



U.S. Citizenship  
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Services

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FILE:

Office: BUFFALO, NEW YORK

Date:

JUN 26 2009

IN RE: Applicant:

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:

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, Buffalo, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of India 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 having attempted to procure an immigrant benefit by fraud and/or willful misrepresentation. Consequently, the applicant submitted a Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) in November 2001.

The district director noted that the Form I-130, Petition for Alien Relative (Form I-130), filed on the applicant's behalf had been revoked on August 29, 2006 and as such, the Form I-601 was thus denied. *Decision of the District Director*, dated August 29, 2006. On September 27, 2006, the applicant appealed the decision denying the Form I-601, by submitting the Form I-290B, Notice of Appeal (Form I-290B).

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 immigrant 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...

On March 10, 2009, the AAO sent a Request for Evidence (RFE) to the applicant, noting as follows:

Although the record establishes that the applicant filed an appeal of the Form I-130 revocation with the Board of Immigration Appeals (BIA), as noted above, no decision from the BIA with respect to that appeal is contained in the record to establish the current status of the Form I-130. If the BIA has affirmed the revocation of the Form I-130, no purpose would be served in adjudicating the appeal of the denial of the Form I-601

as there is no underlying application for admission pending at this time. If the I-130 approval has been reinstated by the BIA, the AAO will proceed with the appellate adjudication accordingly. Therefore, the AAO asks that the applicant submit evidence of the BIA's decision with respect to the applicant's Form I-130, filed in January 1998, approved in April 1998, and subsequently revoked in August 2006.

*See RFE*, dated March 10, 2009. The applicant was given 12 weeks from the date of the RFE to respond to the AAO. As of today, no response to the RFE has been submitted. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). As the applicant has failed to establish that his I-130 has been reinstated, the AAO concurs with the district director that the applicant is statutorily ineligible for a waiver under section 212(i) of the Act, for fraud and/or will misrepresentation.

In conclusion, as the record establishes, on August 29, 2006, the Form I-130 filed on behalf of the applicant was revoked. In addition, on August 29, 2006, the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) was denied. As the applicant's Form I-130 has been revoked, no purpose would be served in adjudicating the appeal of the denial of the Form I-601 as there is no underlying application for admission pending at this time.

**ORDER:** The appeal is dismissed.