



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JAN 13 2014

OFFICE: SAN FERNANDO

[Redacted]

IN RE:

[Redacted]

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:

[Redacted]

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 Field Office Director, San Fernando, California denied the waiver application and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on appeal. This matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The applicant is a native and citizen of Thailand 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 entry to the United States by fraud or willful 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 with her spouse.

The Field Office Director determined that the applicant failed to demonstrate hardship to a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated October 4, 2012. On appeal, the AAO noted that the Field Office Director denied the Form I-130, Petition for Alien Relative, filed on behalf of the applicant by her spouse. As the Form I-130 denial had not been overturned, the AAO determined that there would be no purpose served in granting a waiver of inadmissibility. *See Decision of the AAO*, dated September 5, 2013.

In a motion to reconsider, counsel for the applicant asserts that the applicant's spouse's appeal of his Form I-130 denial is pending with the Board of Immigration Appeals (BIA) and remains a valid basis of an adjustment of status application.

In support of her motion to reconsider, the applicant's spouse submitted a declaration that the BIA has not issued a decision on his Form I-130 appeal.

A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). The AAO, in its previous decision, determined that the applicant's spouse appealed the denial of his Form I-130 to the BIA, in an appeal signed December 3, 2012. The AAO also determined that the record did not contain any indication that the Field Officer Director's Form I-130 denial had been overturned. On motion, the applicant's spouse submitted a declaration asserting that his appeal to the BIA has not resulted in a decision.

Counsel asserts that pursuant to 8 C.F.R. § 1003.6, the Field Office Director's denial of the applicant's spouse's Form I-130 is not final, so a denial of the applicant's waiver of inadmissibility would be premature. 8 C.F.R. § 1003.6 states that the decision in any proceeding from which an appeal to the Board may be taken shall not be executed during the pendency of the appeal. Counsel asserts that the Field Office Director may not execute a decision on the applicant's spouse's Form I-130 while an appeal is pending, but makes no such assertion concerning the AAO's jurisdiction over the applicant's waiver application.

The record contains the Field Office Director's November 13, 2012 denial of the applicant's spouse's Form I-130 submitted on behalf of the applicant. As such, the applicant is not currently eligible for an immigrant visa and the applicant has failed to establish that the denial of her waiver application was based on an incorrect application of law or Service policy.

ORDER: The motion to reconsider is dismissed.