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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**



715

Date: **APR 15 2011**

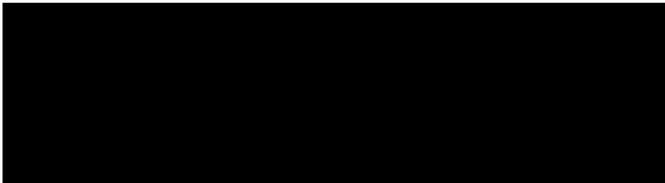
Office: PHILADELPHIA, PA

FILE: 

IN RE: Applicant: 

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

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, Philadelphia, Pennsylvania. The matter 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 who purports to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using another individual's passport and visa. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish she is eligible to adjust her status to that of a lawful permanent resident under section 245(a) of the Act because there was insufficient evidence to establish that the applicant was admitted or paroled into the United States. The field office director further found that the applicant failed to establish she is eligible to adjust her status under section 245(i) of the Act because she failed to demonstrate she falls within one of the enumerated classes of eligible individuals under that statute. Therefore, the field office director found that the applicant had no basis to file a waiver application or adjust her status. Nonetheless, the field office director evaluated the applicant's hardship claim and concluded that the applicant failed to establish extreme hardship to a qualifying relative. The field office director denied the application accordingly. *Decision of the Field Office Director*, dated November 25, 2008.

On appeal, counsel contends the field office director's decision was factually and legally erroneous. Specifically, counsel contends the director misconstrued the record and was "cherry-picking facts" regarding the applicant's manner of entering the United States using a fraudulent passport. Therefore, counsel contends the record shows that the applicant was admitted into the United States using a fraudulent passport. In addition, counsel contends the applicant established the requisite hardship.

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, as described above, the applicant's Form I-485 was denied on November 25, 2008, based on the applicant's failure to establish her eligibility to adjust her status to that of a lawful permanent resident under section 245(a) of the Act or section 245(i) of the Act. *Decision of the Field Office Director, supra*. The AAO does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status. 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).

Because the applicant does not have an underlying adjustment application to support the filing of her Form I-601 waiver application, no purpose would be served in examining the hardship to the applicant's husband. There is no indication in the record that the applicant has filed a motion to reopen the denial of her Form I-485 and no indication any such motion was approved. Accordingly, the waiver application must be dismissed by the AAO as moot.

ORDER: The appeal is dismissed.