U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: JUL 0 9 2014 Office: LOS ANGELES 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 (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California. 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the United States by fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States.

The Field Office Director found that the applicant failed to establish that she has a qualifying relative, a spouse or parent, that would allow her to obtain a waiver. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director,* dated May 31, 2013.

On appeal, the applicant's attorney indicates that the applicant is a widow of a legal permanent resident who filed a Petition for Alien Relative (Form I-130) on her behalf that was approved prior to April 30, 2001, and therefore she qualifies to adjust her status. Counsel also asserts that the applicant's deceased spouse is her qualifying relative for purposes of her waiver application, because the Act does not state that a qualifying relative "must be not deceased." *See Counsel's Letter Accompanying the Appeal*, dated June 28, 2013.

The record includes, but is not limited to, a Notice of Appeal or Motion (Form I-290B); a letter-brief written on behalf of the applicant; financial documentation attached to the applicant's affidavit of support; relationship and identification documents for the applicant and her family members; a death certificate for the applicant's husband; a marriage certificate for the applicant and her deceased husband; and two approved Forms I-130. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which must be the U.S. citizen or lawfully resident spouse or parent of the applicant. Counsel asserts that the applicant's deceased spouse is her qualifying relative, and in his brief, outlines hardship her deceased spouse would experience "through his next of kin," specifically, the applicant's U.S. citizen children and grandchildren.

Counsel provides no legal authority supporting his position that section 212(i) of the Act does not require extreme hardship to be shown to a living relative. Moreover, although section 204(l) of the Act allows certain surviving beneficiaries of petitions to seek relief when qualifying relatives are deceased, a Form I-130 must have been pending or approved when the qualifying relative died.[1] The applicant's husband signed the Form I-130 on October 21, 1991, and he died shortly thereafter, on November 25, 1991. The Form I-130 was not filed until March 19, 1992, after the applicant's spouse's death, and it was approved on May 9, 1992. Prior to the death of the applicant's spouse, the applicant was not the beneficiary of a pending or approved petition, because the Form I-130 was filed after his death.

The applicant has not provided evidence to establish that she has a qualifying family member. Neither the applicant's U.S. citizen daughter or deceased husband, who filed Forms I-130 on her behalf, are qualifying relatives under section 212(i) of the Act. In order to qualify for a waiver under section 212(i) of the Act, an applicant must demonstrate extreme hardship to a U.S. citizen or lawfully resident spouse or parent. As such, the applicant is statutorily ineligible for relief.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

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[1] Section 204(l) provides, in pertinent part:

(1) IN GENERAL- An alien described in paragraph (2) who resided in the United States at the time of the death of the qualifying relative and who continues to reside in the United States shall have such petition described in paragraph (2), or an application for adjustment of status to that of a person admitted for lawful permanent residence based upon the family relationship described in paragraph (2), and any related applications, adjudicated notwithstanding the death of the qualifying relative, unless the Secretary of Homeland Security determines, in the unreviewable discretion of the Secretary, that approval would not be in the public interest.

(2) ALIEN DESCRIBED- An alien described in this paragraph is an alien who, immediately prior to the death of his or her qualifying relative, was—

> (A) the beneficiary of a pending or approved petition for classification as an immediate relative (as described in section 201(b)(2)(A)(i) . . . .