Exhibit A

April 9, 2021

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
6500 Campus Circle Drive East,
Irving, TX 75063

U.S. Citizenship and Immigration Services

HARI RAM YADAV
c/o HARI RAM YADAV
120 MOCKINGBIRD LN
COPPELL, TX 75019

MSC2090451894

A216-040-813

NOTICE OF INTENT TO DENY

Dear HARI RAM YADAV

Thank you for submitting Form I-485, Application to Register Permanent Residence or Adjust Status, to U.S. Citizenship and Immigration Services (USCIS) under section 245 of the Immigration and Nationality Act (INA).

After a thorough review of your application and supporting documents, we must inform you that we are denying your application for the following reason(s).

Generally, to qualify for adjustment under INA 245, an applicant must:

- Be inspected and admitted or paroled into the United States;
- Be eligible to receive an immigrant visa;
- Be admissible to the United States for permanent residence; and
- Have an immigrant visa immediately available at the time the application is filed.

Pursuant to 8 C.F.R § 103.2(b)(16)(i), if a decision will be adverse to the applicant or petitioner and is based on derogatory information considered by USCIS and of which the applicant and/or petitioner is unaware, he/she will be advised of this fact and offered an opportunity to rebut the information and present explanations as appropriate.

After a thorough review of your application and supporting documents, we must inform you that we intend to deny your application because you are inadmissible to the United States.

Statement of Facts and Analysis, Including Ground(s) for Denial

You filed Form I-485 based on being the beneficiary of a multiple immigrant petitions filed on your behalf, both by yourself and prior employers.

USCIS received your Form I-485 on November 26, 2019, and we reviewed your application to determine your eligibility for adjustment of status. Upon review of your application by an Immigration Services Officer, it was found that you signed to testify that you had reviewed all information on your Form I-485 and certified that it, along with any attached testimony and supporting documents, was true and correct.

FORM I-601 NEEDED: Fraud for Purposes of an Immigration Benefit

On page 13 of 18 on your Form I-485, you were asked on question 64 of that page, "Have you **EVER** submitted fraudulent or counterfeit documentation to any U.S. Government official to obtain or attempt to obtain any immigration benefit, including a visa or entry into the United States?" to which you elected "No."

On page 13 of 18 on your Form I-485, you were asked on question 65 of that page, "Have you **EVER** lied about, concealed, or misrepresented any information on an application or petition to obtain a visa, other documentation required for entry into the United States, admission to the United States, or any other kind of immigration benefit?" to which you elected "No."

Your Form I-485 was signed as true, complete, and accurately reviewed and certified with an original ink signature.

A review of the immigration record shows that you were named as an participant in a fraud scheme regarding your prior employer or prospective employer, ACCELERATED Innovators, Inc., under whose auspices you attempted to obtain a non-immigrant visa to enter the United States. While records show that you later withdrew your application during the visa issuance process abroad, they also show that you had misrepresented your employment under oath to Consular Officers, and then misrepresented this incident once more during the issuance of your most recent employment based visa.

Your purposeful misrepresentation or concealment of information regarding your immigration history in order to gain an immigration benefit makes you inadmissible to the United States under INA 212(a)(6)(C)(i).

A waiver of this ground(s) of inadmissibility may be available to whose who file Form I-601, Application for Waiver of Grounds of Inadmissibility, pursuant to section 212(i) of the Act.

If you wish to apply for this waiver, you must respond to this notice and submit Form I-601, along with the filing fee and evidence to establish that denial of your admission to the U.S. would result in extreme hardship to a qualifying U.S. citizen or lawful permanent resident spouse or parent.

As of the date of this review, however, you have not indicated that you are the child or spouse of a lawful permanent resident or U.S. citizen; and you may not be eligible to have the Form I-601 approved on your behalf if you do not have an appropriate qualifying relative.

If you do not wish to apply for a waiver, you must respond to this notice and provide a signed statement indicating you have no desire to pursue the waiver application. If you disagree with the request above, you may also provide written explanation/evidence showing your reasons. If you wish to withdraw your application for adjustment of status, you must sign your request to withdraw with an original ink signature and accompany any request with a photocopy of a current valid identification document by which your signature may be verified.

Any submission of the Form I-601, fees, and related evidence must be made to the correct office and in accordance with the instructions related to the form as shown on https://www.uscis.gov/i-601 where relevant.

RESPONSE PERIOD ALLOWED

You are granted a period of thirty (30) days (33 days if this notice is served by mail) from the date of this notice to establish why your application should not be denied. All requested information must be submitted at one time. Partial submission of information will result in the adjudication of your case based on the record.

Failure to respond to this notice will result in the denial of your application.

We strongly recommend you keep a copy of all documents that you submit to USCIS in response to this NOID.

Please ensure you include a copy of ALL pages of this letter with any filings which you may make at an office other than the Dallas Field Office so that those filings may be routed to the Dallas Field Office for review.

Submit your response with requested document(s), information, etc. to this address:

U.S. Citizenship and Immigration Services
Attn: Notice of Intent to Deny, I-485
6500 Campus Circle Drive East
Irving, TX 75063

Sincerely,

Wilhelm (Will) Bierman
Director
cc:

MSC2090451894

A216-040-813

MURTHY LAW FIRM | Immigration Matters!®

10451 Mill Run Circle
Owings Mills, MD 21117 USA
410.356.5440 law@murthy.com

April 28, 2021

VIA FEDERAL EXPRESS

U.S. Citizenship and Immigration Services
Attn: Notice of Intent to Deny, I-485
6500 Campus Circle Drive East
Irving, TX 75063

RE: NOTICE OF INTENT TO DENY
I-485 APPLICATION OF HARI RAM YADAV

File Number: MSC2090451894 / A216040813

Dear Sir / Madam:

Pursuant to the Notice of Intent to Deny (NOID), dated April 9, 2021, (attached hereto), issued by U.S. Citizenship and Immigration Services (USCIS or the Service), please find the following information and documentation that resolves all questions in favor of the approval of this I-485 Application.

A. ENTRY OF REPRESENTATION

A new Form G-28, properly executed by the Applicant, Hari Ram YADAV, for the undersigned Attorney, is enclosed with this reply. All future correspondence must be sent to the *Attorney*, pursuant to 8 CFR § 292.5.

B. USCIS FAILS TO PROVIDE ANY EVIDENCE OF FRAUD FOR PURPOSES OF OBTAINING AN IMMIGRATION BENEFIT.

The Service alleges that the Applicant, Mr. Hari Ram Yadav, engaged in a "purposeful misrepresentation or concealment of information regarding your immigration history in order to obtain an immigration benefit." NOID, at 2. This sole basis for this allegation is reported by the NOID as follows:

> A review of the immigrant record shows that you were named as an participant in a fraud scheme regarding your prior employer or prospective employer ACCELERATED Innovators, Inc., under whose auspices you attempted to obtain a non-immigrant visa to enter the United States. While records show that you later withdrew your application during the visa issuance process abroad, they also show that you had misrepresented your employment under oath to Consular Officers, and then misrepresented your employment under oath to Consular Officers, and then misrepresented this incident once more during the issuance of your most recent employment based visa.

There are several flaws in this allegation made by the Service. They all constitute a violation of the laws governing disclosure of derogatory information as well as the standard governing when a finding can be made pursuant to 8 USC § 1182(a)(6)(C)(i).

The Service alleges that the Applicant is "named as an participant in a fraud scheme" with Accelerated Innovators, Inc. First, if this evidence relied upon herein is in "the immigration record" of this Applicant, then the Service is obligated to share the evidence with him. 8 CFR § 103.2(b)(16) provides at its subparts that USCIS is required to disclose the derogatory information[1] so that Mr. Yadav can respond to it. However, when the Service makes generalized statements without even identifying the evidence upon which it relies, it is denying the Applicant the full and fair opportunity guaranteed to him by law. *See*, 8 CFR § 103.2(b)(16)(i). The Service is also precluded from hiding evidence from the Applicant – as it has done in this NOID – that must be disclosed under 8 CFR § 103.2(b)(16)(i) unless it met the requirements of 8 CFR § 103.2(b)(16)(iv) when this NOID was issued.

It is our understanding that Steven and Jody Wigginton, owners of Accelerated Innovators, Inc., were charged with committing visa fraud and that they accepted a plea agreement admitting to their crimes. *See*, a copy of the charges in **Exhibit A** and the Docket Report for the criminal proceeding in **Exhibit B**. The contents of the plea agreement are currently sealed. However, if there is anything in that plea agreement or other document from the criminal proceeding that the Service is using against the Applicant as a basis for these allegations, they must be in this record and disclosed to the Applicant in detail.

USCIS states that the Applicant "attempted to obtain a non-immigrant visa to enter the United States" and while he "later withdrew [his] application during the visa issuance process abroad, they also show that you had misrepresented your employment under oath to Consular Officers." NOID at p. 2. The Applicant confirms that he withdrew the Visa Application he submitted for the H1B based on the Accelerated Innovators, Inc. H1B Approval Notice and he signed a statement under oath in front of a Consular Officer. (**Exhibit C**) The Applicant denies the allegation that he committed fraud or made a material misrepresentation, explaining that he answered questions presented to him to the best of his knowledge. (**Exhibit C**) It was on this basis, of not engaging in fraud or making a material misrepresentation, that the U.S. Consulate issued the Applicant an H1B Visa on October 3, 2013, that U.S. Customs and Border Protection admitted him based on this H1B Visa, and the Service extended his H1B status four (4) times. *See*, **Exhibit D** reflecting that the Consular Officer did not make a 8 USC § 1182(a)(6)(C)(i) finding against the Applicant.

The Applicant was last admitted to the U.S. on July 22, 2016 to work for UTI United States Inc. (**Exhibit E**) Since that admission, Mr. Yadav has remained employed, in the U.S., in H1B status, with USCIS granting extensions of his H1B status on four (4) separate occasions. *See*, **Exhibit F**. In each of these H1B Petition's approved by the Service, a determination was made that Mr. Yadav is admissible to the U.S. and not inadmissible. The law states "[e]very nonimmigrant alien who applies for admission to, or an extension of stay in, the United States, must establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act." 8 CFR § 214.1(a)(3)(i). The Service determined that Mr. Yadav was admissible to the U.S. and therefore eligible for H1B status on August 17, 2016, April 27, 2017, October 4, 2019, and September 24, 2020. (**Exhibit F**) Notably, the Applicant was never granted a waiver pursuant to 8 USC 1182(d)(2) because he was never found inadmissible by the Consular Officer when he withdrew his visa application, as described by USCIS in this NOID, or when he was issued the H1B Visa on October 3, 2013. The law precludes the Service from simply changing its mind. "The approval of Forms 1-129[] in these cases...ha[s] the effect of extending the stay of the respondents and of inferentially affirming the

[1] We also note that USCIS is prohibited from using anything to adjudicate the Applicant's I-485 Application unless it is placed in his record. *See*, 8 CFR § 103.2(b)(16)(ii).

continuing legality of their nonimmigrant status." Matter of Dacanay, 16 I&N Dec. 238, 240 (BIA 1977).

"A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." Campaign Legal Ctr. v. Fed. Election Comm'n, 312 F. Supp. 3d 153, 164 (D.D.C. 2018) (quoting F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012) *aff'd sub nom.* Campaign Legal Ctr. & Democracy 21 v. Fed. Election Comm'n, 952 F.3d 352 (D.C. Cir. 2020). This means USCIS is precluded from summarily ignoring or setting aside their prior adjudicative decisions, especially without any explanation. The statement in this NOID is not such an explanation. The statement in this NOID is unsupported by any credible evidence and is directly contradictory to the evidence that is in the record. There is no basis for the Service to state that the Applicant engaged in fraud or a material misrepresentation. The Service has no factual or legal basis for making a finding pursuant to 8 USC § 1182(a)(6)(C)(i).

C. USCIS HAS NO LAWFUL BASIS TO MAKE FINDING OF WILLFUL MISREPRESENTATION PURSUANT TO 8 USC § 1182(a)(6)(C)(i).

The Service proposes to make a finding of inadmissibility pursuant to 8 USC § 1182(a)(6)(C) against the Applicant for allegedly misrepresenting his employment to a Consular Officer, under oath, despite having evidence showing that the U.S. Consulate took his statement and issued the H1B Visa without any inadmissibility finding. A review of the law and evidence reflects that the record does not support concluding that Mr. Yadav made a willful misrepresentation of any material facts to any Consular Officers.

The law prohibits USCIS from finding 8 USC § 1182(a)(6)(C)(i) inadmissibility without evidence. USCIS fails to identify actual facts in the record showing of this proceeding, that an act of willful misrepresentation was committed. The Applicant's H1B Visa, H1B admission, and four H1B extensions by USCIS demonstrate that Mr. Yadav did not violate the law. *See*, Healy and Goodchild, 17 I&N Dec. at 28 ("given the harsh consequences of a finding of inadmissibility" for fraud or misrepresentation "the factual basis of such finding should be subject to close scrutiny"); and Matter of Shirdel, 19 I&N Dec. 33, 35 (BIA 1984) (The government should "closely scrutinize the factual basis for a possible finding" of fraud or misrepresentation).

There must be some evidentiary basis for USCIS to conclude that a person is inadmissible under 8 USC§ 1182(a)(6)(C)(i). *See*, PM Vol. 8, Part J, Chap. 3, §A.1. 8 USC § 1182(a)(6)(C)(i) was enacted to provide a basis for refusing admission to the United States of those aliens who commit fraud or willfully make a material misrepresentation to obtain an immigration benefit. A party is not subject to the penalties of 8 USC § 1182(a)(6)(C)(i) if "there is no evidence that the alien presented or intended to present fraudulent documents or documents containing material misrepresentations" to USCIS. Matter of D-L- and A-M-, 20 I. & N. Dec. 409, 412 (BIA 1991). "[S]ince the statute makes motive critical, [the parties alleging the conduct warranting an INA § 212(a)(6)(C)(i) finding] must provide some evidence of it, direct or circumstantial." INS v. Elias-Zacarias, 502 U.S. 478, 483 (1992). ***There is no such evidence.***

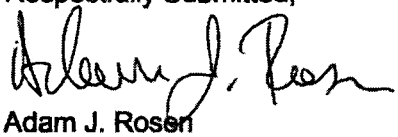
To conclude that someone willfully misrepresented facts according to 8 USC § 1182(a)(6)(C)(i), USCIS is required to find that the party falsely represented a material fact, that the party knew of its falsity, the party intended to deceive a government official empowered to act upon that request, and the Consular Officer believed the falsity and acted based on it to issue a visa or other benefit under the INA. *See*, PM Vol. 8, Part J, Chap. 2, §C (reviewing the requirements for finding commission of fraud by alien). *See*, Matter of G-G-, 7 I. & N. Dec. 161 (BIA 1956)

(explaining the legal standard necessary for a fraud finding). A material misrepresentation requires that a party falsely represented a material fact and that the misrepresentation was willful. *See*, PM Vol. 8, Part J. Chap. 2 §B (reviewing the elements for fining a material misrepresentation under INA §212(a)(6)(C)(i). *See*, Matter of Kai Hing Hui, 15 I. & N. Dec. 288 (BIA 1975) (finding a material misrepresentation after consideration of evidence in the records) and Healy and Goodchild, 17 I. & N. Dec. at 28 (reversing misrepresentation finding when alien presented an "explanation...plausible, if not compelling"). The materiality of a misrepresentation must be show either that the party "is excludable [*i.e.*, inadmissible] on the true facts" or that the party's "misrepresentation tend[ed] to shut off a line of inquiry, which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be [inadmissible]." Matter of S- and B-C-, 9 I. & N. Dec. 436, 447 (BIA 1961). *See*, Kungys v. U.S., 485 U.S. 759 (1988) (holding "whether...concealments or misrepresentations were material is whether they had a natural tendency to influence the decisions" of the government). The Applicant gave his statement under oath to a Consular Officer who determined – contrary to what the NOID states – that Mr. Yadav did not purposely misrepresent any material facts. The evidence submitted here proves that point.

D. Conclusion

The information and documentation herein demonstrates the requirements for the I-485 Application to be approved. As this completely responds to all of the issues raised by your request, we respectfully request a prompt decision. Thank you in advance for your time and favorable attention to this matter.

Respectfully Submitted,



Adam J. Rosen
Attorney at Law

Enclosures