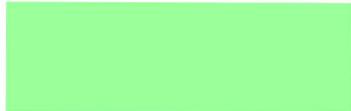


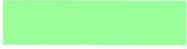


U.S. Citizenship  
and Immigration  
Services

(b)(6)



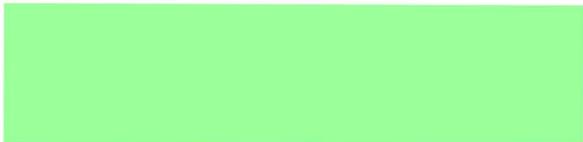
Date: **OCT 01 2013** Office: ORLANDO

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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Orlando, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Colombia 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 having procured U.S. admission through fraud or misrepresentation. The applicant is the beneficiary of an approved spousal Petition for Alien Relative (Form I-130). He is seeking a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The field office director concluded the applicant had failed to establish extreme hardship to a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, July 14, 2010.

On appeal, filed in August 2010 and received by the AAO in April 2013, the applicant contends the field office director erred by not finding that denial of the waiver would cause his wife extreme hardship or in not granting a waiver on humanitarian grounds due to his medical condition. In support of the appeal, the applicant submits a brief and financial documentation. The record also contains the hardship statement of qualifying relative and documents regarding the applicant's asylum and removal proceedings, including an order of removal, evidence of the applicant's removal to Colombia, and information about the applicant's criminal record.<sup>1</sup> The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i)(1) of the Act provides:

The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien [...].

The record reflects that the applicant used a photo-substituted Spanish passport belong to another person to enter the country on June 28, 1997, that on September 29, 2009 he filed applications for waiver of admissibility (Form I-601) and adjustment of status (Form I-485), that on July 15, 2010 he

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<sup>1</sup> The AAO notes that it need not consider whether the applicant's criminal conviction is for a crime involving moral turpitude, as his removal makes him ineligible to adjust status in the United States.

was ordered removed, and that after his request for a stay of removal was denied by the Board of Immigration Appeals on July 28, 2011, he was removed on November 28, 2011.

In the present matter, the applicant is currently residing outside the country pursuant to his removal nearly two years ago. Because of the applicant's removal, he is no longer eligible to adjust status in the United States, and no purpose would be served in adjudicating the Form I-601. He must apply for an immigrant visa outside the United States and may file again for a waiver when he has a visa application pending.<sup>2</sup>

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, this appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> An individual applying for an immigrant visa may file Form I-601 with USCIS after being found inadmissible by a consular officer after a visa interview. *See Instructions for Application for Waiver of Grounds of Inadmissibility.*