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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:

[REDACTED]

Office:

HARLINGEN, TX

Date:

JAN 04 2011

IN RE:

[REDACTED]

APPLICATION:

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

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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Tariq Syed

for
Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded.

The applicant is a native and citizen of the Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). On April 16, 2007, the applicant's spouse filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary, and which was approved on September 1, 2009. During an interview for his immigrant visa it was determined that he was required to file an Application for Waiver of Ground of Inadmissibility (Form I-601). On July 24, 2009, the Acting Field Office Director issued a decision denying the applicant's waiver application on the grounds that the applicant failed to establish extreme hardship to a qualifying relative.

The record reflects that on September 28, 2010, the applicant's spouse requested the cancellation of the Form I-130 petition she filed on behalf of the applicant. In her statement, she asserts that the applicant confessed that he was with her for the sole purpose of obtaining legal residency and she was the victim of fraud.

Pursuant to 8 C.F.R. § 205.1(a)(3)(i)(A), the approval of an I-130 petition is automatically revoked upon written notice of withdrawal filed by the petitioner with any officer of United States Citizenship and Immigration Services (USCIS) who is authorized to grant or deny petitions.¹ Alternatively, pursuant to 8 C.F.R. § 205.2 the approval of an I-130 petition is revocable upon notice to the petitioner on any ground other than those specified in 8 C.F.R. § 205.1 when the necessity for the revocation comes to the attention of USCIS.²

Therefore, the AAO remands the matter to the acting field office director to initiate proceedings for the revocation of the approved Form I-130 petition. Should the approved Form I-130 petition be revoked, the acting field office director will issue a new decision dismissing the applicant's Form I-601 as moot. In the alternative, should it be determined that the Form I-130 is not to be revoked, then the acting field office director will issue a new decision addressing the merits of the applicant's Form I-601 waiver application. If that decision is adverse to the applicant, it will be certified for review to the AAO pursuant to 8 C.F.R. § 103.4.

ORDER: The matter is remanded to the acting field office director for further proceedings consistent with this decision.

¹ The AAO notes that 8 C.F.R. § 103.2(b)(6) would permit the AAO to withdraw the Form I-130 Petition, but due to the underlying reasons for the withdrawal it is being remanded to the acting field office director.

² The AAO notes that section 204(c) of the Act may be applicable in this case.