



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-J-O-

DATE: SPT. 22, 2015

APPEAL OF CHICAGO FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Poland, 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 committed crimes involving moral turpitude seeks to apply for a Form I-601, Application for Waiver of Grounds of Inadmissibility. *See* section 212(h) of the Act, 8 U.S.C. § 1182(h). The Field Office Director, Chicago Field Office, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

The record establishes that the Applicant's spouse, a U.S. citizen, filed a Form I-130, Petition for Alien Relative, on his behalf, which was accompanied by the Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, and Form I-601. In a decision dated July 20, 2010, the Director concluded that the Applicant had not established that his inadmissibility to the United States would result in extreme hardship to his U.S. citizen spouse and stepdaughter. The application was denied accordingly. However, the record also reflects that no final decision on the Form I-130 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 U.S. Citizenship and Immigration Services 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 filed by his spouse.

The purpose of the Form I-130 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, 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.

Matter of R-J-O-

Therefore, in the absence of an approved Form I-130, the Director's decision denying the Applicant's Form I-601 was premature. The decision of the Director will be withdrawn and the matter remanded to the Director to reopen the Applicant's Form I-485 and Form I-601 and to issue a decision on the Form I-130 filed by the Applicant's spouse. If that petition is denied, the Director shall deny Forms I-485 and I-601 accordingly. If that petition is approved, the Director shall issue a new decision addressing the merits of the Applicant's Form I-601. If that decision is adverse to the Applicant, the Director shall certify the decision to us for review.

ORDER: The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of R-J-O-*, ID# 15210 (AAO Sept. 22, 2015)