



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

(b)(6)

Date: **SEP 20 2013**

Office: ATLANTA, GA

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Field Office Director, Atlanta, Georgia, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Uruguay who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Act for having been convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and child in the United States.

The acting field office director found that the applicant was admitted to the United States as an alien in transit for a period not to exceed 20 days and that the applicant had been convicted of aggravated felony identity theft and driving without a license. The field office director further found that the applicant failed to establish extreme hardship to a qualifying relative. The field office director denied the waiver application accordingly.

On appeal, counsel contends that the applicant entered the United States on a tourist visa, even though his visa reflects the classification "C-1." Counsel further contends, among other things, that the applicant established extreme hardship to his wife and child, particularly considering his wife's entire family resides in the United States, her parents have health problems, and she has been diagnosed with polycystic ovary disease and endometriosis.<sup>1</sup>

A Form I-601 waiver application is viable when there is a pending adjustment of status application (Form I-485) or immigrant visa application. In this case, the applicant's Form I-485 was denied on March 16, 2013 for two reasons. First, the acting field office director found that because the applicant entered the United States as an alien in transit (C-1), he is statutorily ineligible to adjust his status under section 245(i) of the Act. The acting field office director also noted that the applicant is not the beneficiary of a petition filed before April 30, 2001. Second, the acting field office director found that the applicant's waiver application was denied. Based on these two reasons, the acting field office director concluded that the applicant is not qualified to adjust status and denied the Form I-485 accordingly. There is no indication in the record that the applicant has filed a motion to reopen the denial of his Form I-485 and no indication any such motion was approved. Because the applicant does not have an underlying adjustment application to support the filing of his Form I-601 waiver application, no purpose would be served in examining the hardship to the applicant's wife or child. As such, the appeal must be dismissed.

To the extent counsel contends the acting field office director erred in finding that the applicant entered the United States as a crewman or alien in transit, the AAO does not have appellate jurisdiction over the denial of an application for adjustment of status. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). In

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<sup>1</sup> The AAO notes that the record contains an unadjudicated Form I-290B filed on or about July 7, 2011. This Form I-290B was never forwarded to the AAO for adjudication. However, as the AAO decision would be the same as the present decision, no separate decision will be rendered.

any event, the AAO notes that the applicant, while represented by current counsel, has filed two previous applications for adjustment of status and two previous waiver applications, affirmatively asserting he entered the United States in C-1 status. See *Form I-485* (signed by counsel on March 8, 2012 stating that the applicant last entered the United States in C-1 status); *Form I-485* (signed by counsel on December 18, 2009 stating that the applicant last entered the United States in C-1 status); *Form I-601* (signed by counsel on March 8, 2012 stating that the applicant was in C-1 status from December 2004 until September 2008); *Form I-601* (signed by counsel on December 18, 2009 stating that the applicant was in C-1 status from January 2005 until September 2008). In addition, Department of State records and copies of the applicant's visa and Form I-94 Arrival Record indicate that he was issued a C-1 visa and entered the United States in C-1 status.

The applicant has failed to establish his eligibility to adjust his status under section 245 of the Act. Because he is statutorily ineligible to adjust his status, no purpose would be served in examining the applicant's inadmissibility to the United States or whether he has established extreme hardship to the his wife or child.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.