



U.S. Citizenship
and Immigration
Services

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FILE:

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Office: CALIFORNIA SERVICE CENTER

Date:

NOV 28 2008

IN RE:

[REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guyana who last entered the United States without inspection on November 27, 1990. The applicant filed a Form I-485, Application to Register Permanent Resident and or Adjust Status, on October 29, 2001, seeking to adjust status under section 245(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(i), as an alien without legal status in the United States. The records of the Citizenship and Immigration Services (CIS) indicate that the applicant previously had an approved Form I-130, Petition for Alien Relative, filed on his behalf on October 29, 1984, by his spouse at the time. However, that petition was revoked on October 22, 1994, and there is no evidence on record of any other existing immigrant visa petition with qualifying priority dates filed on behalf of the applicant. Additionally, the record shows that pursuant to the denial of an asylum application filed by the applicant in 1994, the applicant was granted voluntary departure on January 31, 1996 by an Immigration Judge of the Executive Office of Immigration Review.

In connection with the applicant's Form I-485, CIS issued a request for further evidence (RFE) on April 12, 2006, requesting that the applicant provide, among other things, evidence of an immigrant visa petition or application for labor certification that was filed on his behalf on or before the filing date of the I-485, and evidence establishing that he complied with the terms of the grant of voluntary departure. On July 5, 2006, in response to the RFE, the applicant provided a number of the documentation requested, but did not submit any evidence of an immigrant visa petition or of voluntary departure from the United States. The applicant also filed at that time a Form I-601, Application for Waiver of Ground of Excludability.

In a decision issued on August 29, 2006, the director denied the I-485, finding that in light of the absence of evidence that the applicant has a valid visa petition with qualifying priority date filed on his behalf, the applicant is ineligible for adjustment of status. In addition, the director noted that absent evidence that the applicant complied with the terms of the 1996 grant of voluntary departure, the applicant is inadmissible under section 212(a)(9)(A) of the Act, a ground for inadmissibility for which there is no waiver available. In a decision issued the same day, the director denied the Form I-601 on the grounds that the applicant has applied for a waiver for a section of law that does not provide for a waiver.

The AAO notes that the regulation at 8 C.F.R. §§ 212.7(a) and (b) instructs individuals seeking adjustment of status to use the Form I-601 to file for waivers of inadmissibility under sections 212(a)(g), (h) and (i) of the Act, where a waiver is available. It does not authorize the use of the Form I-601 when an applicant for adjustment is inadmissible under section 212(a)(9)(A) of the Act, where no waiver is available.¹ Accordingly, the applicant in the present case may not seek a waiver of inadmissibility by filing the Form I-601, Application for Waiver of Grounds of Inadmissibility.

¹ The AAO notes that while inadmissibility under section 212(a)(9)(A) is not waivable through submission of a Form I-601, relief is available through submission of Form I-212, Request for Permission to Reapply for Admission. In the present matter, however, the Form I-212 would serve no purpose as the applicant is otherwise inadmissible.

In addition, the viability of the Form I-601 is dependent on an adjustment of status application that is, in turn, based on an approved immigrant visa petition or application for labor certification that was filed on the applicant's behalf. In the absence of an underlying approved Form I-130 or Form I-140, the Form I-601 is moot. The appeal of the denial of the waiver in this instance must therefore be dismissed as moot.

In proceedings for an application for waiver of grounds of inadmissibility under the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.