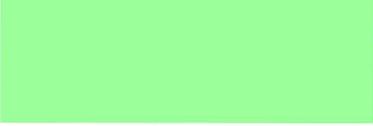




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: Office: NEWARK, NJ FILE:

MAR 27 2013
IN RE: Applicant:

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

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Nicaragua 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). On December 29, 2011, the director stated that the applicant the Form I-485 on the basis of eligibility to adjust under the Nicaraguan Adjustment and Central American Relief Act (NACARA), and that eligibility under section 203 of NACARA requires filing an Application for Suspension of Deportation or Special Rule Cancellation of Removal (Form I-881). The director determined that the applicant had not filed the Form I-881, and stated that the Application for Waiver of Grounds of Inadmissibility (Form I-601) was to be denied, as U.S. Citizenship and Immigration Service (USCIS) does not have authority to adjudicate the Form I-601 where there is no pending Form I-485.

On appeal, counsel contends that the applicant filed the Form I-881. However, the AAO does not have appellate jurisdiction over an appeal of a denial of an I-485. No purpose is served in considering the I-601 waiver application where the adjustment application has been denied on a ground other than inadmissibility for which waiver is available, the subject of the Form I-485 and the Form I-601. The basis for the denial of the Form I-485 in this case was not such inadmissibility, but failure to file the Form I-881, which is not an issue also within the scope of the Form I-601. As such, determination of the matters within the scope of the I-601 cannot remedy denial of the 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.

In sum, as there is no underlying Form I-485 application upon which to serve as the basis for the Form I-601 waiver application, the Form I-601 was properly denied as matter of discretion.

ORDER: The appeal is dismissed.