

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

H2

FILE:

Office: ATLANTA

Date:

AUG 24 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(6)(A)(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 District Director, Atlanta, Georgia denied the instant waiver application, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the applicant is a native and citizen of the United Kingdom, the spouse of a U.S. citizen, the stepfather of a U.S. citizen stepdaughter, and the beneficiary of an approved Form I-130 petition. The applicant filed his Form I-601, Application for Waiver of Inadmissibility, on January 11, 2007, seeking a waiver of inadmissibility in order to reside in the United States with his wife and stepdaughter.

On March 19, 2007, the District Director, Atlanta, Georgia denied the applicant's Form I-485 Application to Register Permanent Resident Status or Adjust Status on the basis that the applicant is not eligible for adjustment of status under 8 C.F.R. § 245.1(b)(3). Also on March 19, 2007, the district director denied the applicant's Form I-601 waiver application, finding that, because the applicant's Form I-485 had been denied, the applicant did not have an underlying petition or application to support the filing of the Form I-601 waiver application. The applicant appealed from that denial of his waiver application.

The AAO does not have appellate jurisdiction over an appeal from the 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 of 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 v. Sullivan*, 965 F.2d 1175, 1178 (1st Cir. 1992). All substantive or legislative rule making requires notice and comment in the Federal Register.

Because 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 Act, there is no underlying petition or application to support the filing of the Form I-601 waiver application. No purpose is served in considering the waiver application as the applicant's adjustment application has been denied on a ground other than inadmissibility under section 212 of the Act. The AAO further notes that the applicant remains inadmissible under section 212(a)(6)(A)(i) of the Act and no waiver is available for this ground of inadmissibility.

The applicant filed his Form I-601 waiver application after the denial of his Form I-485 adjustment application. There is no evidence showing that the adjustment application was reopened after being denied on March 19, 2007. Therefore, there was no underlying petition or application to support the filing of the Form I-601 waiver application and it should have been rejected accordingly.

ORDER: The appeal is rejected.