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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



U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEWARK

Date:

SEP 21 2009

[REDACTED]
(relates)
(relates)

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility

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 District Director, Newark, New Jersey, denied the Application for Waiver of Grounds of Inadmissibility. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Ecuador. On January 7, 2003, the applicant's spouse, [REDACTED], who was then a U.S. lawful permanent resident, filed a Petition for Alien Relative (Form I-130) naming the applicant as the beneficiary.¹ On December 13, 2005, the Director, Vermont Service Center, denied the Form I-130 petition. The Board of Immigration Appeals (BIA) dismissed a subsequent appeal for lack of jurisdiction.

On October 17, 2006, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant attached to the Form I-601 a copy of the receipt notice for the Form I-130 filed by his spouse on his behalf. The District Director, Newark, denied the applicant's waiver application after determining that the applicant is inadmissible under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act) and there is no waiver or exception available for this ground of inadmissibility unless the applicant qualifies for adjustment of status under section 245(i) of the Act. The District Director further determined that there is no evidence that the applicant qualifies for adjustment of status under section 245(i). The AAO notes that the record does not contain evidence that the applicant filed an Application to Adjust Status (Form I-485).

On appeal, the applicant, through counsel, asserts that on April 30, 2001, his employer filed a labor certification application on his behalf.

The status of an alien who was inspected and admitted or paroled in the United States may be adjusted by the Secretary, Department of Homeland Security, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and an immigrant visa is immediately available to him at the time his application is filed. See Section 245(a) of the Act. An alien who enters the United States without inspection may apply for adjustment of status if an alien relative petition or application for labor certification was filed on or before April 30, 2001. See Section 245(i) of the Act; 8 C.F.R. § 245.10. On December 13, 2005, the District Director denied the Form I-130, Petition for Alien Relative, filed by the applicant's spouse on his behalf. The BIA dismissed a subsequent appeal of this denial. The record does not show that the applicant is the beneficiary of an approved application for labor certification. Therefore, the applicant does not have an approved immigrant petition upon which he can file a Form I-485.

A Form I-601 is filed where an alien must prove that he or she is admissible to the United States but can only do so by obtaining a waiver of a ground or grounds of inadmissibility. In the absence of such a requirement, the filing of a Form I-601 is premature. Thus, the necessity of filing a Form I-601 is dependent on the filing of a Form I-485, that is, in turn, based on an approved immigrant petition. In the absence of an underlying approved Form I-130 or Immigrant Petition for Alien

¹ The record reflects that on June 3, 2009, [REDACTED] naturalized to become a U.S. citizen.

Worker (Form I-140) and a pending Form I-485, the filing of the the Form I-601, is premature. Furthermore, the applicant is inadmissible under section 212(a)(6)(A)(i) of the Act and there is no waiver available for this ground of inadmissibility. Therefore, the appeal must be dismissed.

ORDER: The appeal is dismissed.