



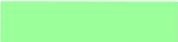
U.S. Citizenship  
and Immigration  
Services

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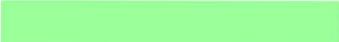


DATE: NOV 06 2013

Office: LOS ANGELES, CA

FILE: 

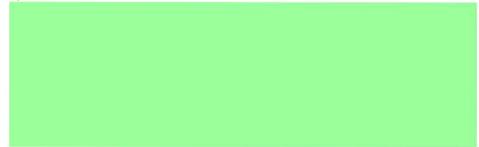
IN RE:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Field Office Director for further proceedings consistent with this decision.

The applicant is a native and citizen of South Korea 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 an immigration benefit by fraud or willful misrepresentation of a material fact. The applicant's spouse is a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated March 21, 2013.

On appeal, counsel submits evidence of hardship and states that the Field Office Director failed to address evidence of hardship and all of the discretionary factors. *Form I-290B, Notice of Appeal or Motion*, received April 23, 2013.

The record reflects that on July 19, 2010 the applicant's U.S. citizen spouse filed a Form I-130, Petition for Alien Relative (Form I-130), naming the applicant as the beneficiary. The Form I-130 was accompanied by the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485). The applicant's Form I-601, Applicant for Waiver of Ground of Inadmissibility (Form I-601), was filed on May 31, 2011. At the time of the denial of the Form I-601, the Form I-130 had 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 his 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 his spouse. In the absence of an approved I-130 petition, the applicant is not entitled to apply for adjustment of status, and his application for adjustment cannot be approved regardless of whether he 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 his 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 the I-130 petition is denied, the Field Office Director shall deny the Form I-485 and Form I-601 accordingly. If the petition is not denied, the Field Office Director shall issue a new decision addressing the merits of the 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.