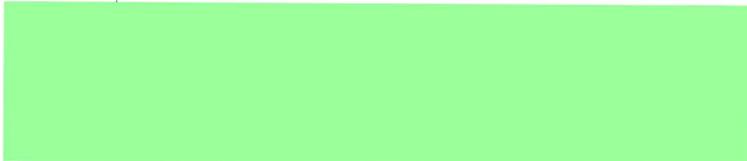




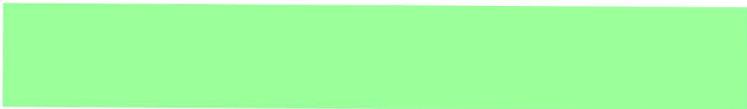
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **FEB 04 2013** OFFICE: TEGUCIGALPA, HONDURAS

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:  


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,

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, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the field office director.

The applicant is a native and citizen of Costa Rica. The applicant's U.S. citizen spouse filed a Form I-130, Petition for Alien Relative (Form I-130) on the applicant's behalf on July 12, 2010. The applicant subsequently filed an immigrant visa application, and she filed a Form I-601 waiver application on November 29, 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 applicant was also found to be inadmissible under section 212(a)(6)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(B), for failing to attend her removal proceeding. No waiver exists for an inadmissibility under this section of the Act. In addition, the applicant was found to be inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered removed, and seeking admission within ten years of removal.<sup>1</sup>

The director found that the applicant was not eligible for a waiver and denied the applicant's Form I-601 waiver application. *See Decision of the Field Office Director*, dated May 22, 2012.

Counsel, on behalf of the applicant, appealed the director's decision, stating that the director improperly applied 212(a)(6)(B) of the Act to the applicant, and she seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). *See Form I-290B, Notice of Appeal or Motion*, dated June 14, 2012.

According to a letter signed by [REDACTED] on January 7, 2013 and received by the AAO on January 17, 2013, he and the applicant are now divorced. On this basis, [REDACTED] requests "a formal withdrawal of the I-212 application."<sup>2</sup> Additionally, his attorney asserts that the Form I-130 has been automatically revoked. The divorce decree between the applicant and [REDACTED] was not submitted with this letter and is not contained in the record.

The filing of a Form I-601 waiver application is predicated on the necessity to demonstrate admissibility, a requirement for an immigrant visa. The purpose of the Form I-130 petition is to establish for immigration purposes the validity of the marital relationship between the applicant and her U.S. citizen spouse. In the absence of an approved I-130 petition, the applicant's application for an immigrant visa could not be approved, whether she is admissible or whether a

<sup>1</sup> The applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied on April 30, 2012 and has not been appealed

<sup>2</sup> Though counsel states in the January 2013 letter that he wishes to withdraw the applicant's Form I-212, the Form I-212 decision has not been appealed to the AAO and the AAO thus has no authority to withdraw the application.

waiver is available for any ground of inadmissibility. Furthermore, a determination that the applicant has demonstrated extreme hardship to her spouse and thus qualifies for a waiver of inadmissibility would be rendered moot if it were determined that their marriage no longer exists.

The regulations provide in pertinent part at 8 C.F.R. § 205.1:

(a) *Reasons for automatic revocation.* The approval of a petition or self-petition made under section 204 of the Act and in accordance with part 204 of this chapter is revoked as of the date of approval:

....  
(3) If any of the following circumstances occur before the beneficiary's or self-petitioner's journey to the United States commences:

....  
(i) (D) Upon the legal termination of the marriage when a citizen or lawful permanent resident of the United States has petitioned to accord his or her spouse immediate relative or family-sponsored preference immigrant classification under section 201(b) or section 203(a)(2) of the Act.

The record contains information indicating that the marriage between the applicant and the U.S. citizen spouse petitioner has been terminated which, if established, would result in the automatic revocation of the applicant's Form I-130 approval. The AAO shall therefore remand the matter to the director to determine whether the applicant and her U.S. citizen spouse, [REDACTED] are in fact divorced, and if so to initiate proceedings for the automatic revocation of her 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.