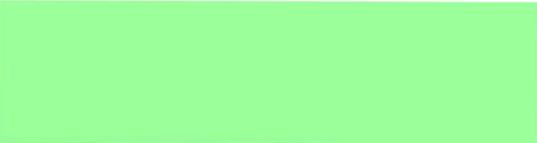
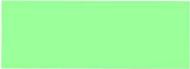


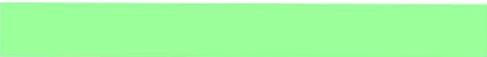


(b)(6)



DATE: **FEB 22 2013** OFFICE: BOSTON, MASSACHUSETTS

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:



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 "Ron Rosenberg", with a long, sweeping underline.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The record reflects the applicant is a native and citizen of Honduras who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) 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. The record also reflects 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 procured an immigration benefit through willful misrepresentation. The record further reflects 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 spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest the finding of inadmissibility under section 212(a)(9)(B)(i)(II) 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 wife in the United States.

The Field Office Director concluded the applicant failed to establish 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 the Field Office Director*, dated October 4, 2011.

On appeal, counsel asserts the U.S. Citizenship and Immigration Services (USCIS) erred in denying the waiver application as additional documentary evidence establishes the applicant's spouse would suffer extreme hardship in the applicant's absence, and the applicant merits a favorable exercise of discretion. *See Form I-290B, Notice of Appeal or Motion*, dated October 10, 2011.

The record includes, but is not limited to: briefs and correspondence from counsel; letters of support; identity, medical, employment, financial documents; academic records; and documents on conditions in Honduras. 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 procured an immigration benefit to the United States through willful misrepresentation.<sup>1</sup>

Section 212(a)(6)(C) of the Act provides, in relevant 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 U.S. immigration officials apprehended the applicant on June 6, 1994 and placed him in deportation proceedings upon the issuance of an Order to Show Cause and Notice of Hearing (Form I-221). The record also reflects the applicant initially applied for Temporary Protected Status (TPS) on March 23, 1999, and in his application, indicated he had never been in immigration proceedings. See Application for Temporary Protected Status (Form I-821). USCIS approved the

<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).

TPS application on March 12, 2003. The AAO finds the record does not show that the applicant lacked the requisite knowledge of being placed in deportation proceedings as he signed the Form I-221 on June 7, 1994. Thereby, the AAO finds the applicant made a willful misrepresentation, and his misrepresentation is material as it tended to shut-off a line of inquiry concerning his eligibility for TPS. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The record further reflects 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 the proscribed period.

Section 212(a)(9) of the Act provides, in relevant part:

**(A) CERTAIN ALIENS PREVIOUSLY REMOVED.-**

...

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

...

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

As stated previously, the applicant was placed in deportation proceedings upon the issuance of Form I-221 on June 7, 1994. The Immigration Judge issued an order of deportation *in absentia* on December 1, 1994. The record reflects the applicant did not timely depart. However, the applicant left the United States in 2008, upon receipt of advance parole. The record further reflects the applicant has remained in the United States since his parole on October 25, 2008. 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 relevant 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.

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. Hardship to the applicant and his in-laws can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only demonstrated qualifying relative in this case. 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 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 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 Id.* at 568; *In re 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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 v. I.N.S.*, 138 F.3d 1292, 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.

Counsel contends the applicant’s spouse would suffer extreme emotional and financial hardship in the applicant’s absence as: she and the applicant have been in a relationship for 10 years and have committed to spending their lives together; she is able to realize her lifelong dream of becoming a teacher and to pay her bills because the applicant is the breadwinner, and his income is used to pay for their expenses; and she receives her medical insurance through the applicant’s employer. Additionally, the applicant’s spouse discusses: her courtship with the applicant, her partner and soul mate; the community service they have performed together at their church; the emotional toll she would suffer if she were separated from the applicant, her partner in life; and that her spirit would be broken and she would be stressed, worrying about the applicant and his health because of his heart condition.

The record is sufficient to establish the applicant is the primary breadwinner and provides health insurance to his spouse through his employer, [REDACTED]. The record also establishes the applicant receives ongoing treatment for atrial fibrillation, including chronic anticoagulation and a mechanical mitral valve. Although the record does not include specific evidence of the applicant’s spouse’s current mental health demonstrating the effect the applicant’s medical condition would have on his spouse, the AAO notes the U.S. Department of State’s current travel advisory for

Honduras states: "Outside of Tegucigalpa and San Pedro Sula, medical care is inadequate to address complex situations. Support staff facilities and necessary equipment and supplies are not up to U.S. standards anywhere in Honduras. Facilities for advanced surgical procedures are not available. Wide areas of the country ... do not have a general surgery hospital. Ambulance services are limited in major cities and almost non-existent elsewhere." *Travel Advisory, Honduras*, issued July 10, 2012. Accordingly, the AAO finds, in the aggregate, the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Counsel contends the applicant's spouse would suffer extreme hardship upon relocating to Honduras to be with the applicant as: she is a U.S. citizen who has never lived outside the United States; she has no family ties or support system in Honduras; she would be unable to find work and would have to abandon her dream of becoming a teacher; and she maintains a close relationship with her ailing parents. The applicant's spouse also states: she could never imagine abandoning the life she has always known; she fears living in poverty as the unemployment rate is very high and the standard of living is very low in Honduras; it would be difficult to obtain health insurance there; it is her responsibility to care for her parents; and she would have to give-up her dream of being a mother as she would not want to have children in a poor country with an inadequate education system.

The record is sufficient to establish the applicant's spouse would suffer hardship if she relocated to Honduras to be with the applicant. She has continuously resided in the United States and maintains close familial and community relationships. Additionally, the U.S. Department of State has issued a travel warning for Honduras: "... crime and violence are serious problems throughout the country. Honduras has the highest murder rate in the world ... The Government of Honduras lacks sufficient resources to properly investigate and prosecute cases, and to deter violent crime ... Kidnappings and disappearances are a concern throughout the country. Kidnapping affects both the local and expatriate communities, with victims sometimes paying large ransoms for the prospect of release." *Travel Warning, Honduras*, issued November 21, 2012. Accordingly, the AAO finds, in the aggregate, the applicant's spouse would suffer extreme hardship upon relocation to Honduras.

As the applicant has shown his spouse would suffer extreme hardship, he has established that denial of the present waiver application "would result in extreme hardship", as required for a waiver under section 212(i) of the Act.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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.

In *Matter of Mendez-Morales*, 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.

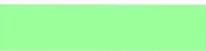
The BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits 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.*

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen spouse, the applicant's continuous presence for almost 20 years, familial and community ties, the payment of taxes, and the absence of a criminal record. The unfavorable factors include the applicant's misrepresentation of having been placed in deportation proceedings; his failure to appear for his deportation proceedings, resulting in a final order; and his employment without authorization.

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 his burden and the appeal will be sustained.

The AAO notes that inadmissibility under section 212(a)(9)(A)(ii)(I) of the Act may not be waived pursuant to a Form I-601 application. Although the applicant has obtained approval of 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.



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**ORDER:** The appeal is sustained.