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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: ATLANTA

Date:

NOV 29 2007

IN RE:

[REDACTED]

APPLICATION:

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

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the District Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the matter returned to the district director for further proceedings consistent with this decision.

The record reflects that the applicant is a native and citizen of Belgium. On August 29, 2001, the applicant's spouse, Latonya Iseghohi, a U.S. citizen, filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary, which was accompanied by the applicant's Application to Register Permanent Resident or Adjust Status (Form I-485). On June 22, 2004, a notice was sent to the applicant informing him that he was required to file an Application for Waiver of Ground of Inadmissibility (Form I-601). The applicant filed this application on August 11, 2004. On June 22, 2005, the district director issued to the applicant's spouse a Notice of Intent to Deny (NOID) the Form I-130 petition on the grounds that she had failed to prove that the marriage between her and the applicant was genuine. Also on June 22, 2005, the district director issued a decision denying the applicant's waiver application on the grounds that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The applicant has appealed that decision. The record reflects that no final decision on the Form I-130 petition has been issued.

The necessity of filing a Form I-601 waiver application is predicated on the existence of an underlying petition or application, in this case the applicant's Form I-485 application for permanent resident status. Although USCIS allows for the simultaneous filing of Forms I-130 and I-485, the applicant's eligibility to apply for permanent resident status is dependant on approval of the Form I-130 petition filed by his spouse.

In the absence of an approved Form I-130 petition, the adjudication of the applicant's Form I-601 waiver application was unnecessary. Therefore, the district director's decision denying the Form I-601 waiver application is withdrawn and the appeal rejected. The matter will be returned to the district director for adjudication of the Form I-130 petition, and then, if necessary, adjudication of the applicant's Form I-601 and issuance of a new decision thereon.

ORDER: The appeal is rejected. The matter is returned to the district director for further proceedings consistent with the foregoing.