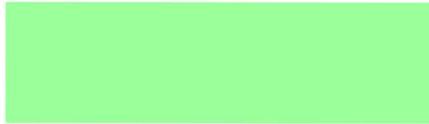




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **NOV 06 2014** Office: NEWARK

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: The waiver application was denied by the Field Office Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Egypt, 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 admission to the United States through fraud or misrepresentation, and for procuring admission to the United States 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), to reside in the United States with his U.S. citizen spouse.

After interviewing the applicant on November 10, 2011, in relation to her Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), the Field Office Director found that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation. On September 16, 2013, the Field Office Director issued the applicant a Form I-72, Request for Evidence (Form I-72), advising the applicant to file Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) within 30 days from the date of the request. On September 24, 2013, the U. S. Postal Service returned the Form I-72 to the Field Office as undeliverable.¹ On September 30, 2013, the Field Office Director denied the applicant's Form I-485, stating that the applicant failed to submit the required documents as stated in the Form I-72, and failed to provide U.S. Citizenship and Immigration Services (USCIS) with a valid mailing address.

The applicant subsequently retained counsel.

The record includes a letter from counsel to the USCIS Field Office in Newark, which indicates that counsel had an in-person discussion with the Field Office on October 22, 2013, and that the Field Office agreed to reopen the matter on a Service Motion. Although there is no other evidence in the record that the Field Office reopened the matter, the record indicates that on November 15, 2013, the Field Office Director issued a second Form I-72 advising the applicant to file Form I-601. The Form I-72 clearly indicates that the requested Form I-601 be submitted within 30 days, and failure to comply with the instructions will result in the form I-601 being denied pursuant to 8 C.F.R. § 103.2(b)(13).

8 C.F.R. § 103.2(b)(13) states:

If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the benefit request may be summarily denied as abandoned, denied based on the record, or denied for both reasons. If other requested material necessary to the processing and approval of a case, such as photographs, are not submitted by the required date, the application may be summarily denied as abandoned.

¹ The address on the envelope of the Form I-72 is the same as the applicant's current address, according to the applicant's recently filed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, dated May 5, 2014. It is unclear why the U.S. Postal Service returned the Form I-72 as undeliverable.

The record indicates that the Form I-601 was signed by the preparer on December 30, 2013, and was filed on January 2, 2014, 48 days after the Form I-72 was issued. Therefore, the Form I-601 failed to comply with the instructions on the Form I-72 that it must be submitted within 30 days.

The Field Office Director denied the Form I-601 on April 8, 2014, stating that the applicant's Form I-485 was denied on September 30, 2013, and that USCIS does not have the authority to grant a Form I-601 absent a pending application for adjust of status or a referral from the Department of State in conjunction with an application for a K nonimmigrant visa or immigrant visa, citing 8.C.F.R. § 212.7(a)(a)(i) and (ii). *See Decision of the Field Office Director*, April 8, 2014.

On appeal, counsel contends that Field Office Director erroneously denied the Form I-601 as the USCIS Field Office in Newark, New Jersey reopened the applicant's Form I-485 application, and on November 15, 2013 issued a request to file the Form I-601 within 30 days of the notice. Counsel states that the applicant filed the Form I-601 on December 13, 2013; however, as noted above, the record indicates that the Form I-601 was not filed until January 2, 2014, 48 days after the request was issued.

The Field Office Director Denied the Form I-601 based upon her denial of the applicant's Form I-485 on September 30, 2013. The AAO does have jurisdiction over the denial of a Form I-485 adjustment of status application filed under section 245 of the Act. Moreover, the record indicates that the Form I-601 was not timely filed pursuant to the instructions on the Form I-72. Therefore, the appeal will be dismissed.

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.

ORDER: The appeal is dismissed.