



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **JAN 17 2013** OFFICE: SAN BERNARDINO, CA

FILE: [Redacted]

IN RE:

[Redacted]

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:

[Redacted]

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 Field Office Director, San Bernardino, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria 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 procuring and seeking to procure an immigration benefit through fraud or willful misrepresentation of a material fact. 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 his spouse.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. See *Decision of Field Office Director*, dated December 1, 2011.

The record reflects that the applicant entered the United States in May 1989 with a passport that did not belong to him and subsequently used another identity to apply for permanent resident status. The applicant's spouse is a U.S. citizen. On November 25, 2011, the Field Office Director denied the Petition for Alien Relative (Form I-130) that the applicant's spouse had filed on his behalf, finding that the petitioner abandoned the Form I-130 by failing to respond to a request for evidence. The record reflects that the applicant is not currently the beneficiary of an approved Form I-130, nor is a Form I-130 petition currently pending.

Counsel for the applicant states that the applicant filed a motion to reopen and reconsider the Form I-130 and as a result, the petition is still pending. However, the record reflects that no fee was received for this motion and no other evidence indicates that either the motion or petition is pending.

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, Application to Register Permanent Residence or Adjust Status, 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 spouse.

The purpose of the Form I-130 petition is to establish for immigration purposes the validity of the marriage relationship between the applicant and his spouse. 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 of status cannot be approved regardless of whether he is admissible or, if not, whether a waiver is available for any ground of inadmissibility.

In the absence of an underlying approved Form I-130, a waiver is unnecessary. The appeal of the denial of the waiver must therefore be dismissed.

**ORDER:** The appeal is dismissed because the waiver is unnecessary.