

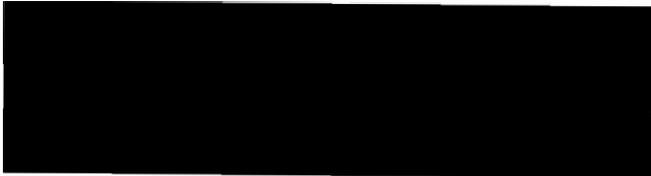
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE:



RELATES)

Office: MEXICO CITY, MEXICO
(PANAMA CITY, PANAMA)

Date: JUL 01 2009

IN RE:



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:

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.

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).

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the Form I-130, Petition for Alien Relative, underlying the approved Form I-129F (K-3 Petition), Petition for Alien Fiance(e), was denied due to abandonment, and the relevant Form I-601, Application for Waiver of Grounds of Excludability ("I-601 Application") is therefore moot as it lacks a valid underlying Form I-129F (K-3 Petition).

The applicant is a native and citizen of Colombia 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 by fraud or willful misrepresentation. The applicant has a U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, at 3, dated July 5, 2006.

On appeal, the applicant details the reasons why the applicant misrepresented himself and also states that she is seeing a doctor as she is on the brink of severe depression. *Form I-290B*, at 2, received January 31, 2007.

The record includes, but is not limited to, a letter from the applicant's spouse's physician and the applicant's spouse's statement.

The record reflects that on February 12, 2000 the applicant sought admission to the United States with a visa and passport in another person's name. As a result of this misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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

- (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 that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

However, the AAO will not determine whether the applicant is eligible for a waiver under section 212(i) of the Act. The Form I-130, Petition for Alien Relative, underlying the approved Form I-129F (K-3 Petition), Petition for Alien Fiance(e), was denied due to abandonment on August 9, 2006. The AAO notes that to benefit from a Form I-129F (K-3 Petition) the applicant must be a beneficiary of a pending or approved I-130 Petition. Section 101(a)(15)(k)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(k)(ii), defines the beneficiary of a K-3 petition as an alien must who—

(ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, **is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner**, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa....

The regulation at 8 C.F.R. § 214.2(k)(7) provides, in part:

To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, . . . **the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative**, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F....

In that the applicant is not the beneficiary of a pending or approved Form I-130, she is not eligible to benefit from the Form I-129F (K-3 Petition) that has been approved on her behalf. Therefore, the applicant's Form I-601 is moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant cannot meet that burden. Accordingly, the appeal will be dismissed as the underlying waiver application is moot.

ORDER: The appeal is dismissed as the underlying waiver application is moot.