

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**

(b)(6)

[REDACTED]  
Date: **FEB 21 2014**

Office: CALIFORNIA SERVICE CENTER [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:  
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. Your file has been returned to the office that issued the initial decision. If you have any further inquiries you should contact that office.

Thank you,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Director, California Service Center, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on motion. The motion will be granted and the matter remanded to the acting director for further action.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and children in the United States.

The acting director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. The AAO dismissed the appeal, finding that there is no approved Form I-130 in the record and, therefore, no purpose would be served in adjudicating the merits of the waiver application.

Counsel now files a motion to reopen and reconsider, and submits evidence that the Form I-130 is currently under review. Counsel contends, among other things, that the AAO erred in denying the applicant's waiver application because the Form I-130 was not denied or terminated, but only administratively closed and pending. Therefore, according to counsel, the AAO may make a determination on the Form I-130, Form I-485, and Form I-601.

After a careful review of the entire record, the AAO concludes that the applicant's waiver application must remain denied. The AAO does not have jurisdiction over a Form I-130, Petition for Alien Relative and, therefore, cannot make a determination on whether it can be approved. 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 her 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.

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 (1<sup>st</sup> Cir. 1992). All substantive or legislative rule making requires notice and comment in the Federal Register. Therefore, the AAO does not have jurisdiction over a Petition for Alien Relative.

It is uncontested in this case that the Form I-130 has not yet been approved. As stated in the prior AAO decision, the filing of a Form I-601 waiver application is predicated on the necessity to demonstrate admissibility, which in this case is a requirement for adjustment to permanent resident status under section 245 of the Act. Although USCIS allows for the simultaneous filing of Forms I-130 and I-485, the applicant's eligibility to apply for adjustment to permanent resident status is dependent on approval of the Form I-130 petition. The record reflects that the applicant does not yet have an approved Form I-130. As such, there is no purpose determining whether the applicant is eligible to apply for a waiver of inadmissibility through adjudication of the Form I-601.

The matter will be remanded to the acting director to issue a decision on the Form I-130 petition filed by the applicant's daughter. If the petition is approved, the field office director shall issue a new decision addressing the merits of the applicant's Form I-601 application. If that decision is adverse to the applicant, the field office director shall certify the decision to the AAO for review.

**ORDER:** The motion is granted. The matter is remanded to the acting director for further action as discussed above.