



U.S. Citizenship  
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FILE:

Office: CHICAGO

Date: SEP 18 2006

IN RE:

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

ON BEHALF OF PETITIONER:

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The district director denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria who entered the United States on or about November 16, 1996 using a passport that was not issued to him and did not belong to him. On May 29, 1997 a Form I-130 Petition for Alien Relative was submitted on his behalf. On August 19, 2004, the district director issued a Notice of Intent to Deny the Form I-130 Petition for Alien Relative on the basis that the application lacked documentation to prove that the marriage was bona fide. On January 20, 2005, the director denied the Form I-130 Family Visa Petition, the Form I-485 Application for Adjustment of Status, and the Form I-601 waiver application. The director acknowledged that the Service had mistakenly accepted a Form I-601 waiver application from the applicant when his Form I-130 had not yet been adjudicated.

The district director determined that, since the I-130 had been denied, there was no underlying petition upon which to base a Form I-601 waiver application.

On appeal, counsel asserts that the applicant can file a waiver for the use of a fraudulent passport because he has the requisite qualifying relatives who would suffer extreme hardship if his application for admission were denied. Counsel further asserts that the denial of the I-130 and the I-485 were without merit.

As a preliminary matter, the AAO notes that only the Board of Immigration Appeals (BIA) has jurisdiction to review the director's denial of the I-130. *See* 8 C.F.R. § 1003.1(b)(5). Therefore this issue is not before the AAO.

Regarding the denial of the Form I-601 waiver application, 8 C.F.R. § 212.7(a) states that a Form I-601 waiver can be filed if there is a pending application for adjustment of status. In this case, the director denied the applicant's I-485 application and I-130 petition. The AAO finds that since the I-130 and I-485 were denied, there is no underlying petition upon which to base the Form I-601 waiver.

**ORDER:** The appeal is dismissed.