

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

H6

[REDACTED]

DATE: NOV 07 2011 Office: NEWARK (MOUNT LAUREL) 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 APPLICANT:
[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.

Thank you,

A. Maria Feli

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the district director will be withdrawn and the matter remanded to district director to reopen the applicant's Form I-485 and Form I-601 applications and issue a decision on the Form I-130 petition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 application. If that decision is adverse to the applicant, the district director shall certify the decision to the AAO for review.

The applicant is a native and citizen of Pakistan 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 gain an immigration 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 more than one year and again seeking admission within ten years of his last departure from the United States. The applicant is the spouse of a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

On April 21, 2003, the district director denied the Petition for Alien Relative (Form I-130) naming the applicant as beneficiary, finding that the applicant submitted a fraudulent divorce decree from his first marriage. The applicant thereafter appealed the district director's decision. On April 21, 2005, the Board of Immigration Appeals dismissed the applicant's appeal. The applicant's spouse filed another Form I-130 on the applicant's behalf on April 18, 2008. However, 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 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 application. If that decision is adverse to the applicant, the district director shall certify the decision to the AAO for review.