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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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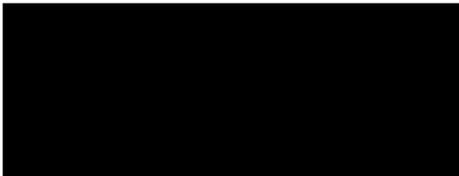
DATE: **MAY 14 2012** OFFICE: NEW YORK, NEW YORK

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 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 with the field office or service center that originally decided your case by filing a 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is unnecessary.

The applicant is a native and citizen of Albania who is the beneficiary of an approved Form I-130, *Petition for Alien Relative*, filed on her behalf by her U.S. citizen spouse. On that basis, the applicant filed a Form I-485, *Application to Register Permanent Residence or Adjust Status*, which was subsequently denied. The applicant filed a motion to reopen the Form I-485 denial, which was subsequently dismissed. The applicant asserts that she is inadmissible 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse and child.

The District Director concluded that the applicant does not meet the eligibility requirements to file a waiver application, and denied her Form I-601 accordingly. See *Decision of the District Director*, dated February 16, 2010.

The applicant's Form I-485, adjustment of status application was denied by the District Director because the applicant does not meet the eligibility requirements for permanent residence in the United States. See *Decision of the District Director*, dated September 30, 2009. The District Director found that the applicant has not met her burden of proof under section 245(a) of the Act, in that she failed to demonstrate that she was admitted or paroled following inspection by an immigration officer, or that she is eligible for benefits under section 245(i) of the Act. *Id.* On October 28, 2009, counsel filed a motion to reopen the Form I-485 denial. On February 16, 2010, the motion was dismissed for failure to offer sufficient evidence to warrant reopening or reconsideration, as well as for failure to offer sufficient evidence or statement of facts to warrant a reversal of the decision denying Form I-485. See *Decision of the District Director*, dated February 16, 2010. On the same date, the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility filed on May 17, 2009 was denied and on March 12, 2010 the present appeal was received.

The viability of the Form I-601, Application for Waiver of Grounds of Inadmissibility, is dependent on a pending or approved Form I-485, Application to Adjust Status that is itself based on an approved Form I-130, Petition for Alien Relative. As the applicant has been found ineligible to adjust status, as outlined in detail above, no purpose would be served in adjudicating the Form I-601. The appeal of the denial of the waiver must therefore be dismissed as the underlying waiver application is unnecessary.

ORDER: The appeal is dismissed. The underlying waiver application is unnecessary.