

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

tlg

[REDACTED]

Date: DEC 19 2012

Office: CHICAGO, IL

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the 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.

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 Acting Field Office Director, Chicago, Illinois. 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 claims he is eligible for adjustment of status through Section 245(a) of the Act, contending he was inspected and admitted to the United States using fraudulent documents. As such, the applicant contends he is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit and submitted a waiver application without being requested to do so. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and children in the United States.

The acting field office director found that the applicant did not meet his burden in proving he was inspected or admitted into the United States and that the applicant is not the beneficiary of a visa petition or labor certificate filed by April 30, 2001. The acting field office director concluded that the applicant is, therefore, ineligible to adjust his status under either section 245(a) of the Act or 245(i) of the Act. Accordingly, the acting field office director denied the waiver application for having no basis at the time of filing as the applicant has not demonstrated, and USCIS has not determined, that the applicant is inadmissible to the United States because of a fraudulent entry.

On appeal, counsel contends the applicant was, in fact, inspected and admitted into the United States using another person's green card and is, according to counsel, eligible to adjust his status.

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 on September 26, 2011. Although the record shows that counsel filed an appeal of the Form I-601, there is no indication in the record that the applicant has filed a motion to reopen the denial of his Form I-485 and no indication any such motion was approved.¹ Because the applicant does not have an underlying adjustment application to support the filing of his Form I-601 waiver application, no purpose would be served in examining the hardship to the applicant's wife. As such, the appeal must be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement.