

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

Date: **MAY 02 2012** Office: MEXICO CITY 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 waiver application was denied by the Field Office Director, Mexico City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the field office director for further action.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated September 3, 2009.

On appeal, the applicant's current husband, [REDACTED] submits additional documentation of extreme hardship, including letters from his physician.

After a careful *de novo* review of the record, the AAO remands the matter to the field office director. The record reflects that on January 2, 2001, [REDACTED] filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary. A copy of their marriage certificate in the record indicates they were married on [REDACTED] 1997, and several documents in the record indicate that the applicant and [REDACTED] were a married couple. *See, e.g., Application to Register Permanent Resident or Adjust Status (Form I-485)*, filed January 2, 2001; *Biographic Information form (Form G-325A)*, dated December 20, 2000; *1999 U.S. Individual Income Tax Return (Form 1040A)*, dated March 11, 2000. By letter dated June 19, 2001, the legacy INS informed the applicant that it had stopped processing the Form I-130 because the check or money order submitted as payment was returned by the bank. There is no further indication in the record addressing whether the applicant or [REDACTED] properly filed the fee to process the Form I-130. Several years later, in September 2007, the applicant claims she withdrew this petition "to make things right." *Letter from [REDACTED]* dated September 12, 2007. The record further shows that on September 14, 2005, the applicant's current husband, [REDACTED] filed a Form I-130 on the applicant's behalf. On this second Form I-130, the applicant indicated that she had no prior marriages. This second Form I-130 was approved on March 17, 2006.

Pursuant to 8 C.F.R. § 205.2, the approval of an I-130 petition is revocable when the necessity for the revocation comes to the attention of the Service. In this case, there is no indication in the record to show that the applicant divorced her first husband, [REDACTED]. Therefore, the AAO remands the matter to the field office director to evaluate whether the applicant's second, approved Form I-130, filed by [REDACTED] is valid. Should the approved Form I-130 petition be revoked, the applicant's Form I-601 will be moot as there will be no underlying petition and no means for the applicant to obtain an immigrant visa. No further action will be required. In the alternative, should it be determined that the

Page 3

Form I-130 is not to be revoked, the field office director will return the record to the AAO to adjudicate the appeal of the Form I-601 denial.

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