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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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H5

[REDACTED]

FILE: [REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 28 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,

Tariq Syed
for

Perry Rhew
Chief, Administrative Appeals Office

ACTION COMPLETED
APPROVED FOR FILING
Initials: JT Date: 6/22/11
FCO/Unit CW

DISCUSSION: The waiver application was denied by the California Service Center, and the appeal was dismissed by the Administrative Appeals Office (AAO). The applicant subsequently filed a motion to reopen and reconsider with the AAO. The motion will be granted and the case shall be remanded to the Director to forward the appeal of the Petition for Alien Relative (Form I-130) to the Board of Immigration Appeals (BIA). If the BIA sustains the applicant's appeal on the Form I-130, the Director shall reopen the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485) and Application for Waiver of Grounds of Inadmissibility (Form I-601), and issue new decisions addressing the merits of the applicant's applications. If the decision on the Form I-601 is adverse to the applicant, the Director shall certify the matter to the AAO for review.

On April 23, 2001, the applicant's United States citizen daughter filed a Form I-130 on behalf of the applicant. On August 7, 2001, the applicant's Form I-130 filed by her daughter was approved. On February 14, 2002, the applicant filed a Form I-485. On August 21, 2006, the applicant filed a Form I-601. On March 8, 2007, the applicant's Form I-130 approval based on her petitioning daughter was revoked based on her prior marriage fraud. On the same day, the Director, California Service Center, denied the applicant's Form I-485, finding that since the applicant's Form I-130 was revoked, the applicant was ineligible for adjustment of status. Additionally, the Director denied the applicant's Form I-601, finding no underlying petition to support the Form I-601.

On March 26, 2007, the applicant, through counsel, filed an appeal with the BIA of the Form I-130 revocation of March 8, 2007. The record is not clear as to the status of this appeal, although the AAO notes that the fee of \$385 was returned to the applicant on March 27, 2007. On April 3, 2007, the Director reopened the applicant's Form I-130 revocation. On April 6, 2007, the applicant, through counsel, filed an appeal with the AAO of the Form I-601 denial. On April 10, 2007, the Director again revoked the applicant's Form I-130 based on marriage fraud. On April 26, 2007, the applicant, through counsel, filed an appeal with the BIA of the Form I-130 revocation of April 10, 2007. On September 21, 2009, the AAO dismissed the applicant's appeal of the Form I-601. The AAO notes that the April 26, 2007 appeal of the Form I-130 was never forwarded to the BIA by the Director.

In his motion to reopen and reconsider, counsel's requests that "the fee to reopen this case be returned due to the repeated failure of the Service to follow the Regulations and Rules pertaining to Appeals and Procedures." The AAO notes that there is nothing in the regulations providing for the return of filing fees if action is taken on the pending application.

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.

Therefore, the AAO finds that, in the absence of a decision by the BIA on the revoked Form I-130, no purpose would be served in rendering a decision on the merits of the applicant's Form I-601. The case shall be remanded to the Director to forward the appeal of the Form I-130 to the BIA.

ORDER: The motion is granted and the case shall be remanded to the Director to forward the appeal of the Form I-130 to the BIA. If the BIA sustains the applicant's appeal on the Form I-130, the Director shall reopen the applicant's Form I-485 and Form I-601, and issue new decisions addressing the merits of the applicant's applications. If the decision on the Form I-601 is adverse to the applicant, the Director shall certify the matter to the AAO for review.