The applicant does not contest the finding of inadmissibility under section 212(a)(9)(B)(i) of the Act. Rather, he seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his adult daughter and children in the United States.

The Field Office Director concluded that the applicant failed to establish that his daughter and children are qualifying relatives, and thereby, failed to establish extreme hardship and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated October 26, 2011.

On appeal, the applicant's daughter asserts that the U.S. Citizenship and Immigration Services (USCIS) erred in denying the waiver application as the applicant's documentary evidence establishes extreme emotional, psychological, and economic hardship to her and the applicant's other U.S. citizen children. *See Form I-290B, Notice of Appeal or Motion*, dated November 8, 2011.

The record includes, but is not limited to: correspondence from previous counsel; letters of support; identity, psychological, employment, and financial documents; academic records; and civil court documents. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

**(B) ALIENS UNLAWFULLY PRESENT.-**

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings

under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

In *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (BIA) held that an applicant for adjustment of status who left the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act did not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. Here, the applicant obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States. In accordance with the BIA's decision in *Matter of Arrabally*, the applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

However, the record reflects that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure entry to the United States through willful misrepresentation.<sup>1</sup>

Section 212(a)(6)(C) of the Act provides, 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 Act is inadmissible.

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

The record reflects that the applicant presented a lawful permanent resident card issued under his name and date of birth, but not his alien number at the Sarita, Texas port of entry on July 20, 1997. As the record reflects that the applicant knew that he did not have proper documentation to enter the United States upon presenting the false lawful permanent resident card, the AAO finds that the

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Field Office Director does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

applicant's misrepresentation of his immigration status in the United States was material. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The record further reflects that the applicant is inadmissible under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for having been ordered removed from the United States and seeking admission within 10 years of his departure from the United States. Inadmissibility under section 212(a)(9)(A)(ii)(I) of the Act may not be waived pursuant to a Form I-601 application. In the event that the applicant obtains an approved Form I-601, he will need to file Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, in order to address his inadmissibility under section 212(a)(9)(A)(ii)(I) of the Act.

The record reflects that on July 20, 1997, the applicant was placed into removal proceedings for having entered the United States without being admitted or paroled around July 19, 1997. On October 31, 1997, the Immigration Judge granted the applicant voluntary departure until March 2, 1998. The record reflects that the applicant did not timely depart, and thereby, the Immigration Judge's voluntary departure order became a final order of removal. However, the record reflects that the applicant left the United States sometime after April 29, 2010, upon receipt of advance parole. Although the applicant's departure executed his final order of removal, he remains inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act, and he will require permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

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

- (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 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.

A waiver of inadmissibility under section 212(a)(6)(C)(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant, his adult daughter, other children, or relatives listed on the applicant's Form I-601, is not relevant under the statute and is considered only insofar as it results in hardship to a qualifying relative. As the applicant has not demonstrated that he has a qualifying relative, the applicant is ineligible for a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act. Consequently, the appeal must be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8

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U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.