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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: [Redacted] Office: SAN FRANCISCO, CA

Date: **FEB 04 2010**

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

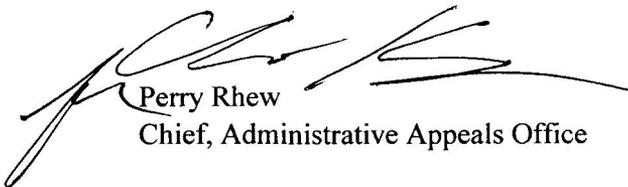
ON BEHALF OF APPLICANT:

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, San Francisco, California, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, which is now before the Administrative Appeals Office (AAO) on appeal. The decision of the district director will be withdrawn and the matter remanded to the district director to reopen the applicant's Form I-485 and Form I-601 applications and issue a decision on the Form I-130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 district director shall deny the Form I-485 and Form I-601 accordingly. If that petition is approved, the district 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 district director shall certify the decision to the AAO for review.

The record reflects that the applicant is a native and citizen of Mexico. On April 12, 2001, the applicant's spouse, [REDACTED] a U.S. citizen, filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary, which was accompanied by the applicant's Application to Register Permanent Resident or Adjust Status (Form I-485). On February 11, 2002, the Form I-130 was denied for failing to appear for an interview. *Decision of the District Director*, dated February 11, 2002. On February 25, 2002, the applicant filed a motion stating he never received his interview letter. The District Director denied the motion on March 5, 2002. *Decision of the District Director*, dated March 5, 2002.

On July 26, 2002, [REDACTED] filed another Form I-130, again naming the applicant as beneficiary, accompanied by a Form I-485. On March 25, 2003, a notice was sent to the applicant informing him that he was required to file an Application for Waiver of Ground of Inadmissibility (Form I-601). The applicant filed this application on June 24, 2003. On July 21, 2004, the district director issued a decision denying the applicant's waiver application on the grounds that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The applicant has appealed that decision. 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 permanent resident status under section 245 of the Act. Although United States 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 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 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 district director's decision denying the Form I-601 was premature. The decision of the district director will be withdrawn and the matter remanded to the district director to issue a decision on the Form I-130 petition filed by the applicant's spouse.

ORDER: The decision of the district director is withdrawn and the matter is remanded to the district 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 district director shall deny the Form I-485 and Form I-601 accordingly. If that petition is approved, the district 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 district director shall certify the decision to the AAO for review.