

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

#6



Date: **NOV 06 2012** Office: MEXICO CITY, MEXICO FILE:

IN RE: Applicant:

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

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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action consistent with this decision.

The record reflects that the applicant, a native and citizen of Mexico, entered the United States without authorization in either December 1995 or March 1997,<sup>1</sup> and remained in the United States until August 2010. The applicant began accruing unlawful presence on April 1, 1997, the effective date of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)*.<sup>2</sup> The applicant was 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 from April 1, 1997 until August 2010, a period of more than one year. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with her Lawful Permanent Resident spouse.

The record indicates that the applicant married her Lawful Permanent Resident spouse, [REDACTED] on May 11, 2001 in Las Cruces, New Mexico. [REDACTED] subsequently filed a Form I-130, Petition for Alien Relative, on May 31, 2001, which was approved on May 18, 2006. On the Form I-130, [REDACTED] indicated that he had no other marriages prior to his marriage to the applicant.

USCIS records indicate that [REDACTED] entered the United States on January 31, 1986 as the husband of a U.S. citizen. USCIS records include a marriage certificate for [REDACTED] and [REDACTED] on April 7, 1982.

Absent verification that the marriage between [REDACTED] and [REDACTED] was lawfully terminated prior to [REDACTED] marriage to the applicant, the Form I-130 which [REDACTED] filed on behalf of the applicant should not have been approved, and is subject to revocation. The record indicates that the field office issued a Form I-72 on January 21, 2011, requesting evidence of the termination of [REDACTED] first marriage, but that no response was received.

As such, there is no evidence that the Form I-130 filed on behalf of the applicant is valid. The ability of the applicant to apply for an immigrant visa is based upon a valid Form I-130. In the absence of a valid Form I-130, no application for admission is possible, and no purpose would be served in considering the application for a waiver for a ground of inadmissibility.

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<sup>1</sup> The Form I-130 filed on behalf of the applicant indicates that she entered the United States in December 1995. Information from the U.S. Consulate in Ciudad Juarez, Mexico, indicates that the applicant entered the United States in March 1997.

<sup>2</sup> No period of unlawful presence prior to the effective date of the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)*, Pub. L. No. 104-208, is counted when determining inadmissibility under section 212(a)(9)(B) of the Act.

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. Therefore, the AAO remands the matter to the field office director determine if the petitioner's first marriage was lawfully terminated prior to his *marriage to the applicant*, and if not, to initiate proceedings for the revocation of the approved Form I-130 petition. Should the approved Form I-130 petition be revoked, the district director will issue a new decision dismissing the applicant's Form I-601 as moot. In the alternative, should it be *determined that the the Form I-130 is valid and not to be revoked*, then the district director will 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 will be certified for review to the AAO pursuant to 8 C.F.R. § 103.4.

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