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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:

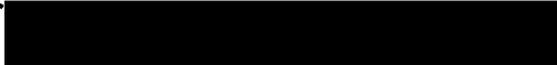
Office: SACRAMENTO, CA

FILE:



**MAY 11 2012**

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:



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.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Sacramento, California, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be returned to the Field Office Director for action consistent with the following discussion.

The applicant is a native and a citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for having obtained a benefit under the Act through fraud or willful misrepresentation. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 1, 2010.

On appeal, counsel for the applicant asserts that he is not inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation and, alternately, that the applicant's spouse would experience extreme hardship due to his inadmissibility. *Form I-290B*, received March 26, 2010.

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 adjustment to permanent resident status under section 245 of the Act. Although United States Citizenship and Immigration Services (USCIS) allows for the simultaneous filing of Forms I-130 and I-485, the applicant's eligibility to apply for adjustment to permanent resident status is dependent on having a valid, approved Form I-130 petition filed by his spouse. The purpose of the Form I-130 is to establish for immigration purposes the validity of the marriage relationship between the applicant and his spouse.

While the record includes an approved Form I-130 petition benefitting the applicant, the AAO notes that it also reflects that the applicant's spouse initiated divorce proceedings against him on March 11, 2011. As a consideration of whether the applicant has demonstrated extreme hardship to his spouse would serve no purpose if the marriage underlying the Form I-130 no longer exists, the AAO will return this matter to the Field Office Director to determine whether the marriage on which the approval of the Form I-130 was based has been terminated and the approved Form I-130 should be revoked. If the Field Office Director revokes the Form I-130, he shall reopen the Form I-601 and issue a new decision. If the Field Office Director determines that the applicant's marriage to his spouse continues to support the Form I-130, the waiver application shall be returned to the AAO for decision.

**ORDER:** The matter is returned to the Field Office Director for action consistent with the preceding discussion.