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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CLEVELAND, OHIO

Date: AUG 24 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The District Director, Cleveland, Ohio, denied the application for waiver of inadmissibility, which is now before the Administrative Appeals Office (AAO) on appeal. The decision of the district director will be withdrawn and the matter remanded to the district director for further action consistent with this decision.

The record reflects that the applicant is a native and citizen of Germany. On April 23, 2002, the applicant's spouse, [REDACTED], 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 May 12, 2005, the district director issued a Notice of Intent to Deny the Form I-485 based on the applicant's unlawful presence in the United States. The notice informed the applicant that she could file an Application for Waiver of Ground of Inadmissibility (Form I-601). The applicant filed a Form I-601 on June 13, 2005. On September 1, 2005, the district director issued a decision denying the applicant's waiver application on the grounds that the applicant failed to establish extreme hardship to a qualifying relative. The district director also issued a denial of the Form I-485 Application for Permanent Residence. The applicant has appealed the denial of the Form I-601 waiver application. The record reflects that no final decision on the Form I-130 petition has been issued.

The filing of a Form I-601 waiver application is predicated on the necessity to demonstrate admissibility, which in this case is a requirement for adjustment to permanent resident status under section 245 of the Act. Although USCIS allows for the simultaneous filing of Forms I-130 and I-485, the applicant's eligibility to apply for adjustment to permanent resident status is dependent on approval of the Form I-130 petition filed by her spouse.

The purpose of the Form I-130 petition is to establish for immigration purposes the validity of the marriage relationship between the applicant and his spouse. In the absence of an approved I-130 petition, the applicant is not entitled to apply for adjustment of status, and her application for adjustment cannot be approved regardless of whether she is admissible or, if not, whether a waiver is available for any ground of inadmissibility. Furthermore, a determination that the applicant has demonstrated extreme hardship to her spouse and thus qualifies for a waiver of inadmissibility will be rendered moot if, in the subsequent adjudication of the Form I-130, it is determined that their marriage is not bona fide.

Therefore, the AAO finds that in the absence of an approved Form I-130, the district director's decision denying the Form I-601 was premature. The decision of the district director will be withdrawn and the matter remanded for issuance of a decision on the Form I-130 petition filed by the applicant's spouse. If that petition is denied, the district director shall deny the Form I-485 and Form I-601 accordingly. If that petition is approved, the district director shall issue a new decision addressing the merits of the applicant's Form I-601 application. If that decision is adverse to the applicant, the district director shall certify the decision to the AAO for review.

ORDER: The decision of the district director is withdrawn and the matter is remanded to the district director to reopen the applicant's Form I-485 and Form I-601 applications and to issue a decision on the Form I-130 petition filed by the applicant's spouse.