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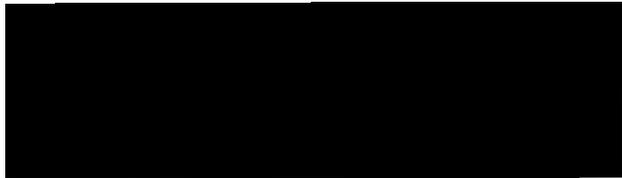
U.S. Department of Homeland Security  
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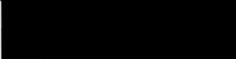
U.S. Citizenship  
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FILE:



Office: SAN ANTONIO, TX

Date:

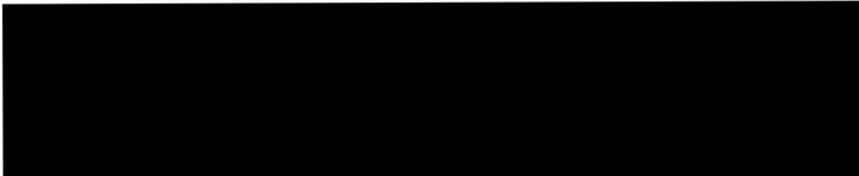
**AUG 13 2008**

IN RE:



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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Antonio, Texas and that matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the field office director for further consideration consistent with the following discussion.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I), based on his 2007 conviction for the laundering of monetary instruments under 18 U.S.C. § 1956(a)(1) and section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having willfully misrepresented his date of birth in seeking adjustment of status. On July 3, 1997, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, based on the Form I-130, Petition for Alien Relative, concurrently filed by his U.S. citizen spouse. The Form I-130 benefiting the applicant was approved on February 27, 2003; the Form I-485 was denied on January 28, 2008. The applicant seeks a waiver of inadmissibility pursuant to sections 212(h) and (i) of the Act, 8 U.S.C. § 1182(h) and (i), in order to reside in the United States.

In his denial of the Form I-601, Application for Waiver of Ground of Excludability, the field office director found that the applicant had established that his U.S. citizen spouse, [REDACTED] would suffer extreme hardship if his waiver request were to be denied. He concluded, however, that the negative factors in the applicant's case outweighed the positive and that he had, therefore, failed to demonstrate that he was deserving of a favorable exercise of discretion. *Decision of the Field Office Director*, dated January 28, 2008.

On appeal, counsel contends that the field office director failed to balance the favorable factors in the applicant's case with the negative, including the applicant's remorse for his crimes, the fact that the events that resulted in the applicant's 2007 conviction took place years before and were regulatory violations, the absence of any other criminal convictions, the length of the applicant's residence in the United States, his family ties to the United States, and his good character. *Counsel's Brief*, February 21, 2008.

The record indicates that on December 28, 2007, [REDACTED] died after a long illness. On February 14, 2008, the field office director automatically revoked the approval of the Form I-130 benefiting the applicant, citing to the requirements of the regulation at 8 C.F.R. § 205.1(a)((3)(i)(C) in the event of a petitioner's death. Counsel for the applicant filed a motion to reconsider. On April 25, 2008, the field office director granted the applicant's motion, but affirmed his decision revoking the Form I-130. On this same date, the field office director also granted counsel's motion to reopen and reconsider the denial of the Form I-485, finding that the applicant had failed to overcome the grounds for the denial of the application. In his decision, the field office director noted the revocation of the underlying Form I-130 and the absence of any other immigrant visa petition, approved or pending, on which to base the Form I-485.<sup>1</sup>

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<sup>1</sup> The AAO notes that it has no authority over the motions filed by counsel in this matter or the adjudication of Form I-130s and I-485s. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. See 8 C.F.R. § 103.5(a)(1)(ii). The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO

The AAO notes the field office director's revocation of the Form I-130 previously approved on the applicant's behalf and, like the field office director, finds no evidence in the record to establish that the applicant is the beneficiary of another immigrant visa petition. It further observes that, although the field office director previously considered the Form I-601 waiver application under the requirements of sections 212(h) and (i) of the Act, his subsequent revocation of the Form I-130 has eliminated the underlying immigrant visa petition required for the filing of a Form I-601.

As the viability of the Form I-601 is based on the Form I-130, the appeal in this matter would normally be dismissed as the Form I-601 is mooted by the absence of an underlying petition. However, on May 5, 2008, the applicant appealed the revocation of the Form I-130 benefiting him to the Board of Immigration Appeals (BIA). The AAO will, therefore, remand the Form I-601 to the field office director to await the BIA's decision on the revocation of the Form I-130. Should the BIA dismiss the applicant's appeal, the Form I-601 is moot based on the absence of an underlying immigrant visa petition. If the applicant's appeal is sustained by the BIA, the field office director should again consider the Forms I-485 and I-601 filed by the applicant and issue new decisions.

**ORDER:** The appeal is remanded for further consideration consistent with the preceding discussion.