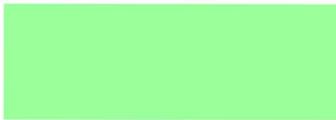


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

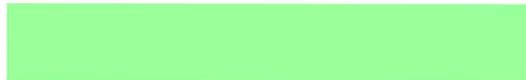


U.S. Citizenship
and Immigration
Services



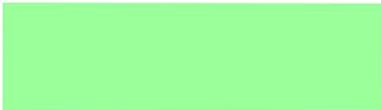
DATE: SEP 05 2013
IN RE:

OFFICE: PROVIDENCE, RHODE ISLAND FILE:



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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Providence, Rhode Island and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Field Office Director for further action as noted below.

The applicant is a native and citizen of the Dominican Republic 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 attempting to procure a benefit under the Act through willful misrepresentation of a material fact, and under section 212(a)(6)(A) of the Act, 8 U.S.C. § 1182(a)(6)(A), for being present in the United States without having been admitted or paroled. The applicant 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 spouse.

The Field Office 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 Field Office Director*, dated January 24, 2013.

On appeal, counsel asserts that the evidence of hardship was legally sufficient to support the waiver and indicates that he would submit additional evidence to the AAO within 30 days. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed February 22, 2013. The record does not contain additional evidence in support of the appeal.

The record contains, but is not limited to: various immigration forms; letters from the applicant's spouse's counselor and the applicant's spouse; financial documents; copies of passport and identity documents; a marriage certificate; and pictures. The entire record was reviewed and considered in rendering a decision on appeal.

The Field Office Director found that the applicant presented fraudulent entry stamps on an I-94 card and passport, and a fraudulent U.S. visa, in order to establish that she was inspected and admitted to the United States as required by section 245(a) of the Act. Based on the evidence in the record, including statements made during the applicant's adjustment of status interview, the director concluded that the applicant had not met her burden of proof regarding evidence of her admission to the United States. The director further found that she had entered without inspection, however, was not eligible to adjust status under section 245(i) of the Act as she was not the beneficiary of a petition filed on or before April 30, 2001. The applicant's Form I-485 Application to Register Permanent Residence or Adjust Status (Form I-485) was, therefore, denied. The AAO has no jurisdiction to review the denial of the Form I-485. At the time of filing the present appeal counsel also filed a motion to reopen the applicant's Form I-485 which remains adjudicated.

As the applicant's Form I-485 has been denied there is no underlying application through which she can adjust status. Absent a means to adjust status, no purpose is served in adjudicating the appeal of the denial of the Form I-601 and determining whether extreme hardship to the applicant's qualifying relative has been established.

The matter is therefore remanded to the Field Office Director to render a decision on the motion to reopen the applicant's Form I-485. If the Form I-485 remains denied, the Form I-601 will remain denied and no further action is required of the AAO. If, however, the Field Office Director reopens and approves the applicant's Form I-485, the matter shall be returned to the AAO to adjudicate the applicant's appeal of the denial of her Form I-601.

ORDER: The matter is remanded to the Field Office Director to take action consistent with this decision.