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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

L7



FILE:



Office: HARTFORD, CONNECTICUT

Date:

IN RE:

Applicant:



APPLICATION: Application for Adjustment of Status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) (P.L. 105-277).

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Boston, Massachusetts, who also dismissed a motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the applicant is a citizen of Haiti who applied for adjustment of status to permanent residence under section 902 of Public Law 105-277, the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA).

The District Director found the applicant inadmissible to the United States because he falls within the purview of 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud and willful misrepresentation of a material fact. The District Director concluded that the applicant does not have a qualifying family member necessary to file for a waiver under section 212(i) of the Act and denied the application accordingly. *See District Director's Decision* dated April 26, 2004. On August 11, 2004, the District Director dismissed a motion to reconsider filed by the applicant's attorney.

The regulation at 8 C.F.R. § 103.5 states in pertinent part, that:

Reopening or reconsideration.

(a) Motions to reopen or reconsider in other than special agricultural worker and legalization cases--

. . . .

(6) Appeal to AAU from Service decision made as a result of a motion. A field office decision made as a result of a motion may be applied to the AAU only if the original decision was appealable to the AAU.

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 exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). The AAO does not have jurisdiction over this type of Form I-485 filed under section 902 of HRIFA.

As noted above the District Director denied the application for adjustment of status on April 26, 2004, and a motion to reconsider was denied on August 11, 2004. Since the original decision was not appealable to the AAO the appeal of the denial of the motion to reconsider will be rejected as a matter of law.

ORDER: The appeal is rejected.