



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JUL 05 2013** Office: MT. LAUREL, NJ

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 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, Mt. Laurel, New Jersey. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed and the underlying application remains denied.

The record reflects that the applicant is a native and citizen of Italy 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 attempting to procure a United States immigration benefit through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen, and he is the father of a U.S. citizen child and two U.S. citizen stepchildren. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 and children.

In a decision dated March 1, 2011, the Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 1, 2011.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established, as required by the Act. *Decision of the AAO*, dated November 8, 2012. Consequently, the appeal was dismissed. *Id.*

The record indicates that on September 24, 1996, the applicant entered the United States, with authorization to remain until December 23, 1996. The applicant failed to depart the United States when his authorization expired. On February 20, 1997, a Form I-130 was filed on behalf of the applicant by [REDACTED]. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). The Form I-130 indicates that the applicant and [REDACTED] had married on December 14, 1996. However, the record establishes that the applicant and [REDACTED] never married. On September 22, 1997, the Acting District Director, Miami, Florida, denied the applicant's Form I-485 because of his failure to appear for his appointment. The record indicates that the Forms I-130 and I-485 were submitted for the applicant to obtain employment authorization in the United States. As the applicant was not married to the petitioner, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to seek an immigration benefit in the United States.

The record further indicates that on October 17, 1997, the applicant married [REDACTED]. On June 4, 1998, the applicant filed another Form I-485 based on his marriage to [REDACTED]. On December 9, 2000, the Acting District Director, Philadelphia, Pennsylvania, denied the applicant's Form I-130 and his second Form I-485, again because of his failure to appear, which constitutes abandonment. The applicant and [REDACTED] divorced, and he married his current spouse on August 1, 2007.

A Form I-130 and Form I-485 were concurrently filed on January 28, 2008 based upon the applicant's current marriage. Because the applicant was found inadmissible under section 212(a)(6)(C) of the Act, he filed Form I-601, the subject of the motion before the AAO, on September 4, 2008.

On May 24, 2013, U.S. Immigration and Customs Enforcement removed the applicant from the United States because as a visa-waiver program violator, he had remained in the United States for a period of time longer than authorized.

Although the applicant had filed the instant motion on December 20, 2012, his removal has resulted in his Form I-485 and Form I-601 becoming invalid.

As the applicant is now outside of the United States, he must apply for an immigrant visa through consular processing with a new Form I-601 waiver application, and an Application to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

The applicant's May 24, 2013 removal has resulted in his Form I-485 and Form I-601 becoming invalid. Accordingly, the applicant's motion will be granted and the underlying application remains denied.

ORDER: The motion to reopen and reconsider is dismissed and the waiver application remains denied.