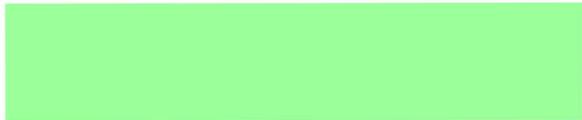




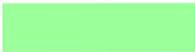
U.S. Citizenship
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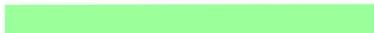
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DATE: JUN 21 2013

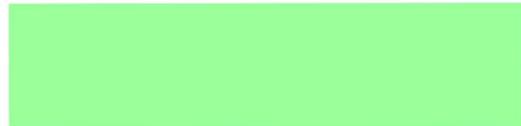
Office: OAKLAND PARK, FL

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 in accordance with the instructions on 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Turkmenistan who was found to be inadmissible to the United States pursuant to 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 committed a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident spouse and three lawful permanent resident children.

In a decision dated May 31, 2012, the field office director concluded that the applicant did not have a pending application for adjustment of status (Form I-485) and thus, was not eligible to apply for a 212(h) waiver with the field office director in Oakland Park, Florida. The application was denied accordingly.

On appeal, counsel asserts that the applicant's family resides in Hallandale, Florida; that the applicant applied for an immigrant visa and was denied; that the applicant is eligible to apply for a section 212(h) waiver; and that his waiver should be approved to permit him to rejoin his family.

The record indicates that on April 13, 2011, the applicant's immigrant visa application was denied and that the applicant is residing in Turkmenistan.

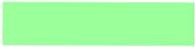
8 C.F.R. Sec. 212.7 states:

(a) *General* -(1) *Filing procedure* -(i) *Immigrant visa or K nonimmigrant visa applicant.* An applicant for an immigrant visa or "K" nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

(ii) *Adjustment of status applicant.* An applicant for adjustment of status who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I-601 with the director or immigration judge considering the application for adjustment of status.

We find that, as the applicant does not have an underlying adjustment of status application, the field office director in Oakland Park, Florida correctly dismissed the applicant's waiver application. As an applicant who has filed an immigrant visa, the applicant must file his waiver application with overseas processing.

The current U.S. Citizenship and Immigration Services website instructs foreign filers to file their waiver application with one of these addresses:



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USCIS
P.O. Box 21600
Phoenix, AZ 85036

Or for express mail and courier deliveries:

USCIS
ATTN: 601/212 Foreign Filers
1820 E. Skyharbor, Circle S, Suite 100
Phoenix, AZ 85034

Thus, as stated above, counsel erred in filing the applicant's waiver application with the Oakland Park Field Office, as the applicant was not filing a Form I-485 application for adjustment of status nor did he have a pending adjustment application. We find that as the applicant does not have an underlying adjustment of status application, the field office director, Oakland Park, Florida correctly denied the applicant's waiver application. As an applicant who has filed an immigrant visa, the applicant must file his waiver application with overseas processing. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.