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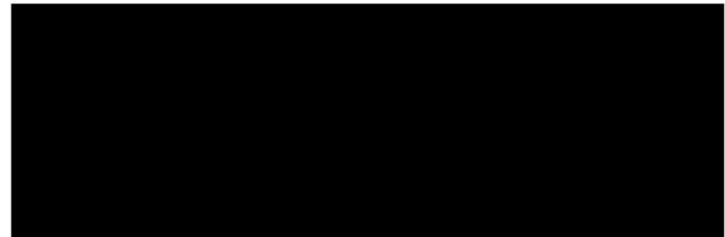


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

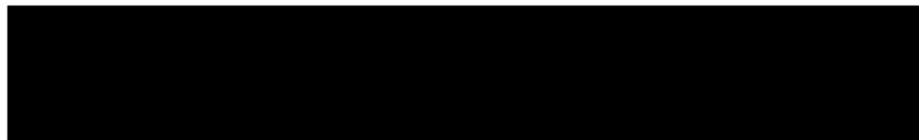
H4



Date: **APR 23 2012** Office: ATLANTA, GEORGIA

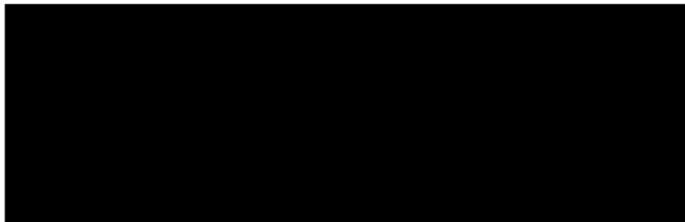


IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(C)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(C)(ii)

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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 The decision of the Field Office Director will be withdrawn and the case shall be remanded to the Field Office Director to forward the appeal of the Petition for Alien Relative (Form I-130) to the Board of Immigration Appeals (BIA). If the BIA sustains the applicant's appeal on the Form I-130, the Field Office Director shall reopen the applicant's Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and Application for Waiver of Grounds of Inadmissibility (Form I-601), and issue new decisions addressing the merits of the applicant's applications. If the decisions on the Form I-212 and Form I-601 are adverse to the applicant, the Field Office Director shall certify the matter to the AAO for review.

On January 25, 2005, the applicant's U.S. citizen husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed a Form I-212 and Form I-601. On September 23, 2009, the Field Office Director denied the applicant's Form I-601, finding the applicant inadmissible to the United States under section 212(a)(9)(C) of the Act, and no waiver was available. Additionally, on the same day, the Field Office Director denied the applicant's Form I-212, finding that she was ineligible for the benefit sought. On September 24, 2009, the applicant's Form I-130 was denied.¹

On October 26, 2009, the applicant, through counsel, filed an appeal of the Form I-130 denial. The record is not clear as to the status of this appeal; however, it appears that the appeal was never forwarded to the BIA by the Field Office Director.

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 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 filed by her 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 her spouse. 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 a waiver is available for any ground of inadmissibility.

Therefore, the AAO finds that, in the absence of a decision by the BIA on the denied Form I-130, no purpose would be served in rendering a decision on the merits of the applicant's Form I-601. The case shall be remanded to the Field Office Director to forward the appeal of the Form I-130 to the BIA.

ORDER: The decision of the Field Office Director is withdrawn and the matter is remanded to the Field Office Director to forward the appeal of the Form I-130 to the BIA. If the BIA sustains the applicant's appeal, the Field Office Director shall reopen the applicant's Form I-601 and Form I-212, and issue new decisions addressing the merits of the applicant's applications. If the

¹ The AAO notes that on December 28, 2010, the applicant's spouse filed another Form I-130 on behalf of the applicant. Additionally, on the same day, the applicant filed another I-485. Neither has been adjudicated.

decisions on the Form I-601 and Form I-212 are adverse to the applicant, the Field Office Director shall certify the matter to the AAO for review.