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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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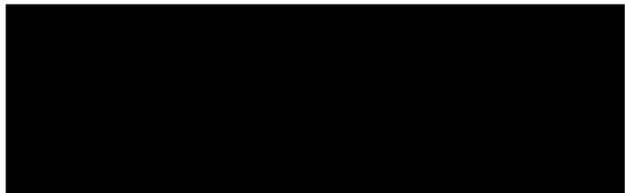
FILE: [REDACTED] Office: MEMPHIS, TN

Date: MAR 31 2011

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

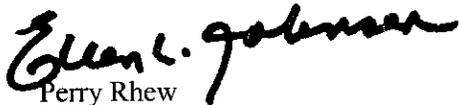


INSTRUCTIONS:

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 \$630. 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 Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Memphis, Tennessee. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the son of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his father in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated March 15, 2008.

On appeal, counsel contends the applicant established extreme hardship. Counsel contends that during the four-year delay in adjudicating the applicant's waiver application, the applicant's father has developed severe osteoarthritis, resulting in his total disability and inability to work. Counsel includes new documentation to support this claim.

A Form I-601 waiver application is viable when there is a pending adjustment of status application (Form I-485) or immigrant visa application. In this case, the applicant's Form I-485 was denied based on the fact that it was filed when there was no visa number available. Specifically, the priority date for the Petition for Alien Relative (Form I-130) was November 2, 1994, past the cutoff date of July 1, 1993. Because an immigrant visa was not immediately available, the field office director denied the applicant's Form I-485. As such, the applicant is not eligible to adjust status based on his Form I-485. Therefore, no purpose would be served in examining the hardship to the applicant's father as the applicant does not have an underlying adjustment application to support the filing of his Form I-601 waiver application. When a visa number becomes available, the applicant must submit a new Form I-485 application. At that time, he will be informed of any grounds of inadmissibility and any forms he will need to file.

Based on the foregoing, the applicant's appeal must be dismissed by the AAO as the underlying application is moot.

ORDER: The appeal is dismissed.