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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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

115

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CALIFORNIA

Date: **AUG 27 2010**

IN RE:

Applicant:

[Redacted]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[Redacted]

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,

[Redacted]

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the Field Office Director will be withdrawn and the matter remanded to the Field Office Director to reopen the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) and issue a decision on the Petition for Alien Relative (Form I-130) filed by the applicant's spouse. If that petition is denied, the Field Office Director shall deny the Application to Register Permanent Resident or Adjust Status (Form I-485) and Form I-601 accordingly. If that petition is approved, the Field Office Director shall issue a new decision addressing the merits of the applicant's Form I-601 application. If that decision is adverse to the applicant, the Field Office Director shall certify the decision to the AAO for review.

The record reflects that the applicant is a native and citizen of the Philippines, who entered the United States on April 17, 1996, by presenting an entry document in another individual's name. On November 20, 2004, the applicant married her United States citizen spouse in Nevada. On February 20, 2006, the applicant's husband filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed a Form I-485. On May 15, 2007, the applicant filed a Form I-601. On July 12, 2007, the Field Office Director denied the applicant's Form I-601, finding the applicant was inadmissible to the United States and had failed to demonstrate extreme hardship to a qualifying relative. The applicant has appealed that decision. The record fails to indicate that United States Citizenship and Immigration Services (USCIS) has issued a final decision on the Form I-130 petition filed by the applicant's spouse.

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 USCIS 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 the 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 Form 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 she 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 her 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.

Therefore, the AAO finds that, in the absence of an approved Form I-130, the Field Office Director's decision denying the Form I-601 was premature. The decision of the Field Office Director will be withdrawn and the matter remanded to the Field Office Director to reach a decision on the Form I-130 petition filed by the applicant's spouse.

**ORDER:** The decision of the Field Office Director is withdrawn and the matter is remanded to the Field Office Director to reopen the applicant's Form I-601 application and issue a decision on the Form I-130 petition filed by the applicant's spouse. If that petition is denied, the Field Office Director shall deny the Form I-485 and Form I-601 accordingly. If that

petition is approved, the Field Office Director shall issue a new decision addressing the merits of the applicant's Form I-601 application. If that decision is adverse to the applicant, the Field Office Director shall certify the decision to the AAO for review.