



U.S. Citizenship
and Immigration
Services

Date: June 25, 2008

File No: [REDACTED]

DECISION

[REDACTED]

Reference is made to your Application to Register Permanent Residence or Adjust Status, Form I-485, which was filed on July 08, 2007. You filed your application for residency on the basis that you are the spouse of a United States citizen with a concurrently filed I-130, Petition for Alien Relative. The Form I-130 has been approved.

Section 245 of the Act provides, in pertinent part:

- (a) The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application or such adjustment, **(2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence**, and (3) an immigrant visa number is immediately available to him at the time his application is filed. (underscoring provided)

A review of your record shows that an I-140, Petition for Alien Worker, was filed on your behalf on June 4, 2003 by Ricky's Stereo. That petition was approved on July 22, 2004 and given a priority date of May 16, 2001. An I-485, Application to Register Permanent Residence or Adjust Status, was filed concurrently. That application was denied because you did not qualify for adjustment under Section 245(i) of the Immigration and Nationality Act (INA). In addition, you misrepresented yourself at the port of entry when you were admitted as a visa waiver applicant. Although you stated upon inspection to be a temporary visitor for pleasure, you were in fact seeking admission to gain employment in the United States. A Motion to Reopen and Reconsider filed on November 4, 2004 was denied on May 22, 2006.

On February 24, 2007 you married a U.S. citizen who filed an I-130 on your behalf. That petition was filed on July 8, 2007 and has been approved. An I-485 and I-601, Application for Waiver of Grounds of Inadmissibility, were filed concurrently. At the time of your I-130 adjustment interview it was discovered that your previous spouse, who was a derivative on your initial application and who attended that interview along with your children, was no longer your spouse at that time. In fact, you were divorced on May 22, 1997. As a result, you are inadmissible under Section 212(a)(6)(C)(i) of the INA for misrepresenting your marital status and your intentions at the time of your initial admission. The I-601 waiver was denied because you failed to establish that there would be an extreme hardship to your U.S. citizen spouse should you be removed from the United States.

You are inadmissible to the United States under Section 212(a)(6)(C)(i) of the INA. The I-601 waiver you submitted to overcome this ground has been denied. As a result, you are not eligible to adjust status

in the United States and your application for residence must be, and is hereby denied. There is no appeal of this decision. However, you may file a motion to reopen with the appropriate fee within thirty days of the date of this decision. The motion must state the new facts to be considered and be supported by affidavits or other documentary evidence.

Diane Campbell

Diane Campbell
Field Office Director
Memphis, Tennessee
DC/JCF



U.S. Citizenship
and Immigration
Services

Date: JUN 25 2008

File No: [REDACTED]

NOTICE OF DECISION

[REDACTED]

On July 8, 2007, you filed an I-601 Application for Waiver of Grounds of Inadmissibility. This application was filed concurrently with an I-130 Petition for Alien Relative and I-485 Application to Register Permanent Residence or Adjust Status. Both of the above will be addressed separately. You are seeking a waiver of section 212(a)(6)(C)(i) of the INA for misrepresentation. Under Section 212(a)(6)(C)(i), any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure, (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. A waiver for this ground of inadmissibility is available.

It states in Section 212(i) of the INA that the Attorney General may, in his discretion, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or lawful permanent resident if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant would result in extreme hardship to the citizen or lawful permanent resident spouse or parent. The Form I-601 that you filed indicates that you are inadmissible because you committed fraud upon admission as a visa waiver applicant when you were in fact an intending immigrant. You also claim use of an altered Employment Authorization Document. Finally, on a previously filed and denied Form I-485 you listed that you were married to [REDACTED] when in actuality you have been divorced since May 22, 1997. On February 24, 2007, about 9 months following the denial of your I-485 application, you married a U.S. citizen who filed an I-130 petition on your behalf. This is despite the fact that your ex-wife and three children remain in the U.S. and there is evidence that they are living with you. They all accompanied you at your initial adjustment interview on March 15, 2006. Furthermore, you have provided no explanation regarding how there would be any hardship to your U.S. citizen spouse should you be removed from the United States on inadmissibility grounds. You have been married for less than one year, your wife is over 40 years old and has had two previous marriages. She is fully employed and you do not have any children together.

Although no box was checked on Form I-601 it is apparent that you are inadmissible under Section 212(a)(6)(C)(i). However, you failed to establish that there would be an extreme hardship to your spouse should you be removed and refused admission back into the United States. Therefore, the I-601 waiver that you have filed must be and is hereby denied. There is no appeal of this decision. However, you may file a motion to reopen with the appropriate fee within thirty days of the date of this decision. The motion must state the new facts to be considered and be supported by affidavits or other documentary evidence.

Sincerely,

Diane Campbell
Field Office Director