



U.S. Citizenship
and Immigration
Services

(b)(1)

DATE: **APR 28 2014** OFFICE: SAN FERNANDO VALLEY

FILE: [REDACTED]

IN RE: Applicant: [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:

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 waiver application was denied by the Field Office Director, San Fernando Valley, CA, and the matter is before the AAO on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Cameroon who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse.

In a decision dated October 4, 2012, the Field Office Director concluded that the applicant did not establish that his qualifying relative would suffer extreme hardship and the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly.

On appeal, the applicant, through counsel, does not contest his inadmissibility but submits new evidence and states that the applicant has established that his U.S. citizen spouse and stepchildren would suffer extreme hardship as a result of his inadmissibility.

In support of the waiver application, the record includes, but is not limited to: a brief from counsel for the applicant; a declaration from the applicant; and affidavit from the applicant's spouse; affidavits from the applicant's spouse's mother and children; medical records for the applicant's spouse; biographical information for the applicant's spouse's children; financial documentation for the applicant's spouse; country conditions information for Cameroon; and documentation of the applicant's criminal and immigration history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992). The viability of the Form I-601 is dependent on an application for adjustment to permanent resident status that is, in turn, based on an approved Form I-130, Petition for Alien Relative (Form I-130). In the absence of an underlying approved Form I-130, the applicant is not entitled to apply for adjustment of status, and his application for adjustment cannot be approved whether he is admissible or, if not, whether a waiver is available for any ground of inadmissibility.

The Field Office Director revoked the Form I-130 underlying the applicant's case on December 20, 2012, stating that a bona fide marriage between the petitioner and the beneficiary did not exist at the time of filing of the application. As a result of the revocation of the underlying Form I-130, granting the waiver would serve no purpose. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.