

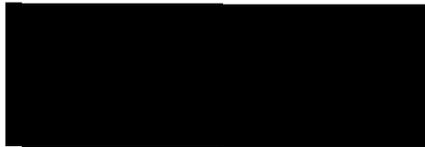
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE:



Office: MOUNT LAUREL, NJ

Date: **SEP 08 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry R. Hew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Mount Laurel, New Jersey denied the application for waiver of inadmissibility, which is now before the Administrative Appeals Office (AAO) on appeal. The decision will be withdrawn and the matter remanded to the Field Office Director to reopen the applicant's Form I-485 and Form I-601 applications and issue a decision on the Form I-130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 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.

The record reflects that the applicant is a native and citizen of China. On April 23, 2006, the applicant's U.S. citizen spouse filed a Form I-130, Petition for Alien Relative, naming the applicant as beneficiary, which was accompanied by a Form I-485, Application to Register Permanent Residence or Adjust Status. On June 29, 2009, the applicant filed a Form I-601, Application for Waiver of Ground of Inadmissibility. On October 2, 2009, the Field Office Director denied the applicant's Form I-485. On December 10, 2009, the Field Office Director denied the applicant's waiver application finding that she had failed to establish that her exclusion would result in extreme hardship for her spouse. The applicant has appealed this decision.

A review of the record and relevant United States Citizenship and Immigration Services (USCIS) databases fails to find that a final decision has been reached on the Form I-130 petition underlying the applicant's adjustment and waiver applications. Though the Form I-130 is stamped "Denied" there is no evidence in the record that a notice of intent to deny or final denial letter was issued to the petitioner as required by 8 C.F.R. § 103.2(b)(19).

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 lawful 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 lawful 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. Further, 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.

Accordingly, 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 will be withdrawn and the matter remanded to the Field Office Director to issue a decision on the Form I-130 petition filed by the applicant's spouse.

ORDER: The decision denying the Form I-601 is withdrawn and the matter remanded to the Field Office Director to reopen the applicant's Form I-485 and Form I-601 applications and issue

a final 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.