

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



H5

Date: **DEC 06 2012**

Office: BLOOMINGTON, MN

FILE: 

IN RE: 

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:

SELF-REPRESENTED

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 in accordance with the instructions on 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 handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Ukraine 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 procuring a visa to the United States through fraud or 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 live in the United States with her legal permanent resident spouse and daughter.

The Field Office Director concluded that the applicant failed to establish that she was eligible to adjust status under the Act or that she had a qualifying relative. The Field Office Director denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director to Deny the Applicant's Form I-601*, dated July 5, 2011 (Form I-601 Denial).

On appeal, the applicant asserts that her husband and daughter will soon become lawful permanent residents of the United States.¹ Further, she requests reconsideration of the Field Office Director's denial, because she is expecting another child and cannot be separated from her husband and children.

The record indicates that the applicant's last entry into the United States, on January 11, 2010, was as a non-immigrant visitor, admitted until July 10, 2010. The Field Office Director notes that because of her non-immigrant admission in 2010, the applicant is no longer eligible to adjust as a public-interest parolee, which is how the applicant first arrived at the United States on January 30, 2008. *See Form I-601 Denial*. The Field Office Director, in her decision regarding the applicant's I-485 Application to Register Permanent Residence or Adjust Status (Form I-485), concluded that the applicant was statutorily ineligible for adjustment of status and denied the applicant's Form I-485 accordingly. *Decision of the District Director to Deny the Applicant's Form I-485*, dated July 5, 2011.

In the present case, inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), would apply to the applicant and require her to file Form I-601 if the Field Office Director had found that the applicant was eligible to apply for adjustment of status. Evidence concerning whether the applicant is eligible to adjust status may not be considered by the AAO; it must be considered by the Field Office Director when adjudicating Form I-485.

As the Field Office Director determined that the applicant is statutorily ineligible to apply for adjustment of status and denied the applicant's Form I-485, there is no underlying application for admission on which to base an application for waiver of grounds of inadmissibility.

¹ The applicant's husband became a legal permanent resident on September 3, 2011.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. As there is no underlying application for admission pending at this time, the appeal will be dismissed.

ORDER: The appeal is dismissed.