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U.S. Citizenship
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JUN 14 2005

[Redacted]

FILE:

[Redacted]

Office: NEWARK, NEW JERSEY

Date:

IN RE:

Applicant:

[Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for a Waiver of Inadmissibility was denied by the District Director, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the matter remanded for entry of a new decision.

The applicant is a citizen of El Salvador who entered the United States without inspection on October 21, 2000. The applicant is inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), as she had attempted to procure admission into the United States on November 20, 1999 by presenting a Costa Rican passport in another person's name. The applicant is the beneficiary of an approved petition for alien relative filed by her U.S. citizen stepfather. The applicant had also applied for Temporary Protected Status, and the AAO notes that she possesses two separate alien numbers, [REDACTED] and [REDACTED] which should be consolidated into a single record.

The record reflects that on October 31, 2003, the district director denied the applicant's application for a waiver of grounds of inadmissibility (Form I-601) and application for permission to reapply for admission into the United States after deportation or removal (Form I-212) in a single decision. The district director found that the applicant had failed to establish that her inadmissibility would cause extreme hardship to her U.S. citizen stepfather and lawful permanent resident (LPR) mother. Pursuant to 8 C.F.R. §103.2(b)(19), the AAO finds that the district director must render two separate decisions on these two applications. Furthermore, according to the Adjudicator's Field Manual, chapter 43.2(d), the waiver application should be adjudicated first, since the applicant's admissibility will ultimately hinge on her eligibility for the waiver. The instant record is thus remanded to the district director for separate adjudication of the Forms I-601 and I-212.

It is also noted that the district director indicated that the applicant withdrew her application for adjustment of status on April 19, 2003 at the conclusion of the adjustment interview. If the application had indeed been withdrawn, however, there would be no purpose in filing and adjudicating an I-601 waiver application based on her application for adjustment of status. If the waiver application was instead based on the application for Temporary Protected Status, the I-601 should be adjudicated pursuant to § 244(c)(2)(A) of the Act, which describes different criteria from those found in § 212(i) of the Act. This case is therefore also remanded to allow the district director to clarify the basis for the I-601 waiver application.

The district director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. If the I-601 waiver application is denied, the decision is to be certified to the AAO. In addition, the applicant is to be allowed to respond to the certification without fee. As always, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The district director's decision is withdrawn. The application is remanded to the district director for entry of a new decision, which if adverse to the applicant, is to be certified to the AAO for review.