

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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**



PUBLIC COPY



115

Date:

MAR 21 2012

Office: PHILADELPHIA, PA

FILE:



IN RE:

Applicant:



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:



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, Philadelphia, Pennsylvania. 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 the Dominican Republic who was found to be 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. 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 field office director found that the applicant failed to establish that he is eligible to adjust his status to that of a lawful permanent resident under section 245(a) of the Act because there was insufficient evidence to establish that the applicant was admitted or paroled into the United States. The field office director further found that the applicant failed to establish he is eligible to adjust his status under section 245(i) of the Act because he did not have a petition or an application for a labor certificated filed on his behalf on or before April 30, 2001. Therefore, the field office director found that the applicant's Form I-485 is not supported by any evidence of eligibility for adjustment of status and denied the Form I-485 accordingly. Nonetheless, the field office director evaluated the applicant's hardship claim and concluded that the applicant failed to establish extreme hardship to a qualifying relative. The field office director denied the waiver application accordingly. *Decision of the Field Office Director*, dated October 23, 2009.

On appeal, counsel contends that the applicant established extreme hardship to the applicant's wife, particularly considering that the applicant is the sole financial provider for his wife and their four children, and her history of being in abusive relationships.

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 October 23, 2009. As described above, the field office director found the applicant failed to establish his eligibility to adjust his status to that of a lawful permanent resident under section 245(a) of the Act or section 245(i) of the Act. 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.

Because the applicant was found ineligible to adjust status for reasons other than his inadmissibility under section 212(a)(6)(C), no purpose would be served in examining the hardship to the applicant's wife. Accordingly, the waiver application must be dismissed.

ORDER: The appeal is dismissed.