



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 31 2015**

FILE #: [REDACTED]
([REDACTED] consolidated therein)

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Los Angeles, California Field Office (the director) denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, and 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 of Mexico, obtained lawful permanent resident status in the United States on March 21, 2002. The director issued a notice of intent to rescind the applicant's lawful permanent resident status on December 24, 2003, and the applicant's lawful permanent resident status was rescinded on January 5, 2010, pursuant to section 246 of the Act, 8 U.S.C. § 1256, and 8 C.F.R. § 246.2.¹

On January 22, 2004, the applicant filed a Form I-601 in response to the director's notice of intent to rescind her lawful permanent resident status. Upon review, the director determined that the applicant was ineligible for a waiver of inadmissibility because she did not file her Form I-601 in conjunction with a Form I-485, Application to Register Permanent Residence or Adjust Status. *Director's Notice of Decision*, dated January 4, 2010, and *Director's Amended Notice of Decision*, dated January 5, 2010. The Form I-601 was denied accordingly.

Through counsel, the applicant appeals the director's decision denying her Form I-601, by asserting that the application was "submitted to be considered along with the I-485 already on record as having been approved." The applicant also contests the director's finding that she is inadmissible due to misrepresentation of a material fact at the time of her adjustment of status interview.

The entire record was reviewed and considered in rendering a decision on the appeal.

The Board of Immigration Appeals (BIA) decision, *Matter of Rivas*, 26 I&N Dec. 130 (BIA 2013), reflects that in order to seek a waiver of a ground of inadmissibility or removal from within the United States, an individual must file the waiver application concurrently with an adjustment of status application:

A section 212(h) 'stand-alone' waiver is not available to an alien in removal proceedings. *Poveda v. U.S. Att'y Gen.*, 692 F.3d 1168, 1177 (11th Cir. 2012) (stating that a lawful permanent resident may obtain a waiver "only if he is an applicant for admission or assimilated to the position of an applicant for admission by applying for an adjustment of status"). We conclude that the statute does not provide for an alien in removal proceedings to obtain a 'stand-alone' waiver without an application for adjustment of status.

Id. at 132-33. Similarly, the BIA clarified in *Matter of Y-N-P-*, 26 I&N Dec. 10, 16 (BIA 2012), that an adjustment of status application:

¹ Once a notice of intent to rescind has been served, the statute of limitations is tolled and a rescission action may proceed beyond the five-year time limit set forth in section 246 of the Act. See *Singh v. INS*, 456 F.2d 1092 (9th Cir. 1972); *Matter of Pereira*, 19 I&N Dec. 169 (BIA 1984).

[S]hall be the sole method of requesting the exercise of discretion under sections 212(g), (h), (i), and (k) of the Act, as they relate to the inadmissibility of an alien in the United States. Pursuant to this rule, which has been in place for over a half century, the respondent would only be eligible to file a section 212(h) waiver application concurrently with an application to adjust her status under section 245 of the Act or one of the other provisions included in the regulations.

The applicant indicates on appeal that her Form I-601 should be considered as concurrently filed with her Form I-485. The record reflects, however, that the applicant's Form I-485 adjustment of status application was filed on April 27, 2001, while her Form I-601 was submitted on January 22, 2004, almost three years later. The applicant's Form I-601 was also submitted over two years after the Form I-485 was approved, on March 21, 2002, and the applicant's status was adjusted to that of a lawful permanent resident; and after the director's December 23, 2003, issuance of a notice to rescind approval of the applicant's lawful permanent resident status. The applicant presents no legal argument or authority to corroborate the assertion that a Form I-601 application, filed years after the adjudication of the Form I-485, is considered to be a concurrently filed application for waiver of inadmissibility purposes.

A section 212(i) waiver application filed without a concurrently filed adjustment of status application does not have a pending adjustment of status application. *See Matter of Rivas*, 26 I&N Dec. at 131. In the present matter, the applicant did not demonstrate that she filed her waiver application in conjunction with her adjustment of status application. The applicant is therefore ineligible to apply for a waiver under section 212(i) of the Act, and the appeal must be dismissed.²

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.

² The applicant filed a second Form I-485 application on March 29, 2011. This Form I-485 also does not qualify as a concurrent filing for waiver of inadmissibility purposes, as it was filed over seven years after the applicant's Form I-601 was submitted and after the I-601 was adjudicated.