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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



**U.S. Citizenship  
and Immigration  
Services**

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DATE:

**MAY 21 2012**

Office: BALTIMORE

FILE: [REDACTED]

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)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*George P. Perry*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland. 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 Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States using a legal permanent resident card that did not belong to her. The applicant's spouse is a United States citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her family.

The District Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of District Director*, dated February 16, 2010.

The record reflects that the applicant sought to enter the United States using an alien registration card belonging to someone else on July 24, 1999, was ordered removed and removed from the United States on the same day. The applicant reentered the United States without inspection the next day. The applicant currently resides in the United States. The applicant has not contested her inadmissibility. As a result of her misrepresentation, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

On February 16, 2010, the District Director denied the Petition for Alien Relative (Form I-130) naming the applicant as beneficiary, finding that the petitioner abandoned the petition after failing to appear for three scheduled appointments. The record reflects that the applicant currently is not the beneficiary of an approved Form I-130, nor is a Form I-130 petition currently pending.

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 her 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 of status cannot be approved regardless of whether she is admissible or, if not, whether a waiver is available for any ground of inadmissibility.<sup>1</sup>

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<sup>1</sup> It appears from the record that the applicant also is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States before she departed, and under section 212(a)(9)(C) of the Act, for having re-entered without being admitted after her removal. The AAO will not address these issues, however, in the absence of an approved I-130 petition.

In the absence of an underlying approved Form I-130, Petition for Alien Relative, the Form I-601, Application for Waiver of Grounds of Inadmissibility, is moot. The appeal of the denial of the waiver must therefore be dismissed.

**ORDER:** The appeal is dismissed because the waiver is unnecessary.