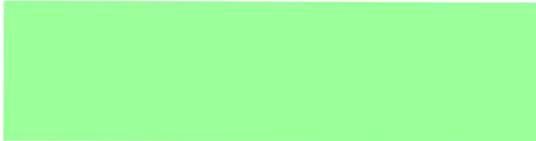


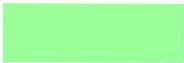


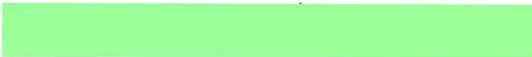
(b)(6)



Date: **FEB 26 2013**

Office: YAKIMA, WA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 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 in accordance with the instructions on 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director, Yakima, Washington. 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 India who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for fraud or willful misrepresentation of a material fact in order to obtain an immigration benefit. The applicant 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 does not have a qualifying relative and denied the application accordingly.

On appeal, counsel contends that the field office director erred in denying the waiver application on a basis different than what was stated in the Notice of Intent to Deny (NOID), depriving the applicant of the opportunity to respond. Specifically, counsel contends the NOID never raised the issue that the applicant's wife would not suffice as a qualifying relative. In addition, counsel contends that the field office director should have withheld making any decision on the applicant's waiver application because the applicant is a derivative of his wife's adjustment application. Therefore, according to counsel, it was premature of the field office director to adjudicate the applicant's Form I-485 and Form I-601 applications before his wife's adjustment application had been adjudicated.

After a careful review of the entire record, the AAO finds that the applicant is ineligible to adjust his status. The record reflects that the applicant's son filed a Petition for Alien Relative (Form I-130), dated May 15, 2012, naming the applicant as beneficiary. A review of USCIS records indicates that the Form I-130 has not yet been approved.

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 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 approval of the Form I-130 petition filed by his son.

The purpose of the Form I-130 petition is to establish for immigration purposes the validity of the relationship between the applicant and his son. In the absence of an approved I-130 petition, the applicant is not entitled to apply for adjustment of status, and his application for adjustment cannot be approved regardless of whether he is admissible or, if not, whether a waiver is available for any ground of inadmissibility. Furthermore, a determination that the applicant has demonstrated extreme hardship to his spouse, even assuming she is now a lawful permanent resident, and thus qualifies for a waiver of inadmissibility will be rendered moot if it is determined that the relationship is not valid.

In this case, the record shows that the applicant does not have an approved Form I-130. Therefore, the AAO finds that in the absence of an approved Form I-130, the field office director's decision denying the Form I-601 was proper as the applicant is ineligible to adjust his status. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. The AAO notes that in addition to the unadjudicated Form I-130, the record also contains a new Form I-485 and Form I-601 that remain unadjudicated.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.