

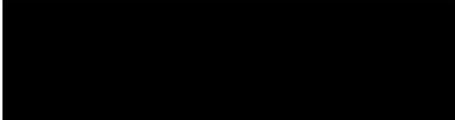
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



PUBLIC COPY

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Date: **SEP 08 2011**

Office: SANTA ANA, CA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Santa Ana, California, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, which is now before the Administrative Appeals Office (AAO) on appeal. The decision of the field office director will be withdrawn and the matter remanded to the field office director to reopen the applicant's Form I-485 and Form I-601 applications and issue a decision on the Form I-130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 field office director shall deny the Form I-485 and Form I-601 accordingly. If that petition is approved, the field office 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 field office director shall certify the decision to the AAO for review.

The record reflects that the applicant is a native and citizen of Bolivia. On February 8, 2008, the applicant's spouse, [REDACTED] filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary. On October 5, 2008, after Ms. [REDACTED] became a naturalized citizen, she filed a second Form I-130 on the applicant's behalf in conjunction with an Application to Register Permanent Resident or Adjust Status (Form I-485). On March 19, 2009, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601).

On June 17, 2009, the field office director issued a decision denying the applicant's Form I-601 waiver application on the grounds that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. *Decision of the Field Office Director*, dated June 17, 2009. The applicant has appealed that decision. However, the record reflects that no final decision on the Form I-130 petition, filed on October 5, 2008, 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 cannot be approved regardless of whether he is admissible or, if not, 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 field office director's decision denying the Form I-601 was premature. The decision of the field office director will be withdrawn and the matter remanded to the field office director to issue a decision on the Form I-130 petition filed by the applicant's spouse.

**ORDER:** The decision of the field office director is withdrawn and the matter is remanded to the field office 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 field office director shall deny the Form I-485 and Form I-601 accordingly. If that petition is approved, the field office 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 field office director shall certify the decision to the AAO for review