



U.S. Citizenship
and Immigration
Services

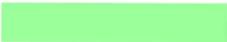
(b)(6)



DATE: SEP 04 2013

OFFICE: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) and 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
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Colombia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining an immigration benefit through willful misrepresentation of a material fact. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with her U.S. citizen husband.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Acting Director*, dated April 5, 2013.

On appeal, counsel asserts that the director did not adequately weigh the evidence, consider all factors of hardship and did not evaluate the hardship factors in the aggregate. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed April 29, 2013.

The record reflects that on January 5, 2012 the applicant's U.S. citizen daughter 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) and the applicant's Form I-601, Applicant for Waiver of Ground of Inadmissibility (Form I-601). At the time of the denial of the Form I-601 the Form I-130 had not been adjudicated. USCIS electronic records indicate that the Form I-130 was administratively closed on June 4, 2013. There is no explanation in the record as to why it was administratively closed.

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 an approved Form I-130 petition.

The purpose of the Form I-130 petition is to establish for immigration purposes the validity of the familial relationship between the applicant and the petitioner. 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 unnecessary if there is no underlying Form I-130.

(b)(6)

NON-PRECEDENT DECISION

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The record as it stands indicates that there is no approved Form I-130 in the present case. Therefore, the AAO finds that in the absence of an approved Form I-130, no purpose is served in adjudicating the appeal of the Form I-601.

ORDER: The appeal is dismissed as there is no underlying Form I-130.