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



**U.S. Citizenship
and Immigration
Services**



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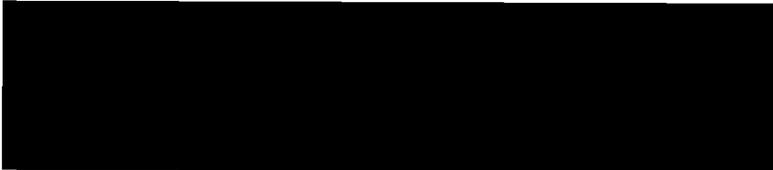
DATE: JUN 27 2011 OFFICE: ST. ALBANS, VT

FILE: [REDACTED]

IN RE: [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 PETITIONER:



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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Albans, Vermont and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Field Office Director for further processing.

The applicant is a native and citizen of Albania 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 sought to procure an immigration benefit by fraud or willful misrepresentation. The applicant is the spouse and father of U.S. citizens. 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.

The Field Office Director concluded that based on the revocation of the Form I-130, Petition for Alien Relative, underlying the applicant's waiver application, he was ineligible to apply for a waiver under section 212(i) of the Act as he lacked the qualifying relative on which to base a waiver application. *Decision of the Field Office Director*, dated August 26, 2009.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services' (USCIS) decision is based on factual error and fails to properly consider the waiver application. *Form I-290B, Notice of Appeal or Motion*, dated September 15, 2009.

The record contains, but is not limited to, the following evidence: counsel's briefs; statements from the applicant, his spouse and his cousin; medical documentation relating to the applicant's spouse; employment letters for the applicant and his spouse; W-2 forms and tax returns; mortgage, bank and billing statements; and country conditions information relating to Albania. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant entered the United States on November 21, 1996 using a fraudulent passport. Accordingly, the applicant's admission to the United States is barred pursuant to section 212(a)(6)(C)(i) of the Act for having obtained a benefit under the Act through fraud or willful misrepresentation and he must seek a 212(i) waiver of inadmissibility.

The filing of a Form I-601 waiver application is predicated on the necessity to demonstrate admissibility, which 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, an applicant's eligibility to apply for adjustment to lawful permanent resident status is dependent on the approval of an immigrant visa petition. Accordingly, if a Form I-130 is revoked, there is no underlying petition on which to base the Form I-601 waiver application and it must be denied.

On March 31, 2009, the Field Office Director revoked the Form I-130 benefitting the applicant pursuant to section 204(c) of the Act, which states:

[N]o petition shall be approved if (1) the alien has previously . . . sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The corresponding regulation at 8 C.F.R. § 204.2(a)(ii) provides:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

In the present matter, the Field Office Director has revoked the Form I-130 benefitting the applicant. While the AAO would ordinarily dismiss the appeal on this basis, we find the record to indicate that, on March 17, 2010, the Board of Immigration Appeals (BIA) vacated the Field Office Director's revocation of the Form I-130, based on its finding that the record of proceeding contained insufficient evidence to establish that the applicant's first marriage had been entered into for the purposes of evading U.S. immigration law. The BIA remanded the matter to the Field Office Director for further consideration and the issuance of a new decision.

In that the Field Office Director's denial of the Form I-601 is based on the revocation of the Form I-130 benefitting the applicant, we find no purpose would be served by considering the applicant's waiver application at this time. We will, therefore, return the matter to the Field Office Director to await the issuance of a new Form I-130 decision.

Should the Field Office Director determine that the Form I-130 is not to be revoked, she shall issue a new Form I-601 decision that addresses the merits of the applicant's waiver application. If that decision is adverse to the applicant, the Field Office Director shall certify it to the AAO for review, notifying the applicant of the opportunity to submit a brief within 30 days, pursuant to the regulation at 8 C.F.R. § 103.4(a)(2). If the Field Office Director again revokes the applicant's Form I-130, the waiver application shall be returned to the AAO for decision.

ORDER: The matter is remanded to the Field Office Director for further consideration consistent with this decision.