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



PUBLIC COPY

[REDACTED]

715

DATE: SEP 21 2011 OFFICE: FRESNO, CA

FILE: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Fresno, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. She gained admission into the United States by using a fraudulent U.S. lawful permanent resident (LPR) card, and she has resided in the United States since January 1992. The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the U.S. through fraud or material misrepresentation. She is married to a U.S. citizen, and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse.

A review of the record reflects that the director denied the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) on May 5, 2009, for lack of prosecution (abandonment). Specifically, the director found that the applicant had failed to submit requested court disposition evidence for an April 1994 arrest for theft. The director determined that the applicant's failure to submit the court documents precluded a material line of inquiry. Accordingly, the applicant's Form I-485 was denied for lack of prosecution pursuant to 8 C.F.R. § 103.2(b)(14). The director subsequently denied the applicant's waiver application on May 5, 2009, based on the fact that the applicant no longer had a pending application for adjustment of her status. Because there was no longer an underlying basis for the waiver application, the Form I-601 was denied.

On appeal, the applicant indicates that she submitted all requested evidence in a timely manner, and she asserts that her U.S. citizen spouse will experience extreme hardship if she is denied admission into the United States.¹

The AAO has reviewed and considered the entire record in rendering a decision on appeal.

With regard to Requests for Evidence and the subsequent submission of evidence, the Regulations state at 8 C.F.R. § 103.2(b)(11) that:

In response to a request for evidence or a notice of intent to deny, and within the period afforded for a response, the applicant or petitioner may: submit a complete response containing all requested information at any time within the period afforded; submit a partial response and ask for a decision based on the record; or withdraw the application or

filed a Form G-28 listing himself as an accredited representative for the applicant. is no longer on the EOIR list of accredited representatives. His name is also not contained on the California Bar list of licensed attorneys. All representations will be considered, but the decision will be issued to the applicant only.

petition. All requested material must be submitted together at one time Submission of only some of the requested evidence will be considered a request for a decision on the record.

8 C.F.R. § 103.2(b)(13) provides further that:

If the petitioner or applicant fails to respond to a request for evidence . . . by the required date, the application or petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. If other requested material necessary to the processing and approval of a case...are not submitted by the required date, the application may be summarily denied as abandoned.

In the present case, the record reflects that on January 15, 2009, the director sent a Request for Evidence (RFE) to the applicant requesting complete medical and vaccination record evidence, and requesting that the applicant submit final and certified court disposition evidence for an April 23, 1994, arrest for [REDACTED] California. The applicant was provided 33 days to submit the evidence. On February 26, 2009, the director denied the applicant's Form I-485 for lack of prosecution, stating that the applicant had failed to submit any of the requested evidence. The applicant filed a Motion to Reopen and Reconsider. The motion was granted on April 21, 2009, upon the applicant's showing that she had timely submitted evidence in response to the director's RFE. The evidence was reviewed and the applicant's Form I-485 was reconsidered. However, on May 5, 2009, the director denied the applicant's Form I-485 a second time for lack of prosecution, based on the applicant's failure to submit final and certified court disposition evidence relating to her April 23, 1994 arrest.

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).

The AAO cannot exercise appellate jurisdiction over additional matters on its own volition, or at the request of an applicant or petitioner. As a "statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy," the creation of appeal rights for adjustment application denials meets the definition of an agency "rule" under section 551 of the Administrative Procedure Act. The granting of appeal rights has a "substantive legal effect" because it is creating a new administrative "right," and it involves an economic interest (the fee). "If a rule creates rights, assigns duties, or imposes obligations, the basic tenor of which is not already outlined in the law itself, then it is substantive." *La Casa Del Convaleciente v. Sullivan*, 965 F.2d 1175, 1178 (1st Cir. 1992). All substantive or legislative rule making requires notice and comment in the Federal Register.

The AAO does have subject matter jurisdiction to consider the appeal of denial of the applicant's Form I-601, and as part of its appellate jurisdiction reviews findings of inadmissibility that necessitate the filing of a form I-601 in the first instance. However, where the underlying adjustment application is denied on a basis other than inadmissibility that can be waived, AAO review is limited. The record reflects that the I-485 was denied for abandonment based on the applicant's failure to provide an adequate response to a request for evidence, which is authorized by the regulation at 8 C.F.R. § 103.2(b)(13). As the purpose of the Form I-601 in this case was to waive inadmissibility for purposes of establishing eligibility to adjust status, and as the applicant was deemed ineligible and the adjustment application denied on a ground that could not be cured by adjudication of the waiver application, the applicant's Form I-601 was properly denied on the basis that there was no longer a pending adjustment application. It is noted that a denial due to abandonment may not be appealed. *See* 8 C.F.R. § 103.2(b)(15). Accordingly, the waiver application is moot and the appeal of the denial of the waiver application is dismissed.

ORDER: The appeal is dismissed.