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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H6

DATE: **APR 11 2011**

Office: KANSAS CITY (ST. LOUIS)

FILE: 

IN RE: 

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,


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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Kansas City, Missouri, denied the application for waiver of inadmissibility, and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on motion to reopen and reconsider. The decision of the district director will be withdrawn and the matter remanded to the district director to reopen the applicant's Application to Register Permanent Resident or Adjust Status (Form I-485) and the Application for Waiver of Ground of Inadmissibility (Form I-601) and to issue a decision on the Petition for Alien Relative (Form I-130) filed by the applicant's spouse.

The record reflects that the applicant is a native and citizen of Mexico. On September 24, 2004, the applicant's spouse, [REDACTED] a U.S. citizen, filed Form I-130 on behalf of the applicant, which was filed concurrently with the applicant's Form I-485. On February 14, 2005, a Request for Evidence (RFE) was sent to the applicant notifying him that he was required to file Form I-601. The applicant filed this application on May 10, 2005. On May 23, 2006, the district director issued a decision denying the applicant's waiver application on the grounds that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The applicant appealed that decision and the AAO dismissed the appeal. The record reflects that no final decision on the Form I-130 petition has been issued.

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 of status cannot be approved regardless of whether he is admissible or whether a waiver is available for any applicable ground of inadmissibility. Furthermore, a determination that the applicant has demonstrated extreme hardship to his spouse and thus qualifies for a waiver of inadmissibility will be rendered moot if, in the subsequent adjudication of the Form I-130, it is determined that their marriage is not bona fide.

Therefore, the AAO finds that in the absence of an approved Form I-130, the district director's decision denying the Form I-601 was premature. The decision of the district director will be withdrawn and the matter remanded to the district director to issue a decision on the Form I-130 petition filed by the applicant's spouse.

ORDER: The decision of the district director is withdrawn and the matter is remanded to the district director to reopen the applicant's Form I-485 and Form I-601 applications and issue a decision on the Form I-130 petition filed by the applicant's spouse. If that petition is denied, the district director shall deny the Form I-485 and Form I-601 accordingly. If that petition is approved, the district director shall issue a new decision addressing the merits of the applicant's Form I-601

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application. If that decision is adverse to the applicant, the district director shall certify the decision to the AAO for review.