UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITES STATES IMMIGRATION COURT
CHICAGO, ILLINOIS

File No.: A[redacted]

In the Matter of:

Ahmed [redacted]

RESPONDENT

IN REMOVAL PROCEEDINGS

CHARGES:

INA § 237(a)(1)(B) Overstay

INA § 237(a)(1)(C)(i) Failure to comply with the conditions of nonimmigrant status

APPLICATIONS:

INA § 245 Adjustment of Status

ON BEHALF OF THE RESPONDENT
James Ten Broeck, Jr.
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ON BEHALF OF THE DEPARTMENT
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DECISION AND ORDERS OF THE IMMIGRATION JUDGE

The Respondent requests adjustment of status under section 245 of the Immigration and Nationality Act ("INA"). For the reasons that follow, his application will be granted.

I. Procedural History

Ahmed [redacted] ("Respondent") is a native and citizen of Egypt. [Ex. 1.] On August 9, 2006, he was admitted to the United States at Atlanta, Georgia on an A-2 nonimmigrant visa, with authorization to remain in the United States

for a period not to exceed the duration of his status as a member of the Egyptian Navy. [Ex. 1.] The Respondent left the Egyptian Navy without permission, and on January 8, 2007, the Deputy Assistant Secretary of State for Visa Services issued a revocation of the Respondent's visa. [Ex. 2.]

The Respondent married a United States Citizen on April 3, 2007. [Ex. 2-D.] On October 9, 2007, the Government initiated removal proceedings against the Respondent by issuing a Notice to Appear ("NTA"), charging that the respondent is removable from the United States under sections 237(a)(1)(B) and 237(a)(1)(C)(i) of the INA. [Ex. 1.]

At a hearing on November 20, 2007, the Respondent, through counsel, admitted the factual allegations set forth in the NTA and conceded removability as charged. Therefore, based on the Respondent's admissions, the Court finds that alienage and removability have been established by clear and convincing evidence, as required by section 204(c)(3) of the INA. The Respondent designated Egypt as the country of removal.

Based upon his marriage to a United States Citizen, the Respondent's I-130 petition was approved in December 2007. [Ex. 4.] The Respondent is now seeking adjustment of status based upon his marriage and his approved I-130.

II. Exhibits

The following documents were marked as exhibits and included in the record of proceedings:

Exhibit 1:	Notice to Appear; served on October 9, 2007
Exhibit 2:	Visa Revocation; issued on January 8, 2007
Group Exhibit 3:	Statement of Requested Relief, I-485, Navy Criminal Investigation Report; filed on December 19, 2007
Group Exhibit 4:	Approved I-130, I-485 and accompanying documents; filed December 26, 2007
Group Exhibit 5:	Supporting documents, pages 1-60; filed December 26, 2007

III. Testimony

A. Summary of Respondent's testimony on January 9, 2008

The Respondent entered the United States through Atlanta, Georgia on August 9, 2006. He was a communications officer in the Egyptian Navy at that time, and came to the United States as part of a training program with a group of ninety-five crewmen from the Egyptian Navy. Between August 10 and December 14, 2006, the Respondent stayed

at Pensacola Naval Base, Great Lakes Naval Base, Norfolk Naval Base, and Austin Texas Naval Base.

The Respondent was in Norfolk, Virginia around the end of October 2006. During that time, the Respondent's commander told the Respondent to obtain a driver's license in order to assist in transporting fourteen Egyptian crewmembers from the base to their training. The Respondent's commander asked the Respondent to apply for a social security number in order to facilitate obtaining a driver's license. The Respondent applied for a social security number at the Norfolk office, but was unable to obtain one because of some clerical errors on his I-94. The Respondent went to the immigration office in Norfolk and had the errors on his I-94 corrected. He then reapplied for a social security number, but by that time, he did not know the next address at which he could receive mail. The Respondent therefore gave the address of his commander's friend living in Chicago as the address to which the social security number should be sent. The commander's friend would forward the social security number to the Respondent when he received it.

Next, the Respondent traveled with the Navy to Texas, near Corpus Christi. He had not received his social security number in the mail, and went with his Commander to the social security office. There they were told to reapply, and since they would not receive the card in time, they abandoned the project.

While in Texas, the Respondent decided that he did not want to return to Egypt because he was tired of life in the military. Instead, the Respondent believed that he could adjust his visa to study in the United States. The Respondent was scheduled to fly to Bahrain with the Navy on December 15, 2006. However, on December 14th, the Respondent abandoned his mission, and instead took a flight to Illinois.

Upon arriving in Illinois, the Respondent stayed with the commander's friend's brother, who was named Asif. The Respondent was alone in the apartment one day in the middle of January when the landlord came to his door along with agents from the Department of Homeland Security Immigration and Customs Enforcement ("ICE"). The ICE agents asked the Respondent about a man named Yusuf [redacted] The Respondent told the agents that he was not related to Mr. [redacted], and that Mr. [redacted] name was on the lease, but he only occasionally stayed in the apartment. The ICE agents called Mr. [redacted] and asked the Respondent to talk with him because of language difficulties.

The Respondent then answered the ICE agents' questions concerning his identity. He showed them his International Driver's License, which he had obtained in Illinois. He did not need a social security number to obtain an International Driver's License, but he believed he needed one to obtain a Virginia driver's license. The Respondent also told the agents that most of his documents were with an attorney at that time, but he did not tell them whether he had filed any specific applications.

After his encounter with the ICE agents, the Respondent permanently left the apartment and the job he was training for at a nearby gas station. The Respondent said he

moved away because he understood that Mr. [redacted] was having immigration problems, and he did not want to be involved with that. He also left because of the gangs and other problems in downtown Chicago.

Towards the end of January, the Respondent saw his future wife for the first time in her uncle's auto shop. The Respondent did not speak to her, but asked her uncle to introduce them. Soon thereafter, the Respondent, his future wife, her uncle, her daughter, and a friend had dinner together at a Mexican restaurant. At that dinner, the Respondent's future wife told him that she was having problems with algebra, and he offered to help her. Beginning the next day, he would go to her apartment each day and help her study. This continued until she finished the semester.

During their tutoring sessions, they began talking about their lives and getting to know one another. They fell in love sometime in March 2007. They were married on April 3, 2007 in downtown Valparaiso, Indiana. The Respondent met his future wife's mother, uncle, siblings, and cousins before they married. The Respondent has spent time with his wife's family at numerous family gatherings.

In May, the newly married couple began looking into purchasing a home together. They found and purchased a home by the end of June. The Respondent's name is not on the deed because he lacks credit, but he made approximately three mortgage payments on the home.

In Gary, Indiana, the Respondent and his wife hired someone to help them complete and submit an I-485 application to adjust status. When they initially went to his office, their personal papers were photocopied and they were told to return a few weeks later. Upon returning, the Respondent sat in a chair and the man asked him questions while typing his answers into a computer. When the man asked the Respondent about his military service, the Respondent told the man that he was AWOL from the Egyptian Navy. With respect to the Respondent's addresses, the Respondent gave the man the addresses of the various naval bases at which he had stayed. In addition, the man had a copy of the Respondent's passport, in which there was a visa showing his status. While completing the I-485 paperwork, the Respondent could not see the computer screen from his seat. However, the man would occasionally tilt the computer screen so that the Respondent could see it. When they were finished filling in the forms, the man printed them and told the Respondent to sign them. The Respondent paid the man and signed the papers.

In December 2007, the Respondent was arrested and interviewed about his applications in an Indiana immigration office. During the interview, the interviewer asked the Respondent whether he intended to remain in the United States when he first arrived. The Respondent told the interviewer that he did not intend to remain upon his arrival, and made the decision to stay in the United States while he was in Texas.

B. Summary of Liza M. [redacted] Testimony on January 9, 2008

Ms. [redacted] is thirty-years-old and was born in El Paso, Texas. She is a United States Citizen, and is married to the Respondent. This is her first marriage. She has a two-year-old daughter. Her daughter's father lives in Mexico.

Ms. [redacted] first met the Respondent in the end of January 2007 in a Mexican restaurant with her uncle. They discussed her studies, and she told the Respondent that she needed help with algebra. The Respondent offered to help her. They also discussed her daughter.

After that initial meeting, Ms. [redacted] and the Respondent saw each other nearly every day. Usually, she would pick him up and they would go to her apartment, have something to eat, and study together. She began to like the Respondent because he was very nice to her and to her daughter. The Respondent met Ms. [redacted]'s family in February, and the couple moved in together towards the end of that month. Since meeting Ms. [redacted]'s family, the Respondent has participated in occasional family gatherings. It was Ms. [redacted] idea to move in together. While living together, they shared the responsibility for bills and rent. The Respondent never gave Ms. [redacted] any money outside of shared household expenses.

The couple began discussing marriage in March 2007. It was the Respondent's idea, and he proposed to her. Ms. [redacted] was feeling scared that it might be too soon to get married, so she did not answer immediately. Instead, she took two weeks to think about it. The Respondent did not pressure Ms. [redacted] to marry him, and never spoke with her about fixing his immigration papers. Ms. [redacted] had fallen in love with the Respondent in a short time, and she wanted a father figure for her daughter. She accepted his proposal, and they were married in Valparaiso, Indiana on April 3, 2007. Ms. [redacted] did not marry the Respondent so that he could stay in the United States, though she did not want him to leave. She knew that he was AWOL from the Egyptian Navy from the beginning of their relationship.

C. Summary of Mercedes Diaz's testimony on January 9, 2008[1]

Mercedes [redacted] is the Respondent's mother-in-law. She first met the Respondent in February 2007. She knew that the Respondent did not have an immigration status, but she never believed that he was interested in her daughter for immigration purposes. Her daughter told her that the Respondent had been in the Navy in Egypt, but that he did not want to go back. She believes that her daughter loves the Respondent, and that they have a good marriage.

D. Summary of [redacted]'s testimony on January 9, 2008

[redacted] is a special agent with the Department of Homeland Security Immigration and Customs Enforcement. She investigates benefit fraud, and has held her position for six years.

[1] The witness requested a Spanish interpreter, but none was available at the time of her testimony.

On January 16, 2007, Ms. ████ was investigating a matter unrelated to the Respondent's. In the course of her investigation, she and some other agents went to an apartment in search of another person, and the Respondent answered the door. He told the agents that he was not well acquainted with the person they were looking for. The Respondent then showed the agents his passport and A-2 visa. He also stated that he had filed an additional application to change status.

Ms. ████ called her office and had them check the validity of the Respondent's visa; she learned that it was a valid A-2 visa. She later went back to her office and discovered that the Respondent had not filed any additional applications, so she returned to the apartment to look for the Respondent. When she arrived at the apartment, it appeared empty. She then proceeded to check every gas station within a two-mile radius because the Respondent had stated that he worked in a neighborhood gas station. She learned that the Respondent did not appear for his eleven o'clock shift that night from the gas station attendant on duty. She later learned that the Respondent was a lieutenant in the Egyptian Navy who had fled prior to completing his training, and that he had ordered a social security number delivered to Illinois.

The Respondent was arrested on October 9, 2007 in Indiana. Ms. ████ interviewed Ms. ████ at that time. Ms. ████ told her that, in the beginning of the relationship, she felt that the Respondent was pushing her into marriage because it was so soon. Ms. ████ also told Ms. ████ that she would help the Respondent stay in the United States because he had helped her pay bills when they were dating. Ms. ████ believes that the marriage was initially entered into for immigration purposes.

E. Summary of ████' testimony on January 9, 2008

Ms. ████ has been an adjudications officer for Citizenship and Immigration Services for twelve years. On December 4, 2007, she interviewed the Respondent and his wife as part of his I-130 application adjudication. During the interview, the Respondent told Ms. ████ that he did not want to return to Egypt. Ms. ████ told Ms. ████ that the Respondent was pressuring her to get married during the first month, and that she took her time to make sure that she was getting married for the right reasons.

Ms. ████ granted the I-130, but she had some reservations about doing so. Specifically, Ms. ████ believes that there was "one-way fraud" in the marriage, in that the Respondent pressured Ms. ████ to marry him for immigration purposes, whereas Ms. ████ married the Respondent in good faith. However, Ms. ████ does not question the bona fides of the marriage.

At the time of the interview, Ms. ████ was aware that the Respondent was subject to an investigation by ICE and that he had left the Egyptian Navy, but she did not ask the Respondent about his military service. Ms. ████ granted the I-130 on the 6th or 10th of December 2007.

IV. Legal Standards

A. Adjustment of Status

To be eligible for adjustment of status under section 245 of the INA, an alien who was inspected and admitted or paroled into the United States must establish that he or she is eligible to receive an immigrant visa, that he or she is admissible to the United States for permanent residence, and that an immigrant visa is immediately available to him or her at the time the application is filed. See INA § 245(a); 8 C.F.R. § 1245.1(a).

If eligibility is established, adjustment of status may be granted in the exercise of discretion. Matter of Arai, 13 I. & N. Dec. 494 (BIA 1970). An applicant for adjustment of status must demonstrate, in addition to statutory eligibility, that relief is merited in the exercise of discretion in his or her case. 8 C.F.R. § 1240.8(d); Matter of Ibrahim, 18 I. & N. Dec. 55 (BIA 1981); Matter of Cavazos, 17 I. & N. 215 (BIA 1980); Matter of Blas, 15 I. & N. Dec. 626, 629 (BIA 1974) ("Whenever an alien applies for discretionary relief in immigration matters, he bears the burden of showing why administrative discretion should be favorably exercised.").

It is the Government's burden to establish that the evidence indicates that a bar to any requested relief from removal may apply. 8 C.F.R. § 1240.8(d); cf. Matter of S-K-, 23 I. & N. Dec. 936, 939 (BIA 2006) and Matter f A-H-, 23 I. & N. Dec. 774, 784-86 (Att'y Gen. 2005) (applying 8 C.F.R. § 1240.8(d) in asylum context). If the Government meets its burden, the burden then shifts to the Respondent to prove by a preponderance of the evidence that the bar is not applicable. Id.

V. Analysis

The Respondent seeks relief from removal by adjusting status to that of a legal permanent resident based upon an approved relative petition filed on his behalf by his U.S. citizen spouse. The Court finds that the Respondent is statutorily eligible and has demonstrated that he merits a favorable exercise of discretion. Therefore, the Court will grant the Respondent's requested relief.

A. Statutory Eligibility

In the present case, the Respondent has satisfied the provisions of section 245(a) of the Act, and, as a result, is statutorily eligible to adjust status to that of a lawful permanent resident. First, the Respondent was inspected and admitted when he entered on an A-2 nonimmigrant visa. [Grp. Ex. 5.] In addition, the Respondent is eligible to receive an immigrant visa and one is immediately available to him through the December 2007 granting of his I-130 petition. 8 C.F.R. § 1245.1(g); [Grp. Ex. 4.]

The Government argues that the Respondent is ineligible to adjust because he is inadmissible pursuant to section 212(a)(6)(c)(1) of the Act, which provides, "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." On the Respondent's I-485 application, the word "none" appears in the space requiring the applicant to list his or her military service. It is the Government's position that this constitutes a fraudulent misrepresentation of a material fact.

In support of their argument, the Government points to United States v. Firishthak, 426 F.Supp. 2d 780 (N.D. Il. 2005). In that case, the United States brought a denaturalization action against a United States Citizen on the grounds that he had served in the Ukrainian Auxiliary Police during the Nazi occupation of World War II, and thus, he had obtained his citizenship illegally. In April 1949, in an application to the United States Displaced Persons Commission claiming that he was a Displaced Person, Firishthak claimed that he worked as a laborer in various places from 1941 – 1944. Firishthak, 426 F.Supp. 2d 780, 788-9. He made a similar claim on an application for Immigration Visa and Alien Registration with the American Consulate in Germany in the same year. Id. In actuality, Firishthak was a working member of the Ukrainian Auxiliary Police from 1941 – 1944, and therefore a persecutor. Id.

The Northern District of Illinois concluded that Firishthak's misrepresentation was material because it would have a tendency to influence the decision-maker's decision regarding whether to grant Firishthak Displaced Person status. Id. at 805. Therefore, the Court found that Firishthak was ineligible for his visa under the Displaced Persons Act, and revoked his United States citizenship.

In this case, the Respondent was a communications officer in the Egyptian Navy who came to the United States on a valid visa to enter a training program. The Government argues that the Respondent hid his military service on his applications, which constitutes a misrepresentation that would have a "tendency to influence the decision-maker's decision" when adjudicating his applications. Firishthak, 426 F.Supp 2d 780; Kungys v. United States, 485 U.S. 159 (1988) ("The term 'material' . . . applie[s] to a concealment or misrepresentation which had a natural tendency to influence or was capable of influencing the decision of the decision-making body to which it was addressed.").

This Court does not find that the Respondent made a misrepresentation on his applications. The Respondent testified that he hired someone to assist him with filing the forms, and this person completed the forms for him. The Respondent stated that he told this person about his military service and that he was AWOL from the Egyptian Navy. In addition, the Respondent supplied this person with the addresses of the various naval bases at which he stayed between August and December 2006. Finally, the person preparing the paper for the Respondent had a copy of the Respondent's passport and visa, which indicated his status. Given all of the above, the Court finds that the Respondent was not attempting to conceal or misrepresent his association with the Egyptian Navy.

Further, even if the Respondent did misrepresent his membership in the Navy, such a misrepresentation is not material. The Government has not demonstrated that such a misrepresentation would have influenced the decision-makers in this case. On the

contrary, the Government's own witness, Ms. Francis, testified that she was aware that the Respondent left the Egyptian Navy and that ICE was investigating the Respondent at the time that she adjudicated his I-130 application. Despite this knowledge, Ms. Francis granted the Respondent's application.

The Government also argues that the Respondent's marriage to a United States citizen was not entered into in good faith, but rather, for immigration purposes only. The Respondent, his wife and her mother all testified to the validity of the marriage. In addition, the fact that the Government approved the Respondent's I-130 in December 2007 undermines their argument entirely.

The Government has failed to meet its burden to show that a bar to the Respondent's requested relief applies. The Court therefore finds that the Respondent is statutorily eligible to adjust status.

B. Adjustment of Status as a Discretionary Matter

The Court must consider whether an alien's application merits a favorable exercise of discretion because the applicable statute contemplates that not all aliens who meet the statutory prerequisites will be granted adjustment of status to that of a lawful permanent resident. Matter of Ortiz-Prieto, 11. I. & N. Dec. 317, 319 (BIA 1965); see also Matter of Blas, 15 I. & N. Dec. at 628. The Court must weigh positive and negative factors in determining whether a respondent merits a favorable exercise of discretion. Matter of Goldeshtein, 20 I. & N. Dec. 382, 387 (BIA 1991); Matter of Ibrahim, 18 I. & N. Dec. 55 (BIA 1981); Matter of Cavazos, 17 I. & N. Dec. 215 (BIA 1980); Matter of Arai, 13 I. & N. Dec. 494 (BIA 1970); Matter of Huey, 13 I. & N. Dec. 5 (BIA 1968). The Board of Immigration Appeals has listed numerous factors to be considered including the individual's immigration history, the nature of his or her entry, violations of immigration and other laws, length of residence in the United States, close family ties and the attendant hardship if deported, property, business and community ties and attachments, employment history, and other humanitarian needs. Matter of Turcotte, 12 I. & N. Dec. 206 (BIA 1967); Matter of Marin, 16 I. & N. Dec. 581 (BIA 1978); Matter of Seda, 17 I. & N. 550 (BIA 1980).

In this case, there are both positive and negative factors to consider. On balance, however, the Court finds that the negative factors are outweighed by the countervailing positive equities.

The Respondent entered the United States on a valid visa through a training program. The Respondent testified that he did not intend to remain indefinitely in the United States when he first arrived. However, the Respondent overstayed the validity of his visa, losing his status as a nonimmigrant. The Respondent testified that he believed he could adjust his status to that of a student, and pursue his dream of studying marine biology in the United States. He had, he stated, given his documents to a lawyer to accomplish that end. Although the Respondent could not produce corroborative evidence, such as a letter from the lawyer, he stated that the lawyer told him he would

have to go back to Egypt and apply for entry at the Consulate there. The Court found this testimony believable.

The Court sees the fact that the Respondent fled after encountering ICE agents at his apartment in January 2007 as a negative factor. However, the Respondent explained that after encountering the agents, he realized that someone in the apartment was having immigration problems, and he did not want to be involved in the situation. The Court finds the Respondent's explanation for permanently leaving the apartment adequate. Likewise, the Respondent's explanation for ordering a social security card in Norfolk, because he believed that he needed it to procure a driver's license there, was also sufficient.

The Respondent's greatest equity is his family in the United States. He is married to Ms. [redacted], a U.S. citizen. Ms. [redacted] testified that the Respondent assists in supporting her and her two-year-old daughter, that she loves him, and that he is a good "father figure" to her daughter. Ms. [redacted]'s mother also testified that her daughter's marriage is a good one, and that her daughter loves the Respondent. The Respondent and his wife both testified that the Respondent has regularly interacted with his in-laws, including his wife's parents, siblings and cousins, indicating that he is an involved member of their family. The Respondent also owns property in the United States; he and his wife purchased a home together in 2007. Cumulatively, these factors indicate that the Respondent's family depends upon him for support and involvement, and that he has permanently settled into a life with his family in the United States. The Court finds the Respondent's involvement with and support of his family to be an overriding positive factor in this case.

Finally, nothing in the record indicates that the Respondent has been convicted of any crimes in the United States. In addition, the Government has not demonstrated that the Respondent has acted fraudulently or made any material misrepresentations in this case.

Therefore, after careful consideration of the above, on balance, the Court finds that the Respondent merits a favorable exercise of discretion to adjust his status to that of a lawful permanent resident of the United States.[2]

VI. Conclusion

The Court finds that the Respondent is both statutorily eligible to adjust status, and that he merits a favorable exercise of discretion. Although the Respondent's case entails some negative discretionary factors, these are overcome by the equities in this case. Therefore, the Respondent's request for relief in the form of adjustment of status to that of a lawful permanent resident is granted.

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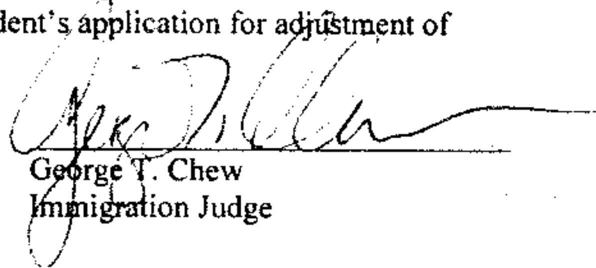
[2] The Court notes that the Respondent's status will be conditional until his marriage is two years in duration. INA § 216(b)(1).

ORDER OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED THAT the Respondent's application for adjustment of status is **GRANTED**.

Date



George T. Chew
Immigration Judge