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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**

[Redacted]

H6

Date: **JUN 06 2011**

Office: NEWARK (MT. LAUREL, NJ)

FILE: [Redacted]

IN RE: [Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

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.

Maria F. Rhew

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Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Newark, New Jersey, denied the application for waiver of inadmissibility, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter is remanded to the district director for further proceedings consistent with this decision.

The applicant is a native and citizen of Ecuador 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 attempting to obtain a benefit through fraud or misrepresentation. He was also found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of more than one year. The applicant requires a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(a)(9)(B)(i)(II) of the Act, in order to remain in the United States.

The District Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The waiver application was denied accordingly. *See Decision of the District Director* dated March 6, 2009.

On appeal, counsel for the applicant requested 30 days in order to submit a brief and/or additional evidence. No additional statement or evidence was submitted, and on May 13, 2011 the AAO sent a facsimile to counsel requesting copies of any brief or additional materials which had been submitted. In response, counsel submitted a copy of a Notice of Action (Form I-797C) dated April 6, 2009 indicating that the appeal was being treated as "a Service motion to reopen or Service motion to reconsider." Counsel states that in reliance on this notice, no brief was submitted to the AAO in support of the appeal.

The AAO notes that the receipt number referenced in the Notice of Action dated April 6, 2009 relates to the Petition for Alien Relative (Form I-130) filed on behalf of the applicant. USCIS computer records indicate that the Form I-130 was denied on March 6, 2009, but a review of the record indicates that the Form I-130 was approved on May 14, 2007 and the approval was never revoked.¹ The AAO further notes that the District Director erroneously sent the applicant a Notice of Certification indicating that the applicant's case had been certified for review to the AAO, when in fact his waiver application had been denied and he had submitted a timely Form I-290B, Notice of Appeal to the AAO. *See Notice of Certification* dated April 6, 2009.

Because the applicant was erroneously informed that his appeal was being treated as a Service motion to reopen and would be informed once action was completed, his attorney did not submit a brief or additional evidence to the AAO. It appears that data entry errors were made indicating that his Form I-130 was denied, and as a result, the appeal of the denial of his waiver application was not properly processed and he was not given proper notice that it was forwarded to the AAO. Therefore, the AAO remands the matter to the District Director to review the matter and correct any data entry or procedural errors made in reference to the applicant's Form I-130 and Form I-

¹ It appears that the decision denying the Form I-601 was incorrectly entered as a denial of the Form I-130 and the appeal of the denial of the applicant's waiver application was erroneously treated as an appeal related to the Form I-130.

601 and to issue a new decision addressing the merits of the applicant's Form I-601 waiver application.

The District Director shall issue a new decision addressing the merits of the applicant's Form I-601 waiver application. If that decision is adverse to the applicant, it shall be certified for review to the AAO pursuant to 8 C.F.R. § 103.4.

ORDER: The matter is remanded to the field office for further proceedings consistent with this decision.