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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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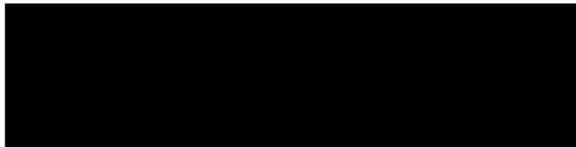


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DATE: Office: HARTFORD, CT FILE:   
NOV 18 2011  
IN RE: Applicant: 

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 \$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,



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Hartford, Connecticut, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the field office director for further proceedings consistent with the .

The applicant is a native and a citizen of Peru who used a fraudulent passport to enter the United States. The applicant 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). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under 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 the applicant's identity had not been established and it therefore could not be confirmed that the applicant was legally free to marry the petitioner and/or eligible to file the Form I-601; that the negative factors outweighed the positive and a favorably exercise of discretion was not warranted; and that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative. Accordingly, the Field Office Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 5, 2010.

On appeal, counsel for the applicant asserts that the denial of the waiver was confusing and improper, failed to give proper weight to the hardship factors identified, and incorrectly concluded that the applicant failed to show that his spouse would suffer extreme hardship. Form I-290B, Notice of Appeal or Motion, received November 4, 2010.

The record reflects that a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant on February 20, 2007. A Form I-485, Application to Register Permanent Residence or Adjust Status, was also filed at that time and Form I-601, Application for Waiver of Grounds of Inadmissibility, were also filed on February 20, 2007. In separate decisions on October 5, 2010 the Field Office Director denied the Forms I-130, I-485 and I-601. The denial of the Form I-130 petition was appealed to the Board of Immigration Appeals. That appeal is currently pending.

The purpose of the Form I-130 petition is to establish for immigration purposes the validity of the marriage relationship between the applicant and his spouse. In the absence of an approved I-130 petition, the applicant is not entitled to apply for adjustment of status, and his application for adjustment cannot be approved regardless of whether he is admissible or, if not, whether a waiver is available for any ground of inadmissibility. Furthermore, a determination that the applicant has demonstrated extreme hardship to his spouse and thus qualifies for a waiver of inadmissibility will be rendered moot if, in the pending appeal of the Form I-130, it is determined that their marriage is not bona fide.

Therefore, 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 of the field office director will be withdrawn and the matter remanded to the field director pending adjudication of the Form I-130 appeal.

**ORDER:** The decision of the district director is withdrawn and the matter is remanded to the district director to reopen the applicant's Form I-485 and Form I-601 applications pending a decision on the Form I-130 appeal filed by the applicant's spouse. If the denial of the Form I-130 is upheld, the field office director shall deny the Form I-485 and Form I-601 accordingly. If the denial of the Form I-130 is overturned, 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 district director shall certify the decision to the AAO for review.