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



**U.S. Citizenship
and Immigration
Services**

H2



DATE: **JUN 18 2012** OFFICE: SAN BERNARDINO, CA

FILE: [REDACTED] /
[REDACTED] CONSOLIDATED

IN RE: APPLICANT: [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:



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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Bernardino, California, and a subsequent appeal before the Administrative Appeals Office (AAO) was rejected as untimely. The AAO will reopen the matter on its own motion. The appeal of the waiver application will be dismissed, and the application remains denied.

The applicant is a native and citizen of Iran who last entered the United States in 1977 in F-1 nonimmigrant status. The applicant was convicted of false imprisonment and petty theft, and he was consequently found to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act) for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. Citizen spouse.

The Field Office Director concluded that the applicant failed to demonstrate extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated October 21, 2010. The AAO rejected a subsequent appeal as untimely. *See AAO Decision*, April 5, 2011. The applicant's representative forwarded evidence of timely submission of the appeal that was not in the record when reviewed by the AAO. The appeal is therefore reopened on Service motion.

On appeal, the applicant's representative contends the spouse, who was born in the United States, would experience extreme difficulties upon relocation due to country conditions in Iran. The representative also asserts that the initial I-601 decision constituted an abuse of discretion by the Field Office Director.

The record reflects that on April 27, 2001 Dorothy J. Graziano filed a Form I-130, Petition for Alien Relative, on behalf of the applicant, which was approved on February 8, 2002. At an immigration interview, the applicant and his spouse explained that they had divorced in July 2009 and remarried on September 8, 2010. The I-130 Petition was revoked due to the termination of the marriage, and the Form I-485 Application to Register Permanent Residence or Adjust Status was denied. *Notice of Revocation*, September 22, 2010, *Notice of Decision*, September 22, 2010. The applicant's spouse filed another Form I-130 Petition on the applicant's behalf on February 9, 2011. No new Form I-485 application was filed.

A Form I-601 waiver application is viable when there is a pending adjustment of status application (Form I-485) or immigrant visa application. In this case, the applicant's Form I-485 was denied on September 22, 2010. The Field Office Director found the applicant failed to establish his eligibility to adjust his status to that of a lawful permanent resident under section 245(a) of the Act because the I-130 Petition supporting the adjustment of status application had been revoked. There is no indication in the record that the applicant filed a motion to reopen the denial of his Form I-485 and no indication any such motion was approved.¹

¹ Moreover, the AAO lacks jurisdiction to reopen a Form I-485 application.

Because the applicant was found ineligible to adjust status for reasons other than his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act no purpose would be served in examining the hardship to the applicant's spouse. Accordingly, the waiver application must be dismissed.²

ORDER: The appeal is dismissed.

² The AAO notes that the applicant was previously assigned alien registration number A 92 904 467, which needs to be consolidated with the applicant's current file.