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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**



H5

Date: **FEB 21 2012**

Office: LOS ANGELES

FILE: 

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 must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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

for

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 matter will be remanded for further action consistent with this decision.

The applicant is a native and citizen of the Philippines 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 admission to the United States through fraud or misrepresentation. The record reflects that the applicant received a C1/D visa on December 1, 1995 and entered the United States as a C1 nonimmigrant on December 16, 1995. The applicant's visa reflects that his purported intention upon admission was to join [REDACTED]. However, the applicant did not board the ship during his 29 day period of authorized stay or thereafter. As a result of misrepresenting his intention while seeking admission, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act.

The record indicates that on April 29, 2007, the applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status, based on a Form I-130, Petition for Alien Relative, filed by the applicant's spouse. On the same date, the applicant submitted Form I-601, Application for Waiver of Ground of Inadmissibility.

On April 23, 2008, the Los Angeles Field Office Director issued a Notice of Decision, indicating that the applicant denied having received his C-1 visa by fraud, and that the applicant had submitted a copy of the employment contract with a vessel to support his contention that there was no fraud intended. The field office director therefore determined that the Form I-601 was inappropriately filed, and returned the Form I-601 to the applicant, stating, "If you believe you have received C-1 visa by fraud, please make a statement as such and re-submit the Form I-601." *See Notice of Decision by the Field Office Director*, dated April 23, 2008.

On June 12, 2009, the field office director denied the Form I-601, which was filed on April 29, 2007, indicating that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, and the applicant failed to establish extreme hardship to his U.S. Citizen spouse. *See Decision of the Field Office Director*, dated June 12, 2009.

The field office director had rejected and returned the applicant's Form I-601 on April 23, 2008 as being inappropriately filed. There is no indication that the Form I-601 had subsequently been resubmitted and accepted as properly filed, or that the field office director had notified the applicant that the rejected Form I-601 would be adjudicated. There is also no indication that the field office issued a Request For Evidence to the applicant to provide support for the Form I-601 which had been returned.¹

¹ According to the applicant's attorney, during an interview with the applicant on October 1, 2007, the interviewing officer, after taking the applicant's testimony, stated that the case would be continued to determine whether the applicant was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, and that if the Service determined that a waiver was required, a request for evidence (RFE) would be issued, requesting additional supporting documents for the Form I-601. The applicant's attorney further contends that the interviewing officer advised the applicant to withhold

The record does not establish that the Field Office has properly adjudicated the Form I-601, as it had been returned to the applicant, he was not notified that it was subsequently being adjudicated, and he was not given an opportunity to submit evidence in support of the application. As such, the AAO remands the matter to the Field Office Director to determine whether the applicant should be required to re-file the Form I-601, and if so, to afford him the opportunity to submit additional evidence in support of the Form I-601 which had been rejected and returned. If it is determined that the applicant must file a Form I-601 waiver of inadmissibility, the 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, it will be certified for review to the AAO pursuant to 8 C.F.R. § 103.4.

ORDER: The matter is remanded to the field office director for further proceedings consistent with this decision.

submission of any supplemental documents in support of the waiver application until the Service made a determination on the issue of whether the fraud even existed. *See Brief in Support of Appeal*, dated August 7, 2009.