identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

H 2

FILE: [redacted] Office: MIAMI DISTRICT OFFICE Date: DEC 03 2004

IN RE: [redacted]

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of China who was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I). At the time of the appeal, the applicant was the spouse of a U.S. citizen seeking a waiver of inadmissibility in order to remain in the United States with her husband and adjust status to that of a lawful permanent resident under INA § 245, 8 U.S.C. § 1255, as the beneficiary of an approved immediate relative petition filed on her behalf by her husband. The request for waiver of inadmissibility was denied on May 12, 2003. The record has been supplemented with a letter from the applicant's spouse. The letter is accompanied by copies of the couple's marriage certificate and a summons issued by the Orange County, California Superior Court on a divorce petition filed by the applicant's spouse, and an original receipt for an application for a California driver's license. The letter states, in part, "I have filed for divorce. She has a felony back in Florida where we got married and also here in California. She tried to kill me. Please investigate before further procedure." The signature on the letter appears to be the same as other known exemplars of his signature in the record.

Under the circumstances, the AAO accepts the above letter as a withdrawal of the immediate relative petition, approved on April 24, 2003. Pursuant to 8 C.F.R. § 103.2(b)(6), a petitioner may withdraw an approved petition at any time before the beneficiary is granted adjustment of status. In the absence of an underlying relative petition, the applicant has no basis to adjust her status to that of a lawful permanent resident. In view of her ineligibility to adjust status, the application for waiver of inadmissibility is now moot. Therefore, no purpose would be served in adjudicating the instant appeal of the denial of the waiver application.[1] Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

---

[1] The AAO further notes that the district director has already denied the application to adjust status as a permanent resident on June 30, 2003. The district director received the instant appeal on June 9, 2003, but the office did not process the fee until October 29, 2003. It appears the appeal of the waiver denial did not reach the file in a timely manner. The application for adjustment was denied, after the expiration of the appeal period, when it appeared that no appeal had been timely received. The denial was premature, given the pending appeal, and as such does not affect AAO processing of a properly filed appeal. However, under the circumstances of this case, the relative petition is deemed to be withdrawn and it appears there will therefore be no cause to reopen the denial of the adjustment application.