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



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



HS

DATE: **AUG 13 2012** OFFICE: LOS ANGELES, CALIFORNIA



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A large, stylized handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Field Office Director to issue a decision on the underlying Form I-130, Petition for Alien Relative, and for further action consistent with this decision.

The applicant is a native and citizen of the Philippines who was found by the Field Office Director 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. spouse and children.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated July 19, 2010.

The AAO notes that the Form I-130, Petition for Alien Relative, filed on the applicant's behalf by his U.S. citizen spouse on December 10, 2007, remains adjudicated by the field office. Despite not having adjudicated the underlying Form I-130 petition or the concurrently filed Form I-485, the Field Office Director issued a Notice of Inadmissibility, dated November 6, 2009, in which the applicant is warned that he "...must file Form I-601, Application for Waiver of Ground of Inadmissibility, within 90 days."

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 U.S. Citizenship and Immigration Services (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, there is no basis for the applicant to adjust his status to lawful permanent resident, 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 unnecessary 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 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 underlying Form I-130 petition filed by the applicant's spouse. If the Form I-130 petition is denied, the Field Office Director shall deny the Form I-601 accordingly. If the Form I-130 petition is approved, the Field Office Director shall issue a new decision addressing the merits of the applicant's Form I-601 application, including the applicant's assertions and evidence with the present appeal. If the new decision on the Form I-601 application is adverse to the applicant, the Field Office Director shall certify the decision to the AAO for review.