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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  
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FILE:



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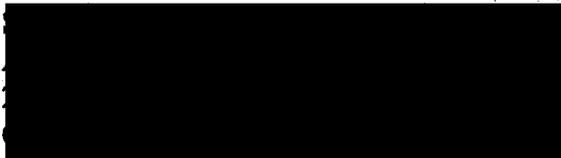
Date: **OCT 01 2010**

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:

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,

*Tang Syed*  
for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Field Office Director to wait for the decision issued by the Board of Immigration Appeals (BIA) on the Form I-130 petition. If the Form I-130 petition is denied, the Field Office Director shall deny the Form I-485 and Form I-601 accordingly. If the Form I-130 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 applicant is a native and citizen of South Korea who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is the child of a United States citizen mother and a lawful permanent resident father and also has two United States citizen children. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his family.

The Field Office Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relatives. The application was denied accordingly. *Decision of the Field Office Director, dated November 24, 2009.*

On appeal, counsel states that the applicant's qualifying relative would suffer extreme hardship. *Form I-290B, Notice of Appeal or Motion.*

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The AAO notes that on March 3, 2010, the Form I-130, Petition for Alien Relative, filed on November 7, 1997, was initially revoked by United States Citizenship and Immigration Services (USCIS). *Decision of the Field Office Director, dated March 3, 2010.* On March 18, 2010 counsel for the applicant appealed this decision to the BIA. *Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a USCIS Officer, dated March 18, 2010.* On July 7, 2010, the same Form I-130, Petition for Alien Relative, was again revoked by USCIS. *Decision of the Field Office Director, dated July 7, 2010.*

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.

The purpose of the Form I-130 petition is to establish for immigration purposes the validity of the relationship between the applicant and his family member. 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.

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 matter will be remanded to the Field Office Director to wait for the decision issued by the Board of Immigration Appeals (BIA) on the Form I-130 petition.

**ORDER:** The matter will be remanded to the Field Office Director to wait for the decision issued by the Board of Immigration Appeals (BIA) on the Form I-130. If the Form I-130 petition is denied, the Field Office Director shall deny the Form I-485 and Form I-601 accordingly. If the Form I-130 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.