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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

DATE: JUL 05 2013 OFFICE: BOSTON, MA

FILE: [REDACTED]

IN RE:

APPLICANT: [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:

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,

Handwritten signature of Ron Rothenberg in black ink.

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic who claims on November 23, 2005, she used a passport and a nonimmigrant visa which did not belong to her to procure admission. She was found to be inadmissible to the United States 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 having procured admission to the United States through fraud or 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 remain in the United States with her U.S. citizen spouse.

The Acting Field Office Director concluded that because the applicant's I-130 petition was revoked, she did not have a qualifying relative for purposes of the I-601 waiver and denied the application accordingly. *See Decision of Acting Field Office Director* dated January 31, 2013.

On appeal, counsel contends given the supplemental evidence, the applicant has shown she was never married before she married the I-130 petitioner. Counsel moreover asserts although the revoked I-130 petition precludes USCIS from considering the I-485 and I-601 applications, the applicant's spouse has remedied this by filing a new I-130 petition.

The record reflects that on April 18, 2011 [REDACTED] filed a Form I-130, Petition for Alien Relative, on behalf of the applicant, which was approved on September 8, 2011. However, it was later determined that the applicant indicated in two nonimmigrant visa applications she was previously married to and had a child with a man named [REDACTED]. The applicant was unable to provide sufficient evidence demonstrating she was free to marry the I-130 petitioner, and the I-130 petition was consequently revoked. *See Revocation of Petition for Alien Relative*, January 13, 2013. The applicant's spouse filed another Form I-130 Petition on the applicant's behalf on March 14, 2013. This application has not been adjudicated,

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 her 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 her spouse. In the absence of an approved I-130 petition, the applicant is not entitled to apply for adjustment of status, and her application for adjustment cannot be approved regardless of whether she is admissible or, if not, whether a waiver is available for any ground of inadmissibility.

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In the absence of an underlying approved Form I-130, Petition for Alien Relative, the Form I-601, Application for Waiver of Grounds of Inadmissibility, is unnecessary. The appeal of the denial of the waiver must therefore be dismissed.

ORDER: The appeal is dismissed.