

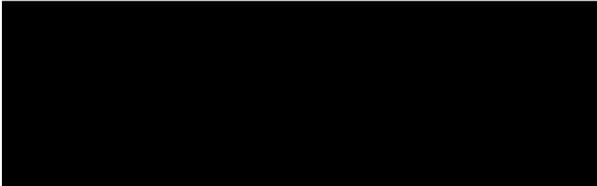
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

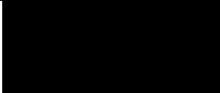


U.S. Citizenship  
and Immigration  
Services



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FILE:



Office: MEXICO CITY (PANAMA CITY)

Date: **MAY 18 2010**

IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the district director for further action consistent with this decision.

The applicant, a native and citizen of Venezuela, was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), unlawful presence in the United States for more than one year, section 212(a)(9)(A)(ii)(II), 8 U.S.C. § 1182(a)(9)(A)(ii)(II), certain aliens previously removed, and section 212(a)(9)(C), 8 U.S.C. § 1182(a)(9)(C), unlawful presence after previous immigration violations. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child, born in 2002.

The district director concluded that “in reference to Section (a)(9)(C), your [the applicant’s] multiple entries or re-entries after been (sic) ordered removed from the United States, there is no provision in the Law that provides for a waiver of these charges regardless of the circumstances.... [I]t is concluded that you are statutorily ineligible for the relief sought....” *Decision of the District Director*, dated July 27, 2007. The Application for Waiver of Grounds of Excludability (Form I-601) was denied accordingly.

The record establishes that on August 3, 2009, the Form I-130, Petition for Alien Relative (Form I-130), filed by the applicant's U.S. citizen spouse, [REDACTED], on behalf of the applicant was revoked, as the Secretary of State had terminated the registration of the beneficiary pursuant to Section 203(g) of the INA because the two-year period of reinstatement of the visa petition had passed. *Letter from [REDACTED] USCIS-Vermont Service Center*, dated August 3, 2009. Electronic USCIS records indicate that the Form I-130 remains revoked. The record does not establish that the Form I-130 has been reinstated as of today. Nor does the record establish that a subsequent Form I-130 has been approved on behalf of the applicant.

Section 205.1 of Title 8 of the Code of Federal Regulations states, in pertinent part:

- (a) Reasons for automatic revocation. The approval of a petition...made under section 204 of the Act...is revoked as of the date of approval:
  - (1) If the Secretary of State shall terminate the registration of the beneficiary pursuant to the provisions of section 203(e) of the Act before October 1, 1991, or section 203(g) of the Act or on after October 1, 1994....

In the absence of an approved Form I-130, the AAO would dismiss the appeal of the denial of the Form I-601 as moot. However, based on a review of the record, the AAO has determined that the approval of the Form I-130 filed on behalf of the applicant may have been revoked in error. The record establishes that the applicant did apply for an immigrant visa within one year following notification of the availability of such visa.<sup>1</sup> Counsel for the applicant, in September 2007, notified

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<sup>1</sup> The record establishes that the applicant’s Form I-130 was approved in August 2005 and the applicant submitted the Form DS-230, Application for Immigrant Visa and Alien Registration, in November 2005.

the American Embassy in Caracas, Venezuela of the Form I-601 denial and subsequent appeal, and further confirmed applicant's continued intent to immigrate to the United States through consular processing. *Letter from* [REDACTED] dated September 7, 2007. Pursuant to the U.S. Department of State's Consolidated Consular Database, as of September 17, 2007, the above-referenced letter from [REDACTED] was received and the applicant's immigrant visa application was being kept open until the final decision on the Form I-601 appeal was made. *Consolidated Consular Database.*

Therefore, the AAO finds that in the absence of an approved Form I-130, the matter will be remanded to the district director to determine the viability of the Form I-130 filed by the applicant's U.S. citizen spouse, [REDACTED], on behalf of the applicant.

**ORDER:** The matter is remanded to the district director to determine the viability of the Form I-130 filed on the applicant's behalf by her U.S. citizen spouse. If the I-130 was properly revoked, the denial of the Form I-601 is moot and the instant appeal of the denial of the waiver must be dismissed. If the Form I-130 was improperly revoked, upon reinstatement the district director shall certify the Form I-601 decision to the AAO for review.