



U.S. Citizenship  
and Immigration  
Services



H6

DATE: DEC 20 2012

OFFICE: CIUDAD JUAREZ (ANAHEIM)

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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Ciudad Juarez, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The waiver application will be dismissed, and the matter remanded to the field office director.

The applicant is a native and citizen of Mexico. On November 28, 2007, the Form I-130, Petition for Alien Relative (Form I-130) that the applicant's lawful permanent resident spouse filed on her behalf in 2004 was approved. The applicant filed an immigrant visa application on June 14, 2010, and a Form I-601 waiver application on June 20, 2011, due to her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The director denied the waiver application on April 23, 2012, because the applicant failed to establish her husband would experience extreme hardship if she were denied admission into the United States. The applicant has appealed that decision.

The filing of a Form I-601 waiver application is predicated on the necessity to demonstrate admissibility, a requirement for an immigrant visa and adjustment to permanent resident status under section 245 of the Act. Eligibility for an immigrant visa based on a marital relationship is dependent on approval of the Form I-130 petition.

In the present matter, the purpose of the Form I-130 petition is to establish for immigration purposes the validity of the marriage between the applicant and her spouse. In the absence of an approved I-130 petition, the applicant is not entitled to apply for an immigrant visa and her visa application could not be approved whether she is admissible or whether a waiver is available for her inadmissibility.

A review of the record reflects that the Form I-130 filed on the applicant's behalf by [REDACTED] on August 23, 2004, was approved on November 28, 2007. The Form I-130 indicates that [REDACTED] and the applicant were married in Indiana on May 21, 2003, and that neither had been previously married. It is noted that the record does not contain a copy of the applicant's 2003 marriage certificate. Moreover, additional information in the record reflects that, at the time of her claimed marriage to [REDACTED] the applicant was married to another man, [REDACTED]. She obtained a legal divorce from her first husband on December 13, 2010 and remarried [REDACTED] on March 1, 2011; however no new Form I-130 was filed or approved on the applicant's behalf. Because the applicant was not in a valid marriage with [REDACTED] when the Form I-130 was filed and approved, the Form I-130 approval was improper and should be revoked.

Pursuant to 8 C.F.R. §205.2, the approval of a Form I-130 petition is revocable upon notice to the petitioner on any ground other than those specified in 8 C.F.R. § 205.1, when the necessity for the revocation comes to the attention of USCIS. Because the applicant was not in a valid marriage with [REDACTED] when he filed Form I-130 on her behalf, the AAO remands the matter to the director to initiate proceedings for the revocation of the improperly approved Form I-130 petition. Should the approved Form I-130 petition be revoked, the director will issue a new decision dismissing the applicant's Form I-601 as moot. In the alternative, should it be determined that the



Form I-130 is not to be revoked, the director's Form I-601 waiver decision will be certified for review to the AAO pursuant to 8 C.F.R. §103.4.

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