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



U.S. Citizenship  
and Immigration  
Services

DATE: AUG 28 2013

OFFICE: HIALEAH, FLORIDA

File: [REDACTED]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Hialeah, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying waiver application is unnecessary.

The applicant is a native and citizen of Haiti. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) pursuant to Section 902 of the Haitian Refugee Immigrant Fairness Act (HRIFA), which was denied. The applicant then filed a Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), asserting that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility to reside in the United States with his U.S. citizen wife.

The Field Office Director concluded that the waiver application was improperly filed as there was no underlying adjustment application and also because there was no conviction for the applicant's arrest, and denied the Form I-601 accordingly. See *Decision of the Field Office Director*, dated March 9, 2013.

On appeal the applicant states that his Form I-485 was never denied and/or he never received proper notice of any defect. See *Form I-290B, Notice of Appeal or Motion* (Form I-290B) filed on April 2, 2013.<sup>1</sup>

The applicant's Form I-485, adjustment of status application was denied by the District Director, Miami, Florida on July 8, 2004 because the applicant did not meet the eligibility requirements for permanent residence in the United States. The director found that the applicant had not met his burden of proof under HRIFA in that he failed to demonstrate that he was present in the United States by presenting either a copy of an asylum application filed prior to December 31, 1995 or a parole document (I-94) dated prior to December 31, 1995. The denial was sent to the applicant's address of record.

The viability of the Form I-601 is dependent on a pending Form I-485. As the applicant has been found ineligible to adjust status, as outlined in detail above, no purpose would be served in adjudicating the Form I-601. The appeal of the denial of the waiver must therefore be dismissed as the underlying waiver application is unnecessary.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The AAO notes that the Form I-290B indicates that a Form I-130, Petition for Alien Relative (Form I-130) is being appealed and provides a receipt number for an I-130. USCIS records reflect that the Form I-130 was approved on March 14, 2011. However, as the date of denial noted is that for the Form I-601 the AAO will take this as an appeal of the denial of the Form I-601.