

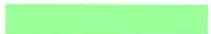


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Date: **MAR 09 2013**

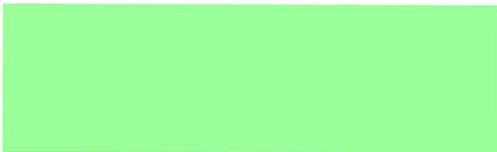
Office: TUCSON, AZ

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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 Field Office Director, Tucson, Arizona. 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 Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband in the United States.

The field office director found that the applicant failed to respond to the Service's notice of intent to deny her Form I-485, which was denied on November 30, 2011. The field office director therefore found that the applicant's Form I-601 was improperly filed as there is no underlying Form I-485. The field office director denied the waiver application accordingly.

On appeal, counsel contends that the applicant attempted to respond to the notice of intent to deny by filing a Form I-601, as instructed, within thirty days of the date of the letter. However, according to counsel, UPS returned the Form I-601 with no explanation and subsequently, USCIS rejected the Form I-601 for supposedly missing a signature, which had been included. Counsel contends it would be fundamentally unfair to refuse to adjudicate the Form I-601 on its merits.

A Form I-601 waiver application is viable when there is a pending adjustment of status application (Form I-485) or immigrant visa application. In this case, the applicant's Form I-485 was denied on November 30, 2011. Although the AAO acknowledges counsel's contentions that the applicant attempted to respond to the notice of intent to deny, and acknowledges that it appears the applicant's signature was properly noted on the waiver application, nonetheless, there is no indication in the record that the applicant has filed a motion to reopen the Form I-485 and no indication any such motion was approved.

Because the applicant does not have an underlying adjustment application to support the filing of her Form I-601 waiver application, no purpose would be served in examining the hardship to the applicant's spouse. As such, the appeal must be dismissed.

**ORDER:** The appeal is dismissed.