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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CHARLESTON, SC

Date: APR 24 2009

IN RE:

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:

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Charleston, South Carolina, noted the denial of the applicant's Form I-601 waiver application as part of her denial of the applicant's Form I-485, Application for Adjustment of Status. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a visa and admission to the United States by fraud or willful misrepresentation. The applicant's spouse is a lawful permanent resident. He is seeking a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The field office director concluded that the applicant had failed to pay the required fee for the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), and had failed to establish that extreme hardship would be imposed on his spouse. *Notice of Denial, Application to Adjust Status*, at 2, dated March 4, 2008.

On appeal, counsel asserts that the denial was factually and legally incorrect in its application of the extreme hardship legal standard. *Form I-290B*, at 2, received April 3, 2008.

The AAO notes that the field office director's decision of March 4, 2008 is entitled, "Notice of Denial, Application to Adjust Status." While the decision notes that the I-601 was denied for lack of payment and, in addition, discusses the hardship claim connected to the waiver application, the AAO cannot view this decision as a denial of the I-601 as the cover letter and conclusion clearly relate to the applicant's application for adjustment of status. The record does not include a separate decision on the Form I-601. In addition, as noted in the director's decision and confirmed by the record, the applicant submitted his initial Form I-601 without paying the required filing fee and without receiving approval of a fee waiver. As the Form I-601 was not properly filed and there was no separate decision, there is nothing to appeal to the AAO.

The applicant filed a second Form I-601 on May 12, 2008, after submission of the current appeal. There has been no decision on that application. The present appeal cannot be applied to the second Form I-601.

The AAO does not have appellate jurisdiction over a denial of an application for adjustment of status. 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 cannot exercise appellate jurisdiction over additional matters on its own volition, or at the request of an applicant or petitioner. As a "statement of general . . . applicability and future effect

designed to implement, interpret, or prescribe law or policy," the creation of appeal rights for adjustment application denials meets the definition of an agency "rule" under section 551 of the Administrative Procedure Act. The granting of appeal rights has a "substantive legal effect" because it is creating a new administrative "right," and it involves an economic interest (the fee). "If a rule creates rights, assigns duties, or imposes obligations, the basic tenor of which is not already outlined in the law itself, then it is substantive." *La Casa Del Convaleciente*, 965 F.2d at 1178. All substantive or legislative rule making requires notice and comment in the Federal Register.

The AAO does not have jurisdiction over an appeal from the denial of a Form I-485 adjustment application filed under section 245 of the Immigration and Nationality Act. Therefore, the AAO cannot review the director's March 4, 2008 denial of the adjustment application.

As there was no properly filed or denied Form I-601 on which to base an appeal, the appeal is dismissed.

ORDER: The appeal is dismissed.