



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

(b)(6)



DATE: **APR 17 2014**

Office: NEBRASKA SERVICE CENTER

FILE: 

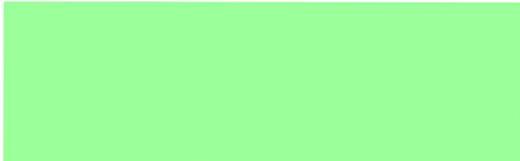
IN RE:

Applicant: 

APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further action.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and children in the United States.

In a decision dated September 19, 2013, the director found that the applicant's immigrant visa application was terminated for lack of action on October 1, 2012. The director therefore found that the applicant is ineligible to file a waiver application and denied the application accordingly.

On appeal, counsel contends that it is not possible the visa application was terminated for lack of action on October 1, 2012, because the waiver application was filed on September 20, 2012, eleven days earlier. According to counsel, the waiver application was filed pursuant to a letter from USCIS dated September 27, 2011, instructing the applicant to file for a waiver. In support of his claims, counsel submits a copy of the Refusal Worksheet dated September 27, 2011, instructing the applicant to file a waiver application within one year and a copy of the receipt showing the waiver application was received by USCIS on September 20, 2012.

After a careful review of the record, the AAO remands the matter to the director as there is insufficient documentation in the record to show that the applicant is ineligible to file a waiver application. The Refusal Worksheet from the Department of State which counsel submits on appeal indicates that the applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and was eligible to apply for a waiver. A warning on the Refusal Worksheet states, "If you fail to take the action requested within one year following visa denial under section 221(g) of the Immigration and Nationality Act, section 223(g) of the Act requires that your application be cancelled." The record shows the applicant filed a waiver application within one year of the Refusal Worksheet, as instructed. There is no evidence in the record showing the applicant's visa application was terminated for lack of action.

Therefore, there is insufficient evidence in the record to support a finding that the applicant is ineligible to file a waiver application. The AAO remands the matter to the director to provide evidence for the record that the visa application was, in fact, terminated and return the record to the AAO for dismissal. If, however, there is no evidence that the visa application was terminated, the director shall issue a new decision addressing the merits of the applicant's waiver application. The new decision, if adverse to the applicant, is to be certified to the AAO for review.

ORDER: The matter is remanded to the field office director for further proceedings consistent with this decision.