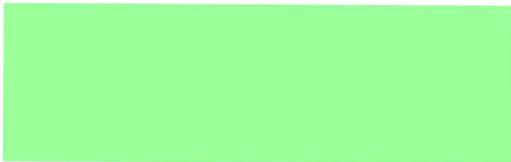




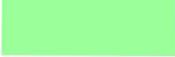
U.S. Citizenship
and Immigration
Services

(b)(6)

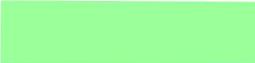


Date: **NOV 13 2013**

Office: VIENNA

FILE: 

IN RE:

Applicant: 

APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601 waiver application was denied by the Officer in Charge, Vienna, Austria. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The AAO granted a subsequent motion by the applicant and sustained the appeal. The AAO then reopened the matter on service motion and issued a notice of intent to dismiss the appeal. The prior decision of the AAO sustaining the appeal will be withdrawn and the appeal will be dismissed.

The applicant is a native and citizen of Albania who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant is married to a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse.

In a decision dated June 18, 2009, the officer in charge concluded that the applicant failed to demonstrate that her U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility to the United States and denied the waiver application accordingly. The applicant appealed that decision and in a decision dated December 5, 2011, the AAO found that the record evidence established the applicant's spouse would experience extreme hardship resulting from separation from the applicant. However, the AAO also found the record evidence insufficient to establish extreme hardship upon relocation to Italy, the country in which the applicant presently resides as a permanent resident. The AAO dismissed the appeal accordingly. The applicant subsequently filed a motion to reopen and reconsider the AAO decision, the motion was granted and the underlying appeal was sustained on April 17, 2013. On May 8, 2013, the applicant's spouse notified USCIS in writing through a sworn affidavit that she wished to withdraw the Form I-130, Petition for Alien Relative, filed on behalf of the applicant. The AAO subsequently provided the applicant notice of reopening the April 17, 2013 decision on service motion and notice of the intent to dismiss the appeal (NOID). The applicant was granted thirty days from October 1, 2013 to respond to the NOID pursuant to 8 C.F.R. § 103.5(a)(5). On October 31, 2013, the AAO received the applicant's response.

In response to the NOID, counsel states that the applicant's spouse notified the U.S. consulate on June 2, 2013 that she wished to retract her withdrawal of the Form I-130 that she filed on the applicant's behalf. Counsel states that she followed up on the request with the National Visa Center and with the USCIS National Customer Service Center. Counsel provided documentation to support these assertions. Based on this information, counsel states that the AAO erred in reopening the matter and argues that the AAO should reinstate its previous decision sustaining the appeal.

As stated in our NOID, the purpose of the Form I-130 petition is to establish for immigration purposes the validity of the marriage relationship 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 or adjustment of status, and such an application cannot be approved notwithstanding eligibility for a waiver of inadmissibility. In the absence of an underlying approved Form I-130, no purpose is served in adjudicating a waiver application, which is necessary to establish eligibility for an immigrant visa or adjustment of status.

(b)(6)

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Where, as in this case, the applicant's spouse formally notified USCIS through a sworn affidavit that she wished to withdraw the Form I-130 that she filed on the applicant's behalf, the regulations, as set forth in 8 CFR § 103.2(b)(6), do not permit her to retract that withdrawal. 8 CFR § 103.2(b)(6) states:

(6) Withdrawal. An applicant or petitioner may withdraw an benefit request at any time until a decision is issued by USCIS or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. However, a withdrawal may not be retracted.

The applicant is no longer eligible for an immigrant visa because the underlying Form I-130 has been withdrawn. Accordingly, no purpose would be served in further adjudication of the Form I-601 waiver application. The appeal from the denial of the waiver application must therefore be dismissed.

ORDER: The appeal is dismissed.