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



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

JUN 23 2009

IN RE:

APPLICATION:

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

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 Director, California Service Center, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant is a native and citizen of Cuba who filed a Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), in conjunction with his Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485). The applicant is seeking to adjust status under the Cuban Adjustment Act (CAA). Section 1 of the CAA states, in part, the following:

That, notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence . . .

The director found the applicant statutorily eligible to adjust status; however, the director denied the applicant's Form I-485 on the ground that a favorable exercise of discretion was not merited. In denying the applicant's Form I-601, the director stated that under section 245 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255, the grant or denial of adjustment of status is within the discretion of the Attorney General, and that no I-601 waiver is available when adjustment of status is denied on that basis.

The applicant's Form I-601 does not identify the ground of inadmissibility he seeks to waive. Further, the director did not find the applicant inadmissible and the record does not reflect any grounds of inadmissibility. The applicant's various arrests and single conviction for DUI do not render him inadmissible under section 212(a)(2)(A) of the Act for conviction of a crime involving moral turpitude. As such, no waiver is required and the Form I-601 is moot.

It is further noted that the AAO lacks jurisdiction to address the denial of a Form I-485.

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), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement.

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 v. Sullivan*, 965 F.2d 1175, 1178 (1st Cir. 1992) 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 the Cuban Adjustment Act and, as noted in the director's decision, a discretionary decision cannot be appealed.

As there is no need for the I-601 and the AAO lacks jurisdiction to review the denial of the Form I-485, the appeal is dismissed.

ORDER: The appeal is dismissed as the underlying waiver application is moot.