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



U.S. Citizenship
and Immigration
Services

[REDACTED]

H5

DATE: FEB 21 2012

OFFICE: PHILADELPHIA

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:

[REDACTED]

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO), and this matter is now before the AAO on an appeal. The appeal will be rejected.

The record reflects that the applicant is a native and citizen of Georgia. The applicant's Form I-601 application, Application for Waiver of Grounds of Inadmissibility, was filed on August 30, 2006. The applicant was denied by the District Director, Philadelphia, on January 20, 2007. On February 22, 2007, the applicant filed a motion to reopen the denial decision, which was dismissed on April 24, 2007. The applicant also filed an appeal of the denial decision, which was dismissed by the AAO on August 11, 2009. The applicant subsequently filed a Form I-290B, Notice of Appeal or Motion, on September 11, 2009. On his Form I-290B, the applicant indicated that he was filing an appeal from the AAO decision of August 11, 2009. Specifically, on Part 2 of the Form I-290B, the applicant checked the box indicating that he was filing an appeal and that his brief and/or additional evidence would be submitted within thirty days. However, the AAO does not have jurisdiction over an appeal from its own decision.

If an applicant believes that the law was inappropriately applied in an AAO decision or is in possession of additional information that he wishes considered, an applicant may file a motion to reconsider or a motion to reopen, within the guidelines of the regulations. 8 C.F.R. § 103.5. It is noted that these instructions are outlined in the applicant's AAO decision of August 11, 2009. The regulations do not provide for the filing of an appeal from an AAO decision.

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 not have jurisdiction over an appeal from its own decision. Accordingly, the appeal must be rejected.

ORDER: The appeal is rejected.