



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

(b)(6)

DATE: **MAY 30 2013** OFFICE: FRESNO, CALIFORNIA

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 with the field office or service center that originally decided your case by filing a 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure entry to the United States through willful misrepresentation. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, he 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 wife and children.

On motion, the Field Office Director determined the applicant was not statutorily eligible for adjustment of status pursuant to section 245(i) of the Act, and accordingly, no purpose would be served in reopening the applicant's adjustment of status application. *See Decision of the Field Office Director to Deny the Applicant's Motion to Reopen Form I-485*, dated November 28, 2012.

In a separate decision, the Field Office Director denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) as a matter of discretion, as "[a]pproving [the applicant's] Form I-601 would not make [him] admissible." *Decision of the Field Office Director to Deny the Applicant's Form I-601*, dated November 28, 2012.

On appeal, counsel contends: U.S. Citizenship and Immigration Services [USCIS] "construed the entirety of the laws applicable to this specific case through the prism of § 245(i) of the [Act], which was the incorrect treatment of this matter" as "there is more to admissibility than just § 245(i)" and the applicant "was 'forced' by [USCIS] to apply for this benefit for which everyone knew he did not qualify"; the applicant is eligible to file a waiver application pursuant to section 212(i) of the Act and "see that process through an appeal and other authorized methods"; USCIS should have provided the applicant "the opportunity to cure any curable defect with the waiver form prior to denying it outright" as "[USCIS's] authority to [exercise its discretion] is unfettered and unlimited by any form or anything else for that matter ... [USCIS] could have exercised discretion even if the [waiver] request were made on a paper napkin"; the applicant's U.S. citizen "relatives will suffer the direst of consequences amounting to extreme hardship should a favorable exercise of discretion not be granted"; and upon properly balancing the applicant's equities, "it is more likely than not that his circumstances will warrant a favorable exercise of discretion in keeping with the '*raison d'etre*' of the availability of [w]aivers under the [Act]" (italics added). *Brief in Support of Notice of Appeal*, dated January 25, 2013.

The record reflects the applicant last entered the United States without inspection by U.S. immigration officials on or about July 27, 1995, and he has remained in the United States to date. On March 31, 2006, the applicant's U.S. citizen spouse filed on his behalf a Form I-130, which USCIS denied on September 14, 2009. On August 23, 2009, the applicant's spouse filed another Form I-130 on his behalf, which USCIS approved on May 10, 2010. On August 23, 2009, the applicant simultaneously filed an Application to Register Permanent Residence or Adjust Status

(Form I-485), which USCIS denied on May 11, 2010. The Field Office Director determined the applicant was statutorily ineligible for adjustment of status in the United States as he last entered the United States without inspection by immigration officials, and he did not have a priority date of April 30, 2001 or earlier.

Section 245(i) of the Act provides, in pertinent part:

(1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States—

(A) who—

(i) entered the United States without inspection; or

(ii) is within one of the classes enumerated in subsection (c) of this section;

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 203(d)) of--

(i) a petition for classification under section 204 that was filed with the Attorney General [now Secretary of Homeland Security (Secretary)] on or before April 30, 2001; or

(ii) an application for a labor certification under section 212(a)(5)(A) that was filed pursuant to the regulations of the Secretary of Labor on or before such date; and

(C) who, in the case of a beneficiary of a petition for classification, or an application for labor certification, described in subparagraph (B) that was filed after January 14, 1998, is physically present in the United States on the date of the enactment of the LIFE Act Amendments of 2000 [enacted Dec. 21, 2000];

may apply to the [Secretary] for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The [Secretary] may accept such application only if the alien remits with such application a sum equaling \$1,000 as of the date of receipt of the application...

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 May 11, 2010. As described above, the Field Office Director found the applicant failed to establish his eligibility to adjust his status to that of a lawful permanent resident under section 245(a) or section 245(i) of the Act. Although a second motion to reopen the denial of the

applicant's Form I-485 is pending, the AAO lacks jurisdiction to review the Field Office Director's denial of the applicant's Form I-485 application.¹

Because the applicant was found ineligible to adjust status for reasons other than his inadmissibility under section 212(a)(6)(C), no purpose would be served in examining the hardship to the applicant's wife. Accordingly, the waiver application must be denied, and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.3(a)(1) (as in effect on August 29, 2011).