



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

[Redacted]

Date: **JUN 12 2013** Office: HARLINGEN, TX FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:

[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. 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, Harlingen, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the field office director will be withdrawn and the matter remanded to the field office director to reopen the applicant's Form I-485 and Form I-601 applications and issue a decision on the Form I-130 petition filed by the applicant's spouse. If that petition is denied, the field office director shall deny the Form I-485 and Form I-601 accordingly. If that petition is approved, the field office director shall issue a new decision addressing the merits of the applicant's Form I-601 application. If that decision is adverse to the applicant, the field office director shall certify the decision to the AAO for review.

The record reflects that the applicant is a native and citizen of Mexico. On November 25, 2011, the applicant's spouse, [REDACTED], filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary, which was accompanied by the applicant's Application to Register Permanent Resident or Adjust Status (Form I-485). On the same day, the applicant filed an Application for Waiver of Ground of Inadmissibility (Form I-601). On June 29, 2012, the field office director issued a decision denying the applicant's waiver application on the grounds that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The applicant has appealed that decision. The record reflects that no final decision on the Form I-130 petition has been issued.

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. Furthermore, a determination that the applicant has demonstrated extreme hardship to her spouse and thus qualifies for a waiver of inadmissibility will be rendered moot if, in the subsequent adjudication of the Form I-130, it is determined that their marriage is not bona fide.

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 premature. The decision of the field office director will be withdrawn and the matter remanded to the field office director to issue a decision on the Form I-130 petition filed by the applicant's spouse.

**ORDER:** The decision of the field office director is withdrawn and the matter is remanded to the field office director to reopen the applicant's Form I-485 and Form I-601 applications and issue a decision on the Form I-130 petition filed by the applicant's spouse. If that petition is denied, the

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field office director shall deny the Form I-485 and Form I-601 accordingly. If that petition is approved, the field office director shall issue a new decision addressing the merits of the applicant's Form I-601 application. If that decision is adverse to the applicant, the field office director shall certify the decision to the AAO for review.