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

H6

Date: **FEB 23 2012**

Office: LOS ANGELES, CA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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

The record reflects that the applicant is a native and citizen of Mexico, who was found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), based on unlawful presence in the United States. On July 25, 2009, the director denied the applicant's waiver application based on her failure to establish extreme hardship to a qualifying relative. The applicant's Form I-485, adjustment of status application (Form I-485) was denied on the same day based on the applicant's failure to obtain a waiver of her ground of inadmissibility.

On August 24, 2009, counsel for the applicant filed a Form I-290B, Notice of Appeal or Motion (Form I-290B). Counsel states in Part 2 of the Form I-290B, that he is filing an appeal. On Page 2 of the Form I-290B, under the request for information on the relating application or petition, counsel lists "I-290B." A copy of the applicant's Form I-601 denial decision was attached to the Form I-290B. Counsel provides no information regarding the basis of the appeal in Part 3 of the Form I-290B, however, stating only, "[m]y brief and additional evidence will be submitted within 30 days."

Counsel submitted a brief and additional evidence on September 17, 2009. The brief and evidence were sent in an envelope addressed to attention of the U.S. Citizenship and Immigration (CIS) MTR Unit. Counsel's brief is entitled, "Motion to Reopen" and is addressed to the Board of Immigration Appeals. Counsel states in his brief, "[t]his Motion to Reopen is based on fraud and ineffective assistance by a not attorney holding himself out to be an attorney." The brief ends with a request that the applicant's Form I-601 waiver be approved and that the applicant be allowed to proceed with her adjustment of status application. The additional evidence includes a copy of the applicant's Form I-485 denial decision, a copy of the applicant's Form I-130 approval, affidavits relating to hardship, and letters of complaint against the person who assisted the applicant in filing her previous immigration applications.

8 C.F.R. § 103.2(a)(1) provides in pertinent part that:

[E]very benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions. . . .

8 C.F.R. provides in pertinent part at 103.2(b)(1) that:

[E]ach benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. . . .

In the present matter the Form I-290B was not properly completed in accordance with the form's instructions, and the AAO is unable to determine the basis of the applicant's appeal, or whether the appeal is within the AAO's jurisdiction.

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).

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.

Because the Form I-290B was not properly completed and the AAO is unable to determine the basis of the appeal, or that it is within AAO jurisdiction, the appeal must be rejected.

ORDER: The appeal is rejected.