



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

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

In Re: 13723568

Date: JUL. 16, 2021

Appeal of Honolulu, Hawaii Field Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for fraud or willful misrepresentation.

The Director of the Honolulu, Hawaii Field Office denied the application, concluding that the record did not establish that the Applicant had any pending request for an immigration benefit, because her Form I-485 had already been denied. The Director additionally found that, even addressing the merits of the waiver, the Applicant had not demonstrated extreme hardship to a qualifying family member.

On appeal, the Applicant claims that because her Form I-130 is pending appeal, she has a pending request for an immigration benefit. She also argues that her U.S. citizen spouse would experience extreme hardship upon denial of the waiver.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further proceedings.

In January 2020, U.S. Citizenship and Immigration Services (USCIS) denied the Applicant's Form I-130 because the Applicant's spouse did not establish their marriage was bona fide. USCIS simultaneously denied the Applicant's Form I-485 because there was no approved underlying petition, and because of the Applicant's misrepresentations in her visa applications. In February 2020, the Applicant appealed the denial of the Form I-130 to the Board of Immigration Appeals and filed a motion to reopen the Form I-485. In April 2020, the Applicant filed the Form I-601. In June 2020, the Director denied the Applicant's motion to reopen the Form I-485 and the waiver application. The Director denied the waiver application because the Applicant no longer had a pending application for adjustment of status.

Since filing the appeal of the Form I-601, the Applicant has filed a new Form I-130 and a new Form I-485, which remain pending. Thus, we will remand the matter for the Director to adjudicate the Form I-130 and Form I-485. If the Director determines the Applicant is eligible for adjustment of status, the Director shall review the merits of the Form I-601 and issue a new decision.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis.