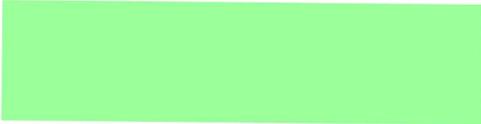




U.S. Citizenship
and Immigration
Services

(b)(6)



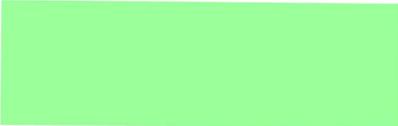
DATE **DEC 30 2014** OFFICE: PITTSBURGH, PA

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: On July 17, 2014, the waiver application was denied by the Field Office Director, Pittsburgh, Pennsylvania, who dismissed a subsequent appeal on October 2, 2014. As the Field Office Director did not have jurisdiction over the appeal, the October 2, 2014, decision will be withdrawn, and the Administrative Appeals Office (AAO) will enter a new appellate decision. The appeal will be dismissed.

The applicant is a native and citizen of India 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 having procured or attempted to procure a visa, admission to the United States, or a benefit under the Act through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The Field Office Director concluded that as the applicant's I-130, Petition for Alien Relative (I-130 petition) and I-485 Application to Register Permanent Residence or Adjust Status (I-485 application) were denied, the waiver application no longer had grounds for consideration. See *Decision of Field Office Director*, July 21, 2014. The Field Office Director additionally found the applicant had not demonstrated that his qualifying relative would experience extreme hardship given his continued inadmissibility. *Id.* The application was accordingly denied. *Id.*

On appeal, counsel contends that the I-130 petition has not been fully adjudicated, as the Field Office Director's July 19, 2014, I-130 petition denial was appealed to the Board of Immigration Appeals (BIA), where it remains pending. Counsel adds that because the I-130 denial was improper, and the waiver application was filed to address inconsistencies delineated in the I-130 denial, the waiver application remains relevant, and should be adjudicated on the merits.

Counsel also asserts that, if the I-485 application is reopened based on a favorable appellate decision on the I-130 petition, then the waiver application warrants reconsideration of the merits due to the unsubstantiated speculation contained in the denial notice. However, the record does not presently contain an approved I-130 petition, as according to USCIS records, the appeal of the I-130 denial remains pending at the BIA.

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.

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NON-PRECEDENT DECISION

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In the absence of an underlying approved Form I-130, Petition for Alien Relative, the Form I-601, Application for Waiver of Grounds of Inadmissibility, is moot. The appeal of the denial of the waiver must therefore be dismissed.

ORDER: The appeal is dismissed.