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



U.S. Citizenship  
and Immigration  
Services

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DATE: **MAY 30 2012** OFFICE: NEW YORK, NEW YORK

FILE

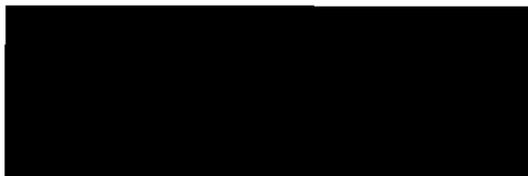


IN RE: Applicant:



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:

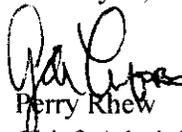


INSTRUCTIONS:

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.

The record reflects that the applicant is a native of the Union of Soviet Socialist Republics and citizen of Uzbekistan 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 procured a visa and subsequent entry to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. The applicant, through counsel, does not contest this finding of inadmissibility. Rather, he 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 his wife.

The District Director determined that the applicant had failed to establish eligibility for adjustment of status because it was determined that the applicant did not warrant favorable discretion as outlined in section 245(a) of the Act. The District Director denied the Form I-485, Application to Resister Permanent Residence or Adjust Status (Form I-485) accordingly. *Decision of the District Director to Deny the Applicant's Form I-485*, dated March 10, 2010.

In a separate decision, the District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of District Director*, dated March 10, 2010.

On appeal, counsel contends that the United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application as the record establishes that the applicant's spouse would suffer extreme hardship if the waiver application was not approved. Moreover, counsel asserts that the applicant merits a favorable exercise of discretion. *See Form I-290B, Brief in Support of Notice of Appeal*, dated April 8, 2010.

The District Director determined that the applicant was statutorily ineligible for adjustment of status as he is inadmissible for having procured a visa and subsequent entry to the United States through fraud or misrepresentation. The District Director further noted as follows:

You have positive equities in the United States, namely, your marriage to a United States Citizen and your residency here in the United States for three (3) years. However, these seemingly positive equities are not sufficiently meritorious to outweigh the above stated statutory ineligibility grounds, the criteria for inadmissibility...and the additional discretionary factors describe below. Thus, you have not overcome the burden of demonstrating to USCIS that you warrant a favorable exercise of discretion.... For these reasons, your application for adjustment of status is denied as a matter of discretion in addition to the grounds of statutory ineligibility listed above....

*Supra* at 3.

As the District Director denied the applicant's Form I-485 as a matter of discretion, no purpose is served in determining whether the applicant is eligible for a waiver of inadmissibility as this will not overcome the discretionary denial. As there is no underlying application for admission pending at this time, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.