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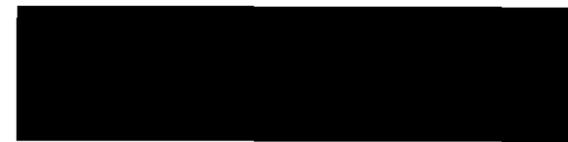
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services

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Date: **JAN 24 2012** Office: JOHANNESBURG, SOUTH AFRICA



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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Johannesburg, South Africa, and 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 Mozambique who initially entered the United States on October 26, 2003 on a B-1/B-2 nonimmigrant visa. On March 5, 2004, the applicant filed a Form I-539 to have her status extended. United States Citizenship and Immigration Service (USCIS) approved the applicant's request allowing the applicant to remain in the United States from April 26, 2004 until October 25, 2004. On September 24, 2004, the applicant filed another Form I-539, which USCIS denied on March 11, 2005. On April 26, 2005, the applicant departed the United States. On August 4, 2005, the applicant was granted another B-1/B-2 nonimmigrant visa. On September 12, 2005, the applicant attempted to enter the United States; however, she was denied entry based on her previous overstay. On June 22, 2008, the applicant's United States citizen husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On October 3, 2008, the applicant's Form I-130 was approved. On April 23, 2009, the applicant stated under oath that she knowingly made a misrepresentation to the consular officer on August 4, 2005 in order to obtain the B-1/B-2 nonimmigrant visa. Additionally, during her interview, the applicant stated that on January 24, 2008, she applied for a B-1/B-2 nonimmigrant visa and during her interview she stated she was visiting her friend in Arizona and never mentioned visiting her current husband in California. Based on these misrepresentations, on May 4, 2009, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On August 13, 2009, the Field Office Director denied the applicant's Form I-601. On or about September 9, 2009, the applicant filed an appeal of the Field Office Director's decision. With the appeal, the applicant, through counsel, submitted a brief, statements from the applicant's husband, letters of support for the applicant and her husband, medical documents for the applicant's stepsons, money transfer receipts, and country conditions documents on

On or about December 4, 2009, the applicant's husband submitted a letter stating that he no longer wanted to pursue the immigrant visa application because the applicant's waiver application was denied and she "is banned from US for a certain time period." On January 7, 2010, the Director, California Service Center, revoked the applicant's Form I-130 based on the applicant's husband's "letter to the USCIS formally requesting a withdrawal of the petition."

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 an immigrant visa. 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 an immigrant visa, and her application for an immigrant visa cannot be approved regardless of whether she is admissible or, if not, whether a waiver is available for any ground of inadmissibility.

In the absence of an underlying approved Form I-130, Petition for Alien Relative, the Form I-601, Application for Waiver of Grounds of Inadmissibility, is moot. The appeal of the denial of the waiver must therefore be dismissed.

ORDER: The appeal is dismissed.