State of New York
County of Kings

Affidavit

I, Algernon ……., being duly sworn, depose and say:

1. I am making this affidavit in support of my pending application for adjustment of status. More specifically, I am making this affidavit to prove that I am not subject to Section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (hereinafter, "INA" or "the Act"). This affidavit constitutes my response to the letter that I was issued on January 13, 2005, at the conclusion of the adjustment of status interview held on that date at the New York District Office of the U.S. Citizenship and Immigration Services (USCIS). This USCIS letter, addressed to me, begins with the following statement: "You appear to be inadmissible pursuant to Section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act for being present in the United States unlawfully for over one year." In the portion of this affidavit that most fully presents and analyzes the law concerning this Section – see numbered paragraphs 15 through 24 below – I explain why the statement appearing in the USCIS letter is a grossly oversimplified, distorted, and hence inaccurate presentation of this Section, according to the standard interpretation of this Section otherwise employed by USCIS itself; I provide an accurate interpretation of this Section; and I then show why this Section cannot possibly apply to me. A copy of the USCIS letter is attached to this affidavit as Exhibit 1 and made a part hereof.

2. In support of my contention that I am not subject to the above Section of the INA, I intend to present the relevant facts of my U.S. immigration history, followed by an analysis of the relevant law as it applies to these facts. I believe my presentation of the facts and the law will make it irrefutably clear that I am not subject to the above Section of the INA. However, since part of my presentation is the claim that the law is overwhelmingly, indeed completely, on my side, I believe it would be helpful to first explain how I came to be in this position of having to refute an appearance of inadmissibility. In other words, if the law is as clear as I maintain it to be, I need to first explain why the law, and its application to the facts of my case, was not perfectly clear at the time of the adjustment

interview. I begin therefore by presenting an account of what took place at the interview.

3. On January 13, 2005, Sara ……., my wife and U.S. citizen petitioner, and I were interviewed at the New York District Office of USCIS. The District Adjudications Officer who interviewed us was Ms. …… At the interview, Sara and I were represented by attorney Oscar Abraham Jaeger, with offices at 729 Kathleen Place, Brooklyn, N.Y. 11235, telephone 718/615-0393.

4. During the course of the interview, Officer ……. questioned me extensively about my U.S. immigration history; she focused especially on the years 1999 and 2000. During these two years, I had two consecutive and overlapping immigration "statuses" (the reason for my use of quotation marks will become clear momentarily).

5. My first status, chronologically, was as a student. I received a student visa, in Paris, France, on December 16, 1998, which was valid from that date through December 15, 2000. I returned to the U.S. with that visa, on February 10, 1999, and the Form I-94 that was then issued to me by the Immigration and Naturalization Service (INS, the predecessor to USCIS) was stamped "Valid for duration of status" or "Valid: Indefinite" or words to that effect. I did not make, and therefore do not have, a copy of that I-94, which I believe I relinquished when, after departing the U.S. on November 23, 1999, I returned to the U.S. on November 30, 1999. Accordingly, as to the information on that I-94, I have to rely on my memory of it; however, USCIS should have the original or a copy of that I-94 in its files. I was, in fact, a student for at least a significant part, if not indeed the entirety, of the period of validity of my student visa, and I tried to prove this fact to Officer ……. at the adjustment interview, using whatever documents I had brought with me. However, once the law relevant to this case is made clear – see numbered paragraphs 15 through 24 below – it will also become clear that my presentation at this time of additional proof of compliance with the terms of my student visa (or, for that matter, my presentation of any

evidence at all on this point) is completely unnecessary.[1] According to USCIS's own interpretation of the applicable law, were USCIS to make a determination at this time that I was out of status for any portion, or even the entirety, of the period of validity of my student visa, that determination would not be retroactive, but would be prospective only; the period of time I would be deemed to be accruing unlawful status would commence with the date of that (as-yet-unmade) determination. Accordingly, any departure or departures that I made from the U.S. during the period of validity of my student visa could not possibly trigger the 10 year bar to my admissibility that is the subject matter of Section 212(a)(9)(B)(i)(II) of the Act.

6. My second status, which commenced later than the first but overlapped it in time, was as an applicant for adjustment of status based on my first marriage, to U.S. citizen Candace ..... That application was filed on or before January 12, 2000.[2] To be sure, the filing of that adjustment application may not have conferred on me a full-fledged immigration status separate from and independent of my student status. However, the period during which my application was pending – which was the period between the date of its filing and the date it was ultimately denied, on January 31, 2001 – is regarded by USCIS itself as a period of authorized stay. This holds even where the application is ultimately denied, as occurred in my case. During this period of pendency, I could not have been accruing unlawful presence in the U.S. As was the case with reference to the (overlapping) period of time in which I held a valid student

[1] Despite this assertion, and without in any way intending to undermine it, I have nevertheless written a brief summary of my history as a student during this period of time. This summary is attached to this affidavit as Exhibit 8 and made a part hereof. I am furnishing it only to show that I have always had the best intentions in trying to comply with the requirements of whatever immigration status the U.S. government was generous enough to confer upon me.

[2] The reason for the ambiguity in my statement as to the application's date of filing is that I do not have, nor was I able to obtain from the attorney who filed the application, a Form I-797C Receipt Notice, which would be dispositive evidence of the official filing date. Instead, I have two documents that contradict each other as to the filing date. I discuss this contradictory evidence, and its impact or, more precisely, lack of impact, on the validity of my legal analysis, in numbered paragraph 22 below.

visa, any departure or departures that I made from the U.S. during the period that my application for adjustment was pending could not possibly trigger the 10 year bar to my admissibility that is the subject matter of Section 212(a)(9)(B)(i)(II) of the Act. A more detailed discussion of the relevant law and of the application of the law to the facts in my case is presented in numbered paragraphs 15 through 24 below.

7. Returning to the adjustment interview itself, at first Mr. Jaeger did not understand why Officer ..... was so concerned about the possibility that I was out of status in 1999 or 2000 or during any other period of time for that matter. He asked Officer ..... why she was focused on this line of inquiry; he pointed out that, when it comes to the category of immediate relatives, which includes myself, the transgression of being out of status is not a bar to adjustment. Officer ..... then explained that I had departed from the U.S. on numerous occasions, with departures in the years 1999 and 2000 being of particular interest. If any of those departures were preceded by a substantial-enough period of time during which I was out of status, then, depending on the amount of time involved, I could have triggered a bar that would render me inadmissible to the U.S. for as much as ten years from the date of my transgression, despite my being the immediate relative of a U.S. citizen.

8. Officer ..... continued to question me along these lines and I answered her as best as I could. However, at this time, neither she nor I had before us a complete set of immigration-related documents that would have established a clear timeline of my successive, and sometimes overlapping, statuses. Furthermore, neither Mr. Jaeger nor Officer ..... seemed entirely certain of the laws that would apply to the various fact patterns that were emerging as possibilities. Having reached this impasse, Officer ..... issued a letter to me which declared that I appeared to be inadmissible to the U.S. pursuant to the above section of the Act, but which offered me the opportunity to prove that I am not subject to that Section. I am taking advantage of this opportunity to declare and demonstrate that I am definitely not subject to this Section. In fact, the proof I will present is beyond clear and convincing: once the facts of my case are known and the applicable law is understood, my eligibility for adjustment will be deemed incontrovertible.

9. Before turning directly to that proof, I feel obliged to return to the following question: if the proof is so compelling, why did Officer ..... not immediately comprehend it? I believe the initial uncertainty as to my admissibility was the result of the interaction of two factors. Broadly speaking, one factor was unclarity concerning the facts in my case and the other factor was confusion as to the applicable law. In order to determine conclusively if I was out of status and thereby triggered a bar to admissibility, the facts had to be known and the relevant law had to be understood and applied to those facts. At the time of the interview, the facts were not known and so could not be ascertained, notwithstanding Officer .....'s diligent questioning and my equally diligent attempts to be responsive. At the same time, I believe the relevant law was not fully understood by anyone present in that room: neither my attorney nor Officer ....., and certainly neither Sara nor myself, understood the law at that time. I say this not out of disrespect for anyone. Immediately after the interview, Mr. Jaeger told me that he needed to research the law and that he believed Officer ..... needed to do the same. After conducting that research, he learned what the applicable laws actually were and explained these laws to me. I then saw the accuracy of his observation concerning an initial lack of knowledge on the part of everyone concerned.

10. The reason the relevant facts were not immediately known is twofold. First, on the part of Officer ....., she herself said that the file she had before her while conducting the interview was a "skimpy" one, missing essential documents; later, she told us that she was requesting a second file that should include these vital documents. Second, for my part, I was inadequately prepared at that time to provide the documentation that would fill in the gaps in Officer .....'s skimpy file.

11. There are two principal reasons for my lack of preparation. In the first place, from the time I began living in the United States, in 1991, whether it was for the purpose of study or work, until the date of my adjustment interview in this case, a period of almost 14 years, I can honestly say that Officer ..... was the first person to raise the issue of my potential ineligibility to remain here. Until she did so, I had always assumed that I had maintained a perfect record of always being in status. During all

the years I had applied for – and, in many cases, had received – a variety of immigration statuses, none of the immigration attorneys I had retained to assist me, including Mr. Jaeger; none of the immigration officials with whom I had interacted; none of the school officials who assisted me to obtain student visas; no one, in short, had ever questioned the legality of my immigration status. Accordingly, I did not gather together, and bring with me to the interview, all of the immigration-related documents in my possession.

12. In the second place, and by way of further explanation as to why I would not undertake, in the absence of necessity, the task of gathering and presenting these voluminous immigration documents, I have for some time been disheartened by the fact that some of the documents I once possessed are gone, destroyed in one or another of two floods that inundated one of my offices. I refer to the office I maintain at ... Lexington Avenue, in New York, N.Y., where I work as a physical therapist with the patients of Dr. ...., the world-renowned physiatrist with whom I have had the privilege of working from March of 1999 through the present time. I keep patient files and some of my own personal files in that office. In May of 2002, there was a minor water leak in the office, which turned into a major leak when the plumber accidentally opened a hot water valve. I was not in my office at the time, but I don't know if being there would have helped to avert any part of the ensuing disaster anyway. When I returned, I encountered a big mess of unreadable, unuseable documents that had to be thrown out. In June of 2004 a similar disaster struck my office, this time caused by an overflow of water from the apartment directly above my office. Again, I was not in my office at the time. The result of the overflow included the destruction of numerous personal files containing immigration documents.

13. As to why neither Officer ..... nor Mr. Jaeger were fully aware of the applicable laws at the time of the interview, I can only say that immigration laws generally, and certainly the particular laws that are specifically relevant here, strike me as quite technical. Especially when, until now, the facts of my history were themselves fairly unclear, I am not surprised that some confusion and uncertainty should have arisen during the interview, on the part of both Officer ..... and Mr. Jaeger. Now that I

have researched my immigration history and have presented whatever documentation I possess to Mr. Jaeger, and he has reviewed and organized this documentary evidence and has fully researched the law applicable to my history, he and I are clear on both the facts and the law. With the assistance I am now receiving from no less than two attorneys – Mr. Jaeger, of course, but also my wife Sara, who is a duly qualified and licensed attorney who has worked assiduously to help me find and obtain as much in the way of documentation as is readily available – I believe I can effectively dispel any doubt as to my eligibility to adjust my status.

14. At the request of Officer ……., I have prepared an 11-page timeline of all the U.S.-immigration-related activities in which I have engaged since first coming to the U.S. in July of 1991. This timeline is attached to the instant affidavit as Exhibit 2 and made a part hereof. I refer to an immigration-related activity as an event. For each event, I indicate its date; what foreign travel documents, if applicable, and what U.S. immigration documents, if applicable, were used in association with the event; and a brief explanation of the event's nature and purpose. Whenever I was not certain of the date of an event, because I could not recall it precisely and the document that would best establish the date was lost or destroyed, I made my best estimate of the date and indicated its status as an estimate by placing a question mark next to it. There are 31 events in total. Of these 31, 14 relate to U.S. immigration statuses that I held in the time period I regard as crucial to this case, between April 1, 1997 and June 23, 2000 (see numbered paragraphs 17 through 19 below). At the conclusion of the timeline, I have attached a series of 14 document-packages relating to this crucial period; each document-package consists of a cover page referencing an event taken from the timeline followed by a copy of whatever evidence I have in my possession that verifies my description of that event.[3]

[3] Naturally, with respect to those events as to which I do not possess any documentary evidence, none has been attached, so that the document-package consists entirely of the cover page. There are four such instances. In each such instance, I presume that USCIS is in possession and control of a copy of the missing evidence. The first concerns the issuance to me by the legacy INS of a B-2 visitor's visa valid from a date in December 1997 through a date in December 1998. While I do not possess any documentary evidence verifying the issuance of that visa, I clearly recall being issued such a visa. The second instance concerns my first marriage certificate, dated 05/24/99.

15. In researching the law concerning INA Section 212(a)(9)(B)(i)(II), my attorney, Oscar Jaeger, has relied in substantial part on a treatise he regards, and believes is widely regarded, as authoritative, well-written, and accurate. That treatise, entitled Immigration Law and the Family, was written by Sarah B. Ignatius and Elisabeth S. Stickney and is updated annually by Mary A. Kenney. The edition used by Mr. Jaeger is the most recent edition, updated as of June, 2004. Mr. Jaeger told me that the sections from that treatise most relevant to my case are sections 12:19 through 12:29. He provided me with a copy of these sections and reviewed the text of it with me. As a result, even though I am not an attorney, I believe I understand the relevant law and, with Mr. Jaeger's assistance, I intend to present and analyze that law now. Attached to this affidavit as Exhibit 3, and made a part hereof, is a copy of the title page of the treatise, followed by a copy of sections 12:19 through 12:29. Hereinafter, this treatise will be cited as the IL&F treatise.

16. I will begin my analysis of the relevant law by presenting and examining INA Section 212(a)(9)(B). The text of the law I will be presenting, which Mr. Jaeger reviewed with me and then provided to me, comes from the book used by Mr. Jaeger in researching the applicable law. This book is entitled Immigration and Nationality Act, 2002 Edition, as annotated and published by the American Immigration Lawyers Association (hereinafter, the AILA book). Attached to this affidavit as Exhibit 4, and made a part hereof, is a copy of the title page of this book, followed by a copy of INA Section 212(a)(9)(B) itself. This Section begins with the words "Aliens unlawfully present"; in the AILA book, these words are followed by footnote 89, which is an annotation discussing the effective date of INA Section 212(a)(9)(B). Since this effective date is significant to my case, I also provide here the text of the "Note 3" referred to in footnote 89. Attached to this affidavit as Exhibit 5, and made a part hereof, is a copy of

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The third instance concerns the timeline event dated 08{?]/99. In numbered paragraph 22 below, I explain that this date is my best estimate of when I must have filed my first application for adjustment, leaving aside the anomalous evidence of a 01/12/00 filing date. The fourth and final such instance concerns the notice from the legacy INS informing me of a scheduled adjustment of status interview date (see footnote 6, at page 10 below, for a discussion of why I believe that date to have been September 8, 2000).

the referenced Note 3. I should explain that the "IIRAIRA" cited in these footnotes is the acronym for the Illegal Immigration Reform And Immigrant Responsibility Act Of 1996 (Pub. L. 104-208, 110 Stat. 3009 (September 30, 1996)).

17. An examination of Exhibits 3 through 5 reveals the following points of law to be relevant to my situation. The first point is that the effective date of INA Section 212(a)(9)(B) is April 1, 1997, six months after the date that IIRAIRA was enacted. Footnote 89 of the AILA book is well summarized in a statement made in Section 12:19 of the Il&F treatise: "The counting of time in unlawful status began on April 1, 1997." Although my timeline (Exhibit 2) tracks all of my U.S. immigration-related activities since I first came to the U.S., it should be clear that dates prior to April 1, 1997, are irrelevant to the present consideration. Without conceding that I actually accrued any time in unlawful presence prior to that date, I am asserting that any such time accrued would be irrelevant for the purpose of applying INA Section 212(a)(9)(B)(i)(II).

18. The second point of law addresses and corrects the misstatement of the law contained in the USCIS letter to me dated January 13, 2005 (Exhibit 1). And while the first point of law establishes the initial boundary of the timeline actually relevant to my case, this second point establishes the final relevant boundary: June 23, 2000. Without affirming or denying that I actually accrued any time in unlawful presence after that date, I am asserting that any such time accrued would be irrelevant for the purpose of applying INA Section 212(a)(9)(B)(i)(II).

19. To be sure, INA Section 212(a)(9)(B)(i)(II) was not written with ideal exactitude. If read in isolation from INA Section 212(a)(9)(B)(i)(I), a construction such as the one presented in the USCIS letter is feasible. However, leaving aside the non-dispositive language contained in the USCIS letter to me, the legacy INS (now USCIS) has always taken the position that INA Section 212(a)(9)(B)(i)(II) should be read in conjunction with, and indeed tracks the language of, INA Section 212(a)(9)(B)(i)(I). This second point of law is stated with nearly flawless precision in Section 12:19 of the IL&F treatise. A reading of Section 12:19 of the IL&F treatise, in conjunction with a review of INA 212(a)(9)(B)(i), yields the following as the

only valid application to my circumstances of INA Section 212(a)(9)(B)(i)(II): if, at any time between April 1, 1997, the effective date of this Section, and June 23, 2000, the date that I last departed from the U.S., I accrued a period of time of one year or more in unlawful status, then, if any departure from the U.S. was made subsequent to any such accrual, I would be inadmissible to the U.S. for a period of 10 years from the date of that departure. In accordance with the 2 additional points of law that I present below, I will demonstrate conclusively that, in the period between April 1, 1997, and June 23, 2000, I cannot be deemed to have accrued even one second, let alone one year, of time in unlawful status. Accordingly, INA Section 212(a)(9)(B)(i)(II) is totally inapplicable to me.[4]

20. The third point of law concerns the method that is currently employed by USCIS – a well-established method, with consistent, uniform application by the legacy INS since September of 1997 – when determining periods of unlawful presence with respect to students. This method is well explained in Section 12:20 of the IL&F treatise (see the first full paragraph on page 12-22 of the treatise). Applying this method to the facts in my case, any determination now made by USCIS that I was guilty of a violation of my student status – again, I do not concede any such violation, but for the purposes of my argument I do not strenuously defend myself here from such a finding – would trigger the accrual of a period of unlawful status commencing only with the date of that determination; unlawful presence would <u>not</u> begin to accrue as of the date of the ostensible violation. This being the case, the period of validity of my student status, from December 16, 1998 through December 15, 2000, is inviolable: at no time during that period could I have accrued unlawful presence, and hence no departure from the U.S. that I made during that period could have been made subsequent to an accrual of even one second, let alone one year, of unlawful presence.

[4] Since I argue that, within the initial and final boundaries of the time period that applies here, I never accrued any time time at all in unlawful presence, there is no need for me to dwell on how the period of time in unlawful presence is counted. The reader interested in this point is directed to Section 12:19 of the IL&F treatise, which states: "The period of time [in unlawful presence] is not counted in the aggregate: each period of unlawful presence is counted separately [citation omitted]."

21. The fourth point of law concerns the method that is currently employed by USCIS – again, a well-established method, with consistent, uniform application by the legacy INS since May of 2000 – when determining periods of unlawful presence with respect to applicants for adjustment of status. This method, too, is well explained in Section 12:20 of the IL&F treatise (see the first full paragraph on page 12-18.2 of the treatise). Applying this method to the facts in my case, the period during which my application for adjustment was pending – from the date of filing, which was on or before January 12, 2000,[5] until the date the legacy INS issued an order of denial, January 31, 2001[6] – was a period of "authorized stay." This period of authorized stay is also inviolable: the fact that my adjustment application was ultimately denied makes no difference, nor could any determination now made by USCIS have any retroactive impact on my status as lawfully present during this period.[7] Since it was impossible for me to accrue any time in unlawful presence during this period, it was also impossible for any departures from the U.S. that I made during this period to have triggered a 10 year bar to my admissibility.

22. I will now explain the ambiguity in my presentation of the date that I filed my application for adjustment of status based on my first marriage. As I observed above at page 3, footnote 2, the exact filing date is

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[5] Please see numbered paragraph 22 for an explanation of why I am not specifying a more precise date of filing.

[6] The order of denial incorrectly refers to September 8, 2000, as the date the Form I-130 was filed on my behalf by my first wife and as the date that I filed the Form I-485 application for adjustment of status. I do not possess any documents explicitly referring to the date for which my adjustment interview was scheduled. However, given that the denial of my adjustment application was based on the non-attendance by my wife and myself of the scheduled interview, I believe it is reasonable to assume that September 8 was a misplaced reference to the date of the scheduled interview.

[7] Despite this assertion, and without in any way intending to undermine it, I have nevertheless written a brief account of my first marriage, in an effort to show that it was a real marriage, even though it was concluded by divorce. This summary is attached to this affidavit as Exhibit 9 and made a part hereof. I am furnishing it for much the same reason that I furnished Exhibit 8: to show that I have always acted in good faith with respect to whatever immigration status the U.S. government was kind enough to confer upon me.

unknown to me. The only two documents I possess that shed light on this question contradict each other. According to one document, INS Form G-711 ("Individual Fee Register Receipt"), a copy of which is attached hereto as Exhibit 6 and made a part hereof, on January 12, 2000, I, or more precisely my then-attorney Mark ..... acting on my behalf, filed applications for adjustment of status, advance parole, and employment authorization. I obtained this document on January 21, 2005, from the law offices of ..... and ....., in Largo, Florida, the successor to the law firm where Mr. ..... used to work, and ordinarily such a document would be entitled to be regarded as compelling evidence of the filing date. But I am also in possession of an INS Form I-512 advance parole document, dated October 18, 1999, which suggests a filing date much earlier than January 12, 2000. A copy of this Form I-512 is attached hereto as Exhibit 7 and made a part hereof. This advance parole document was valid for multiple entries as long as it was used prior to October 16, 2000, and I appear to have used it for three entries: first, on November 30, 1999; second, on January 6, 2000; and third on July 16, 2000. This advance parole document very clearly describes me, under "Remarks," as "an applicant for adjustment of status." Logically, if my application for this I-512 was approved on October 18, 1999, I must have filed my application for adjustment of status on or before that date (based on what I believe to be the time the INS would ordinarily take to process and approve a Form I-131 application for advance parole, my best estimate for when I filed the adjustment of status application would be sometime in August of 1999).

There are three points I would like to make about this contradictory evidence. The first point is that USCIS should be able to solve this mystery by examining its own file records; presumably, these records should contain documents and annotations that would establish the actual filing date. The second point is that, despite this first point, and for the sake of providing USCIS with a timeline as accurate as I could possibly make it, I made several attempts to contact attorney ....., including faxing a letter of inquiry to him, in an effort to see if he could shed any light on this matter, but he never responded to my inquiries. My third point is that it makes no difference to my legal argument whether the actual filing date was a) on or before October 18, 1999 (that is to say, a date, most likely in August of 1999, between the date of my marriage and the date my

advance parole was granted) or b) on precisely January 12, 2000. Between December 16, 1998 and December 15, 2000, I held a valid student visa which entitled me to legally reside in, depart from, and return to the United States throughout the period of its validity (provided that I was deemed to be in compliance with the requirements of that status, and I was so deemed at that time). My advance parole document, valid for multiple entries between October 18, 1999, and October 15, 2000, provided concurrent legal authorization to depart from and return to the U.S. throughout its period of validity. The validity of both documents is inviolable: neither document can be retroactively impeached. Taken together, and in conjunction with the periods of validity of the statuses that I held prior to my obtaining this student visa – I refer to an H1-B employee visa valid from 12/10/96 through 12/01/97 and a B-2 visitor's visa valid from 12/97 through 12/98[8] – it is impossible for me to have accrued any time at all in unlawful presence between April 1, 1997 and the date I last departed from the U.S., June 23, 2000. Accordingly, INA Section 212(a)(9)(B)(i)(II) is inapplicable to me.

23. I believe I have now explained why it was impossible for me to accrue any time in unlawful presence while I was in possession of a valid student visa (between December 16, 1998 and December 15, 2000) and also while I had an application for adjustment of status pending with the legacy INS (between the date of filing, on or before January 12, 2000, and the date of the decision, January 31, 2001). Taken together, this period of time is from December 16, 1998 through January 31, 2001. I have focused on this period of time because it covers the years 1999 and 2000 that appeared to be of greatest concern to Officer ..... I assume that she did not question me very much on my immigration history in the time preceding December 16, 1998, for the reason that she correctly perceived that this prior history did not present a problem. I need to be careful, however, and not let any part of my case depend on an untested

[8] As I noted in footnote 3 above, I cannot state the period of validity of my visitor's visa with greater precision because I am relying here entirely on my memory, which is clear but not photographic. I no longer have in my possession the immigration documents that would verify my holding of the visitor's visa status and specify the exact dates of its validity. However, USCIS is in a position to verify, from its own records, their issuance of this visa and the exact dates of its validity.

assumption. For that reason, I am concluding my presentation with a brief review of that part of my immigration history prior to December 16, 1998 that is relevant to INA Section 212(a)(9)(B)(i)(II).

24. As I demonstrated in numbered paragraph 17 above, for the purposes of INA Section 212(a)(9)(B)(i)(II), the counting of time accrued in unlawful presence commenced April 1, 1997. Therefore, in this concluding analysis of my immigration history, I limit my focus to the immigration status or statuses that I held in the period of time between April 1, 1997, and December 16, 1998. There were two such nonimmigrant statuses. The first was as the holder of an H-1B visa, valid between December 10, 1996 and December 9, 1997. During this period of time I made one departure from the U.S.: I left on March 12, 1997 and returned on April 8, 1997. My second status was as the holder of a B-2 visitor's visa, valid, to the best of my recollection, from December 1997 through December 1998. During this period of time I made one departure from the U.S.: I left on December 4, 1998, for Paris, France, where the U.S. Embassy issued a student visa to me, valid from December 16, 1998 through December 15, 2000, and I returned to the U.S. on February 28, 1999. During the period of time that I held these two nonimmigrant statuses, first as a temporary employee and then as a visitor, I was always in lawful presence in the U.S. Accordingly, my departures from the U.S. during this period of time did not trigger the application to me of INA Section 212(a)(9)(B)(i)(II).

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Algernon .....

Sworn to before me this
day of February, 2005

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Notary Public