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**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: SACRAMENTO, CA Date: MAR 15 2011

IN RE: [redacted]

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Michael Humphrey

for Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Sacramento, California, and 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 India. On July 31, 2008, the field office director denied the applicant's Form I-601, Application for Waiver of Ground of Inadmissibility. In his decision, the field office director states that on February 21, 2007 the applicant submitted an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved Alien Relative Petition (Form I-130) filed on the applicant's behalf by his lawful permanent resident mother. The AAO notes that the record shows that the applicant's Form I-485 is based on his being granted asylum by the Board of Immigration Appeals on October 29, 1997. The record does not include an approved Form I-130.

In regards to asylees who are seeking adjustment of status, Section 209(c) of the Act states:

> (c) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any alien seeking adjustment of status under this section, and the Secretary of Homeland Security or the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

The AAO notes that the applicant was advised to file the incorrect waiver application. The proper waiver application for an asylee seeking adjustment of status who as been found inadmissible under section 212(a)(2)(A)(i) of the Act is a Form I-602, Application by Refugee for Waiver of Grounds of Excludability.

In a Notice of Appeal to the AAO (Form I-290B), dated August 28, 2008, counsel states his reasons for appealing the applicant's Form I-601. However, the AAO finds that as the applicant is required to file a Form I-602, no purpose would be served in discussing his Form I-601. Furthermore, while the AAO has appellate jurisdiction over a Form I-601, the AAO does not have appellate jurisdiction over a Form I-602.

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 v. Sullivan*, 965 F.2d at 1175, 1178 (1st Cir. 1992). All substantive or legislative rule making requires notice and comment in the Federal Register.

The AAO notes that there is no appeal from a denial of a Form I-602. 8 C.F.R. § 207.3(b) The Form I-602 may, however, be considered by the immigration judge if the Form I-485, Application to Register Permanent Residence or Adjust Status, is renewed during removal proceedings pursuant to the regulation at 8 C.F.R. § 209.2(f). *See Adjudicator's Field Manual*, Chapter 41.6(b)(2)(B).

As the applicant is required to file a Form I-602, no purpose would be served in discussing the applicant's Form I-601 application. Thus, the appeal is dismissed.

**ORDER:** The appeal is dismissed.