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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



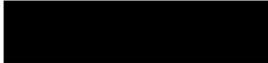
U.S. Citizenship and Immigration Services

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FILE:



Office: ATLANTA, GEORGIA

Date: SEP 23 2010

IN RE:

Applicant:



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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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for

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Chief, Administrative Appeals Office

**ACTION COMPLETED
APPROVED FOR FILING**
Initials: JT Date: 6/22/11
FCO/Unit COW

DISCUSSION: The waiver application was denied by the Field Office Director, Atlanta, Georgia, and 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 Senegal, who entered the United States on January 18, 2001, on a B-1/B-2 nonimmigrant visa. On December 17, 2004, the applicant married his wife, a United States citizen, in Georgia. On December 22, 2004, the applicant's wife filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On June 29, 2006, the applicant's Form I-130 was approved. On July 6, 2006, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On August 21, 2007, the applicant's Form I-130 was revoked based on a request by the applicant's wife. On the same day, the Field Office Director denied the applicant's Form I-485 and Form I-601, finding that the applicant had failed to establish that extreme hardship would be imposed on his qualifying relative. On October 3, 2007, the applicant's wife sent a letter asking to withdraw her original withdrawal request.

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 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 in the absence of an approved Form I-130.

On August 21, 2007, the applicant's Form I-130 was revoked based on the applicant's wife's request to withdraw the Form I-130 petition. The AAO finds that the Field Office Director properly revoked the applicant's Form I-130, which then led to the denial of the applicant's Form I-485 and Form I-601. The AAO notes that an applicant or petitioner may withdraw an application or petition at any time until a decision is issued by USCIS; however, a withdrawal may not be retracted. *See* 8 C.F.R. § 103.2(b)(6). The AAO finds that since the applicant's Form I-130 has been revoked, there is no underlying petition to support the applicant's Form I-485 and Form I-601, and the appeal will be dismissed.

ORDER: The appeal is dismissed.