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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

[REDACTED]

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DATE: **AUG 09 2012** Office: LOS ANGELES, CA FILE: [REDACTED] 6

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 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the field office director will be withdrawn and the matter remanded to the field office director for further processing consistent with this decision.

The applicant is a native and citizen of Uganda 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 his willful misrepresentation of a material fact.<sup>1</sup> The applicant 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 with his spouse.

The record indicates that the applicant was granted conditional-resident status on March 8, 2002, but this status was terminated on March 23, 2006. In April 2006 the applicant's current spouse, [REDACTED], a U.S. citizen, filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary, which was accompanied by the applicant's Application to Register Permanent Resident or Adjust Status (Form I-485). An Application for Waiver of Grounds of Inadmissibility (Form I-601) was thereafter submitted on October 29, 2009. On February 9, 2010, the field office director issued a decision denying the applicant's waiver application on the grounds that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The applicant has appealed that decision. However, the record reflects that no final decision on the Form I-130 petition has been issued.

The filing of a Form I-601 waiver application is predicated on the necessity to demonstrate admissibility, which in this case is a requirement for adjustment to permanent resident status under section 245 of the Act. Although USCIS allows for the simultaneous filing of Forms I-130 and I-485, the applicant's eligibility to apply for adjustment to permanent resident status is dependent on approval of the Form I-130 petition filed by his spouse.

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 of status cannot be approved regardless of whether he is admissible or 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 subsequent adjudication 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

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<sup>1</sup> The AAO notes that the director, in a letter dated October 15, 2009, notified the applicant of his inadmissibility by checking a box to show that he "misrepresented a material fact or . . . committed fraud." A handwritten note next to the misrepresentation sentence indicates "BIRTH CERTIFICATE." The director's Form I-601 decision does not outline facts supporting a finding of inadmissibility; however, it cites section 212(a)(6)(C)(i) of the Act.

withdrawn and the matter remanded to the field office director to issue a decision on the Form I-130 petition filed by the applicant's spouse.

**ORDER:** The decision of the field office director is withdrawn and the matter is remanded to the field office director to reopen the applicant's Form I-601 application and issue a decision on the Form I-130 petition filed by the applicant's spouse. If that petition is denied, the field office director shall deny the Form I-485 and Form I-601 accordingly. If that petition is approved, 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 field office director shall certify the decision to the AAO for review.