



**U.S. Citizenship
and Immigration
Services**

(b)(6)

[Redacted]

Date: **MAR 28 2013**

Office: ST. PAUL, MN

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Paul, Minnesota. 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 Liberia who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The applicant is married and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act.

The field office director found that the applicant's spouse is no longer a lawful permanent resident of the United States and therefore, no longer a qualifying relative. She further found that no evidence of hardship to the applicant's children had been submitted, and denied the application accordingly.

On appeal, counsel contends the field office director erred in failing to consider all of the evidence submitted by the applicant.

After a careful review of the record, the AAO finds that the applicant is ineligible to adjust her status. The record reflects that on September 23, 2011, the Petition for Alien Relative (Form I-130) filed on behalf of the applicant by the applicant's husband was revoked based on his removal and loss of permanent resident status.

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 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. In the absence of an approved I-130 petition, the applicant is not entitled to apply for adjustment of status, and her application for adjustment cannot be approved regardless of whether she is admissible or, if not, whether a waiver is available for any ground of inadmissibility.

In this case, the record shows that the applicant does not have an approved Form I-130. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she established extreme hardship to a qualifying relative or merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.