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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

H5

FILE:

Office: PROVIDENCE, RI

Date:

MAY 11 2010

IN RE:

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

*Perry Rhew for*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, Providence, Rhode Island, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, which is now before the Administrative Appeals Office (AAO) on appeal. The decision of the district director will be withdrawn and the matter remanded to the district director to reopen the applicant's Form I-485 and Form I-601 applications and issue a decision on the Form I-130 petition filed by the applicant's spouse. If that petition is denied, the district director shall deny the Form I-485 and Form I-601 accordingly. If that petition is approved, the district 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 district director shall certify the decision to the AAO for review.

The record reflects that the applicant is a native and citizen of Liberia. On October 7, 1997, the applicant's spouse, [REDACTED], filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary, which was approved on February 27, 1998. On April 16, 2001, counsel filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) in conjunction with an Application to Register Permanent Resident or Adjust Status (Form I-485), as well as a second Petition for Alien Relative (Form I-130) because the first Form I-130 failed to mention the applicant had previously been married to [REDACTED]. See Letter from [REDACTED], dated April 3, 2001 ("Due to the fact that our client had previously been married to [REDACTED] and had not disclosed that on the prior application, we had out client obtain a divorce from [REDACTED] and remarry his wife [REDACTED] [and] are refilling the entire package."). On September 15, 2004, U.S. Citizenship and Immigration Services (USCIS) sent a Notice of Intent to Revoke Petition for Alien Relative to [REDACTED] stating that there was no evidence that the applicant's marriage to [REDACTED] had ever been terminated. USCIS never received a response and, as a result, revoked the approval of the Form I-130 on December 28, 2006. *Notice of Revocation of Visa Petition*, dated December 28, 2006.

On January 19, 2007, in response to [REDACTED] second Form I-130, USCIS sent a Notice of Intent to Deny Visa Petition on the basis that there was no evidence that the applicant's marriage to [REDACTED] had ever been terminated. *Notice of Intent To Deny Visa Petition*, dated January 19, 2007. In response, counsel submitted a copy of a Final Judgment from the State of Rhode Island's Family Court, awarding the applicant a final divorce from [REDACTED] on October 19, 2000. In addition, counsel responded that "[a]s it is apparently the case that [the applicant] was married to [REDACTED] when he went through a marriage ceremony with [REDACTED] on August 20, 1997, we do not believe that that ceremony had any effect and, therefore, no divorce was required prior to [the applicant re-]marrying his current wife, [REDACTED] on January 10, 2001." Letter from [REDACTED], dated January 30, 2007.

On January 5, 2007, the district director issued a decision denying the applicant's Form I-601 waiver application on the grounds that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated January 5, 2007. The applicant has appealed that decision. However, the record reflects that no final decision on the Form I-130 petition, filed April 16, 2001, 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 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 approval of the Form I-130 petition filed by his 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 his spouse. In the absence of an approved I-130 petition, 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.

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

**ORDER:** The decision of the district director is withdrawn and the matter is remanded to the district director to reopen the applicant's Form I-485 and Form I-601 applications and issue a decision on the Form I-130 petition filed by the applicant's spouse. If that petition is denied, the district director shall deny the Form I-485 and Form I-601 accordingly. If that petition is approved, the district 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 district director shall certify the decision to the AAO for review.