

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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**

H₂

FILE:

[REDACTED]

Office: PHILADELPHIA, PA Date: NOV 09 2009

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:

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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The Field Office Director's decision will be withdrawn and the matter remanded for the reopening of the applicant's adjustment and waiver applications.

The applicant is a native and citizen of India. He was found to be inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) of the Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by fraud and willful misrepresentation. He is married to a U.S. citizen. He seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) on July 29, 2008.

The applicant's spouse filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary on June 28, 2008, which was accompanied by the applicant's Application to Register Permanent Resident or Adjust Status (Form I-485). The applicant filed the Form I-601, Application for Waiver of Grounds of Inadmissibility, on September 29, 2006. The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) on July 29, 2008. The record reflects that no final decision on the Form I-130 petition has been issued.

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 lawful permanent resident status under section 245 of the Act. Although U.S. Citizenship and Immigration Services (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 the approval of the Form I-130 petition filed by his 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 his spouse. In the absence of an approved Form I-130 petition, the applicant is not entitled to apply for adjustment of status, and his application for adjustment cannot be approved regardless of whether he is admissible or, if not, whether a waiver is available for any ground of inadmissibility. Furthermore, a determination that the applicant has demonstrated extreme hardship to his spouse and thus qualifies for a waiver of inadmissibility will be rendered moot if, in the subsequent adjudication of the Form I-130, it is determined that their marriage is not bona fide.

Therefore, the AAO finds that in the absence of an approved Form I-130, the Field Office Director's decision denying the Form I-601 was premature. The decision of the Field Office Director will be withdrawn and the matter remanded to the Field Office Director to issue a decision on the Form I-130 petition filed by the applicant's spouse.

ORDER: The decision of the Field Office Director is withdrawn and the matter is remanded to the Field Office Director to reopen the applicant's Form I-485 and Form I-601 applications and issue a decision on the Form I-130 petition filed by the applicant's spouse. If that petition is denied, the Field Office Director shall deny the Form I-485 and Form I-601 accordingly. If that petition is approved, the Field Office Director shall issue a new decision addressing the merits of the applicant's Form I-601 application. If that decision is adverse to the applicant, the Field Office Director shall certify the decision to the AAO for review.